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themselves and all others similarly situated, and
on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

ALICIA JUAREZ, on behalf of herself and
all others similarly situated, and on behalf of
the general public,

Plaintiffs,

v.

FLOREXPO, LLC; KENDAL FLORAL
SUPPLY, LLC; and DOES 1-100,

Defendant.

Case No. 37-2020-00015644-CU-OE-CTL

[Consolidated with Case No. 37-2020-00016123-
CU-OE-CTL]

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS
NOTICE, SETTING OF FINAL APPROVAL
HEARING DATE**

Date: December 16, 2022

Time: 8:30 a.m.

Judge: Hon. Keri Katz

Dept.: C-74

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I. INTRODUCTION

Plaintiffs Alicia Juarez and Karla Martinez Flores (“Plaintiffs”), on behalf of themselves and the approximately 7,434-member putative class, respectfully request that this Court preliminarily approve the Joint Stipulation and Settlement Agreement¹ (“Settlement”) entered into between Plaintiffs and Defendants Florexpo, LLC and Kendal Floral Supply, LLC (“Defendants”) (Plaintiffs and Defendants are collectively referred to as the “Parties”). The Parties’ Settlement seeks to resolve claims raised against Defendants in this matter in exchange for a non-reversionary \$2,000,000 Gross Settlement Amount (“GSA”). The proposed class is comprised of all current and former non-exempt, hourly employees of Defendants who were employed in California at any time during the Class Period (“Class Members” or “Settlement Class Members”). The Class Period is from May 26, 2016 and November 24, 2022.

It is requested that the Court grant preliminary approval, as, when analyzing the strengths and vulnerabilities of the class claims along-side Defendants’ potential liability exposure, this proposed settlement of \$2,000,000 – which is estimated to pay class members an average settlement share of approximately \$139² – is well within the range of reasonableness. Moreover, the proposed Agreement satisfies all of the criteria for preliminary approval under Rule 3.769 of the California Rules of Court.

As the following sections show, Class Counsel are convinced that the proposed settlement is in the best interests of the Class based on the negotiations and a detailed knowledge of the issues present in this action. The length and risks of trial and perils of litigation that affect the value of the claims were all carefully weighed. In addition, the defenses asserted by Defendants, the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals, were also carefully considered by Class Counsel in arriving at the proposed settlement. The Settlement was the product of an all-day mediation with well-regarded and experienced mediator Mark Rudy and was the product of non-collusive, arm’s-length negotiations by informed counsel and parties. The settlement is fair, reasonable, and adequate to all. Accordingly, Plaintiffs seek: (1) preliminary approval of the terms contained in the Joint Stipulation; (2) provisional

¹ The Settlement is attached to the Declaration of David Mara, Esq. (“Mara Dec.”) as **Exhibit 1**.

² \$1,033,340 estimated Net Settlement Amount (“NSA”) / 7,434 class members = \$139 average payout per Class Member.

1 certification of the Class; (3) appointment of Plaintiffs as Class Representatives; (4) appointment of
2 Mara Law Firm, PC as Class Counsel; (5) approval of the Parties' proposed notice of class action
3 settlement³ (referred to herein as the "Class Notice" or "Notice") and method of notifying the Class
4 about the settlement; and (6) set a hearing date for final approval.

5 **II. FACTUAL/PROCEDURAL BACKGROUND**

6 Defendants are wholesale florists who import and distribute flowers on the west coast,
7 including California. In order to carry out their business, Defendants employ hourly non-exempt
8 employees, like Plaintiffs. Mara Dec. ¶ 9.

9 On March 9, 2020, in compliance with Labor Code § 2699.3(a)(1), Plaintiff Alicia Juarez
10 submitted written notice via online filing to the LWDA, setting forth the facts and theories of the
11 violations alleged against Defendants, claiming that she and others were subject to various wage and
12 hour violations. Plaintiff Alicia Juarez then filed her PAGA action against Defendants on May 26,
13 2020, in San Diego Superior Court, Case No. 37-2020-00015644-CU-OE-CTL. She alleged causes of
14 action on behalf of herself and other hourly employees seeking civil penalties under PAGA for: (1)
15 Failure to Pay for All Time Worked; (2) Failure to Pay Overtime; (3) Failure to Provide Meal Periods;
16 (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Pay All Wages Due at Termination;
17 (6) Failure to Provide Itemized Wage Statements; and (7) Failure to Pay All Wages Owed Twice Per
18 Month. Mara Dec ¶ 10.

19 Plaintiff Alicia Juarez filed a class action against Defendants on May 26, 2020, in San Diego
20 Superior Court, Case No. Case No. 37-2020-00016123-CU-OE-CTL. She alleged causes of action on
21 behalf of herself and other hourly employees for: (1) Failure to Pay for All Time Worked; (2) Failure
22 to Pay Overtime; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods;
23 (5) Failure to Provide Itemized Wage Statements; (6) Failure to Pay All Wages Due at Termination;
24 and (7) Violation of Unfair Competition Law. As part of the settlement process, the Parties agreed to
25 the filing of the First Amended Complaint in the class action, adding Karla Martinez Flores as a class
26 representative. The agreed upon First Amended Complaint is attached to the Mara Dec. as **Exhibit 2**.
27 Plaintiffs respectfully request that the Court deem filed the First Amended Complaint and deem it
28

³ The Class Notice is attached to the Settlement as **Exhibit A**.

1 answered with the answer currently on file in this action. Mara Dec. ¶ 11.

2 Defendants deny the allegations of the action in its entirety, deny any liability or wrongdoing
3 of any kind associated with the claims alleged in this action, and further deny that, for any purpose
4 other than settling this action, this matter is appropriate for class treatment. Defendants further contend
5 that they have complied with all applicable California laws, the California Labor Code, the applicable
6 California Wage Order(s), and the Unfair Competition Law. Defendants finally contend that, if this
7 matter were to be litigated further, they would have strong defenses to oppose class certification and
8 succeed on the merits of Plaintiffs' causes of action. Mara Dec. ¶ 12.

9 **III. LITIGATION HISTORY/PARTIES CONTENTIONS**

10 **a. Discovery and Investigation**

11 Through discovery, Plaintiff sought numerous documents and substantial amounts of data that
12 were needed to evaluate the case. These documents included requests for time and wage records for
13 the Class, employee handbooks in place during the class period, any policies regarding meal breaks,
14 rest breaks, the payment of wages, and employee training in place during the class period. Plaintiff
15 also requested data surrounding the number of current and former employees, as well as the number
16 of shifts, workweeks, and pay periods worked by Class Members during the relevant time period. Mara
17 Dec. ¶ 13.

18 This discovery, in conjunction with the Parties' meet and confer efforts, resulted in the
19 production of numerous documents and thousands of lines of data. Using the time and wage records
20 for Class Members produced by Defendants, and the data surrounding the number of current and
21 former Class Members, Plaintiffs' expert was able to provide numerous data points used in
22 establishing a potential exposure model in preparation for mediation. Mara Dec. ¶ 14.

23 **b. The Parties' Staunchly Conflicting Positions**

24 **i. Rest Periods**

25 Based upon the discovery conducted, Plaintiffs contend – and Defendants deny – that
26 Defendants fail to provide Class Members with rest periods in compliance with California law. The
27 IWC Wage Orders mandate that every employer authorize and permit all employees to take rest
28 periods at the minimum rate of a net ten consecutive minutes for each four hour work period, or major

1 fraction thereof. In California, the 10-minute rest break must be a net 10-minutes in a suitable rest
2 area. None of the time allotted for rest breaks can be consumed by the time it takes to get to a suitable
3 rest area. *See Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 267-268 (2016) (relying on
4 1/3/86 and 2/22/02 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest
5 breaks means 10-minutes of time in a rest area and cannot include time it takes to get to and from the
6 rest area).

7 If an employer does not provide an employee a meal and/or rest period in compliance with
8 California law, the Labor Code § 226.7 premium is triggered. *Brinker Restaurant Corp. v. Superior*
9 *Court* (“*Brinker*”), (2012) 53 Cal.4th 1004, 1018; *Augustus v. ABM Security Services, Inc.*
10 (“*Augustus*”), 2 Cal. 5th 257, 269-270 (2016). Failure to provide a lawful meal and/or rest period shall
11 result in the employer paying “the employee one additional hour of pay at the employee’s regular rate
12 of compensation for each workday that the meal or rest or recovery period is not provided.” Cal. Lab.
13 Code § 226.7(c).

14 Plaintiffs contend that based on the information provided from Plaintiffs and numerous class
15 members, Defendants only provide their employees with 10 minutes in which to take a rest period.
16 Defendants instruct employees that their rest period begins immediately upon leaving their
17 workstation, and that they must be at their workstation ready to resume work within 10 minutes. This
18 does not account for the time it takes employees to navigate Defendants’ massive facility to get to and
19 from a suitable rest area, and thus violates California’s mandate that employees be provided a *net* 10
20 minutes of rest time, exclusive of the time it takes to travel to a suitable rest area, like the breakroom,
21 and back to their workstations. Mara Dec. ¶ 15.

22 Further, Plaintiffs claim that Defendants tell employees that they get one 10 minute rest period
23 when they work an 8 hour shift, and they will receive a second 10 minute rest period when they work
24 a 12 hour shift. Under California law, an employee who works an 8 hour shift would be entitled to two
25 10 minute rest periods, and an employee who worked a 12 hour shift would be entitled to three 10
26 minute rest periods. Mara Dec. ¶ 16.

27 Defendants argue that employees were unquestionably provided with legally compliant rest
28 periods in which employees can do whatever they choose, and that these alleged “policies” Plaintiffs

1 have conjured do not exist. Defendants point out that they have a written rest period policy that directly
2 refute Plaintiffs' allegations, as it provides for two 15 minute rest periods, which permits employees
3 plenty of time to take a net 10 minute rest period in suitable rest area, as well as provides the requisite
4 number of rest periods under California law depending on shift length. Mara Dec. ¶ 17.

5 Defendants further argue that even *if* Plaintiffs were subject to some purported unlawful
6 practice in spite of its facially lawful policy (which Defendants deny entirely), these incidents were
7 isolated and limited. Plaintiffs would have to ask each employee what they thought Defendants' rest
8 period policy was, how long they were given to take rest periods, and how many rest periods they
9 received during a shift. Because each employee would have to testify as to their understanding of the
10 policy, individual issues would predominate and any trial would unmanageable. Mara Dec. ¶ 18.

11 **ii. Meal Periods**

12 Plaintiffs further contend that Defendants fail to provide Class Members with meal periods in
13 which Class Members are relieved of all duty. Under California Labor Code section 512, no employer
14 shall employ any person for a work period of more than five hours without providing a meal period of
15 not less than thirty minutes. In *Brinker*, the California Supreme Court succinctly described Section
16 512's mandate: "Employers must afford employees uninterrupted half-hour periods in which they are
17 relieved of any duty or employer control and are free to come and go as they please." *Brinker Rest.*
18 *Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1037.

19 Plaintiffs argue that Defendants fail to provide employees with a full 30 minute meal period "in
20 which they are relieved of any duty or employer control." Defendants expect employees to clock out
21 and in for meal periods. However, there are no timeclocks in the breakroom. This means employees
22 must spend several minutes of their meal periods walking back to the timeclock to clock back in for
23 work. To make matters worse, due to the fact that large groups of employees all take meal periods at
24 the same time, employees are required to wait in line in order to clock back in after their meal periods.
25 All of this time spent under Defendants' control cuts into the employee's 30 minute meal period. Mara
26 Dec. ¶ 19.

27 Defendants assert that, just as with rest periods, employees are provided with meal periods in
28 accordance with California law. Defendants once again points out that the policies in their handbook

1 is facially lawful, that nothing in Defendants’ meal period policy prevents employees from taking
2 additional time beyond the minimum allocated 30 minutes, and that no one is disciplined for not
3 clocking in precisely at the 30-minute mark upon their return from a meal period, nor would it be
4 feasibly possible to expect employees to do so, highlighting the absurdity of Plaintiffs’ claims here.
5 Defendants also argue that Plaintiffs would have to ask each employee whether they thought the policy
6 Plaintiffs rely upon actually meant that employees were required to clock back in to work after a 30-
7 minute meal period, despite Defendant’s meal period policy explicitly providing for a minimum of 30
8 minutes, not a maximum. Because each employee would have to testify as to their understanding of
9 the policy, class certification would be denied for lack of predominance. Mara Dec. ¶ 20.

10 **iii. Unpaid Wages**

11 In addition, Plaintiffs contend that Defendants fail to pay all wages owed to employees for the
12 same reasons just discussed with the meal period claims. Under California law, employees must be
13 paid for all “hours worked,” as that phrase is defined in the Industrial Welfare Commission Wage
14 Orders and interpreted by California law. Hours worked is defined in Wage Order 1-2001 as “the time
15 during which an employee is subject to the control of an employer, and includes the time the employee
16 is suffered or permitted to work, whether or not required to do so.” Wage Order 1-2001, Subd. 2(K);
17 *see also Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833. Under this standard, “it is
18 only necessary that the worker be subject to the control of the employer in order to be entitled to
19 compensation.” *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 584 (2000).

20 The *Morillion* Court reasoned that an employee is under the employer’s control and entitled to
21 compensation when the employer “‘directs, commands or restrains’ an employee.” *Morillion, supra*,
22 22 Cal. 4th at 583, quoting from *Bono Enterprises, Inc. v. Bradshaw*, 32 Cal. App. 4th 968, 975 (1995).
23 Whether time is considered compensable hours worked is based entirely on employer control. *Id.* at
24 584. That is, whether during the time in question the employee is subject to an employer’s directive,
25 command, or restraint. *Id.* at 583. Completely irrelevant to the analysis of whether time is compensable
26 work time is whether employees were permitted to engage in limited, non-working activities, such as
27 eating, reading, or sleeping, while they are under the employer’s directive, command, or restraint. *Id.*
28 at 587. Again, it is the existence of the directive, command, or restraint that the employee must oblige

1 that determines whether the employee is engaged in compensable hours worked. *Id.* at 583.

2 As discussed previously, Defendants do not pay Class Members for the time spent traveling
3 from the breakroom to the timeclock during their unpaid meal periods and waiting in line to clock
4 back in for work during their unpaid meal periods. Additionally, because large groups of employees
5 all begin their shifts at the same time, the line for the timeclock to even start your shift for the day is
6 incredibly long. All of this time is spent under Defendants compensable control, but employees are
7 not paid for this time at all. Mara Dec. ¶ 21.

8 Defendants argue that beyond the limited accusations of Plaintiffs, there is no evidence that
9 Class Members performed *any* work-related tasks for which they were not compensated, and that
10 Defendants have uniform practices and policies *forbidding* employees from working off the clock.
11 Defendant claims that Plaintiffs’ “investigation” is wholly inaccurate, and that the time spent engaging
12 in the above activities takes merely seconds, not minutes. Due to this brevity, Defendants assert that
13 it is not reasonably required to compensate employees for this time. Mara Dec. ¶ 22.

14 As evidenced above, the Parties took staunchly conflicting positions with respect to Plaintiffs’
15 claims.

16 **c. The Parties Agreed to Attend Mediation**

17 The Parties agreed to attend mediation with respected wage and hour mediator Mark Rudy on
18 August 25, 2022. After a full day of mediation, the Parties were able to reach a settlement in principle.
19 Since then, the Parties have met and conferred regarding the terms of the settlement and finalized their
20 agreement in the Joint Stipulation. The Parties seek preliminary approval of the Settlement in the
21 instant motion. (Mara Dec. ¶ 23; **Exhibit 1**).

22 **d. The Terms of the Proposed Settlement**

23 Under the terms of the proposed settlement, Defendants will create a settlement fund of
24 \$2,000,000.

25 **i. Deductions From the Settlement**

26 The Parties have agreed (subject to and contingent upon the Court’s approval) that this action
27 be settled and compromised for the non-reversionary total sum of \$2,000,000 (“Gross Settlement
28 Amount” or “GSA”), which includes, subject to Court approval: (a) attorneys’ fees of up to \$666,660

(33.333% of the GSA) to compensate Class Counsel for work already performed and all work remaining to be performed in documenting the settlement, administrating the settlement, and securing Court approval; (b) litigation expenses estimated not to exceed, \$30,000;⁴ (c) Class Representative Enhancement Payments to the named class representatives, Alicia Juarez and Karla Martinez Flores, in a sum not to exceed \$10,000 each in consideration for agreeing to a general release of their claims against Defendant which is broader than that of other class members, and in recognition of their efforts in prosecuting their actions; (d) claims administration fees and expenses to Phoenix Class Action Administration Solutions (hereinafter “Phoenix”), estimated not to exceed approximately \$50,000;⁵ and (e) \$200,000 allocated to Plaintiffs’ PAGA claims, which is to be distributed only to “Eligible Aggrieved Employees.” Class Members who worked during the “PAGA Period” (March 9, 2019 through November 24, 2022).

ii. Calculation of the Settlement Payments

After all Court-approved deductions from the GSA, it is estimated that \$1,033,340 (“Net Settlement Amount” or “NSA”), less all applicable employee payroll taxes⁶, will be distributed to Participating Class Members.⁷ Subject to the terms and conditions of the settlement, the Settlement Administrator will calculate and issue Individual Settlement Shares based on the following formula:

Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks they worked for Defendants in California, in an hourly, non-exempt position, based on the Class Data provided by Defendants, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class Data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a work week for purposes of this calculation. Therefore, the value of each Class Member’s Individual Class

⁴ These will be tabulated and presented to the Court at final approval. Plaintiffs will only seek the amount of actual expenses incurred during the litigation of this case. Should the actual expenses exceed \$30,000, Plaintiffs will only seek reimbursement of costs up to \$30,000.

⁵ Phoenix will present to the Court a declaration in conjunction with the final approval motion outlining the costs of the settlement administration process. If the settlement administration costs are lower than the amount allocated in the Settlement, the difference will be added to the NSA for distribution to Participating Class Members.

⁶ The employer’s share of payroll taxes due on the portion of the Individual Class Settlement Shares that is allocated to wages shall be paid by Defendants separately and in addition to the GSA. **Exhibit 1** attached to the Mara Dec. at Section I, Paragraph 19.

⁷ Participating Class Members are Class Members who do not submit a valid and timely request to exclude themselves from this Settlement. **Exhibit 1** attached to the Mara Dec. at Section I, Paragraph 33.

Settlement Share ties directly to the amount of weeks that they worked. **Exhibit 1** attached to the Mara Dec. at Section III, Paragraph 56(A)(i).

Furthermore, the Settlement allocates \$200,000 in consideration for the settlement of Plaintiffs' PAGA claims, which is to be distributed separately from the NSA. Class Members who performed work for Defendant from March 9, 2019, one year prior to the submission of the first written notice of Labor Code violations to the LWDA pursuant to Labor Code § 2699.3(a)(1), through November 24, 2022 ("PAGA Period") are also deemed "Eligible Aggrieved Employees" and able to recover their share of the civil penalties under the settlement. 75% of this \$200,000, or \$150,000, will be paid to the LWDA, while the remaining 25%, or \$50,000, will be distributed to the Eligible Aggrieved Employees. The Settlement Administrator will calculate and issue PAGA Settlement Shares based on the following formula:

Each Eligible Aggrieved Employee will receive a proportionate share of the Net PAGA Settlement Amount that is equal to (i) the number of weeks they worked for Defendants in California, in an hourly, non-exempt position, based on the Class Data provided by Defendants, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class Data, which is then multiplied by the Net PAGA Settlement Amount. One day worked in a given week will be credited as a work week for purposes of this calculation. Therefore, the value of each Eligible Aggrieved Employee's Individual PAGA Settlement Share ties directly to the amount of weeks that they worked. **Exhibit 1** attached to the Mara Dec. at Section III, Paragraph 57(A)(i).

The precise number of compensable weeks worked per class member will not be known until the administrator tabulates them, following preliminary approval. Under no circumstances will any portion of the \$2,000,000 settlement revert to Defendants and one hundred percent (100%) of the NSA is available for Class Members to claim.

The Individual Settlement Shares will be divided into a "wage portion" to compensate Participating Class Members for alleged unpaid wages and a "non-wage portion" to compensate Participating Class Members for alleged interest and penalties. Participating Class Members' individual settlement shares will be apportioned as follows: fifteen percent (15%) wages, forty percent (40%) interest, and forty-five percent (45%) penalties. The PAGA Settlement Shares will be apportioned as one-hundred percent (100%) penalties.

iii. Notice to the Class

Upon the Court granting preliminary approval of this Settlement, Defendants shall provide the

1 Settlement Administrator, in electronic form, a list which sets forth the following information
2 pertaining to each Class Member and Eligible Aggrieved Employee: (1) first and last name; (2) last
3 known mailing address; (3) social security number; and (4) hire and termination dates during the Class
4 Period.

5 Within fourteen (14) days after receipt of the Class Data, the Settlement Administrator will
6 send all Class Members and Eligible Aggrieved Employees by First Class Mail, at their current or last
7 known address, the Court-approved Class Notice. Before mailing this Notice, the Settlement
8 Administrator shall conduct a “national change of address search.” The Settlement Administrator will
9 use reasonable efforts, including tracing, to identify the correct address and re-mail all returned,
10 undelivered mail within five (5) business days of receiving notice that a Class Notice was
11 undeliverable. The Parties agree to cooperate with the Settlement Administrator to locate Class
12 Members and Eligible Aggrieved Employees, if necessary.

13 Class Members shall have sixty (60) days after the Class Notices are mailed to respond by
14 submitting a challenge to the number of workweeks attributed to them, submitting an objection, or
15 requesting to be excluded from the Settlement.

16 **iv. Distribution of Funds**

17 Within thirty (30) days after the date the Court enters Judgment granting final approval of the
18 settlement, Defendants shall fund the Settlement by wiring the GSA amount into an account
19 established by the Settlement Administrator. Within twenty (20) days after wiring of the funds, the
20 Settlement Administrator will distribute all payments due under the Settlement.

21 Participating Class Members and Eligible Aggrieved Employees must cash or deposit their
22 Individual Class Settlement Share and Individual PAGA Settlement Share checks within one hundred
23 and eighty (180) calendar days after the checks are mailed to them. If any checks remain uncashed or
24 not deposited by the expiration of the 180-day period, the Settlement Administrator will, within two
25 hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated with
26 the Individual Class Settlement Share and Individual PAGA Settlement Share checks shall be paid to
27 the Monarch School, a non-profit organization that qualifies as a *cy pres* beneficiary in compliance
28 with section 384 of the California Code of Civil Procedure.

1 **v. Release of Claims**

2 Under the terms of the Settlement, the Plaintiffs and the Settlement Class Members will release
3 and discharge the Released Parties from any and all wage-and-hour claims, rights, demands, liabilities
4 and causes of action of every nature and description whether pled or could have been pled based on
5 the factual allegations made in the Lawsuits against Defendants, for the duration of the Class Period.
6 A full recital of the released claims can be found in **Exhibit 1** attached to the Declaration of David
7 Mara, Esq., which is the Settlement, in Section I, Paragraphs 37 and 38.

8 In addition, Plaintiffs agreed to a general release of their claims against Defendants. (*See*
9 **Exhibit 1** to the Mara Dec., Section III, Paragraph 60(P)). At final approval, Class Counsel will seek
10 approval of these Class Representative Enhancement Payments to each named Plaintiff in the sum of
11 \$10,000. As will be detailed at final approval, the requested Class Representative Enhancement
12 Payments are reasonable in light of the broad general release Plaintiffs are giving to Defendants in
13 exchange for the \$10,000 payment.

14 **IV. ARGUMENT**

15 **a. Class Action Settlements are Subject to Court Review and Approval Under the**
16 **California Rules of Court**

17 Rule 3.769 requires court approval for class action settlements.⁸ “Before final approval, the
18 court must conduct an inquiry into the fairness of the proposed settlement.” (California Rules of Court,
19 Rule 3.769(g).) Rule 3.769 further requires a noticed motion for preliminary approval of class
20 settlements:

21 (a) A settlement or compromise of an entire class action, or a cause of action in a
22 class action, or as to a party, requires the approval of the court after hearing.

23 . . .
24 (c) Any party to a settlement agreement may serve and file a written notice of
25 motion for preliminary approval of the settlement. The settlement agreement
26 and proposed notice to class members must be filed with the motion, and the
27 proposed order must be lodged with the motion.

28 Courts act within their discretion in approving settlements that are fair, not collusive, and take into

⁸ The California Supreme Court also has authorized California’s trial courts to use Federal Rule 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, therefore, the Parties cite Federal Rule 23 and federal case law in addition to California law.

1 account “all the normal perils of litigation as well as the additional uncertainties inherent in complex
2 class actions.” *In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F. 2d 167, 179, cert. den.
3 sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S. 905.

4 **b. The Settlement is Fair, Reasonable, and Adequate**

5 In deciding whether to approve a proposed class action settlement under Code of Civil
6 Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.”
7 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is
8 **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-length
9 negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act
10 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
11 small. *Dunk v. Ford Motor Co.*, *supra*, at 1802. As the following shows, all of these elements – with
12 the exception of the percentage of objectors, which cannot be anticipated at this stage of the litigation
13 – bearing on the fairness of the proposed settlement are present here and the Court’s grant of
14 preliminary approval is therefore requested.

15 **i. The Settlement was Reached as a Result of Arm’s Length Negotiations**

16 The settlement was reached as a result of arm’s-length negotiations. Though cordial and
17 professional, the settlement negotiations have been, at all times, adversarial and non-collusive in
18 nature. At the mediation and the following negotiations through the mediator, Counsel for the Parties
19 conducted extensive arm’s length settlement negotiations until the settlement was reached. The terms
20 of the settlement are memorialized in the Settlement which is attached to the Declaration of David
21 Mara, Esq. as **Exhibit 1**.

22 **ii. The Settlement is the Result of Thorough Investigation and Discovery**

23 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before
24 reaching the proposed settlement, and engaged in sufficient investigation, research and discovery to
25 support the settlement. The settlement was only possible following discovery and evaluation of
26 Defendants’ policies and procedures, as well as the data produced for the putative class, which
27 permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages.
28 This litigation has reached the stage where “the Parties certainly have a clear view of the strengths and

1 weaknesses of their cases” sufficient to support the settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979)
2 485 F. Supp. 610, 617.

3 **iii. Counsel for Both Parties are Experienced in Similar Litigation**

4 Both Plaintiffs’ Counsel and Defendants’ Counsel are particularly experienced in wage and
5 hour employment law and class actions. Plaintiffs’ Counsel has significant experience in litigating
6 unpaid wages, unprovided meal and rest periods, misclassification, overtime, and expense
7 reimbursement class actions. Plaintiffs’ Counsel has prosecuted numerous wage and hour class action
8 cases on behalf of employees for California Labor Code violations and thus are experienced and
9 qualified to evaluate the class claims and to evaluate settlement versus trial on a fully informed basis,
10 and to evaluate the viability of the defenses. Mara Dec. ¶¶ 2-8. Indeed, Mara Law Firm, PC was class
11 counsel in *Hohnbaum et al. v. Brinker Restaurant Corp et al.*, which is the subject case in the landmark
12 decision of *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Mara Dec. ¶ 4. This
13 experience instructed Plaintiffs’ Counsel on the risks and uncertainties of further litigation and guided
14 their determination to endorse the proposed settlement. Defendants’ Counsel has extensive experience
15 representing companies and regularly deals with wage and hour litigation matters. Accordingly, both
16 Parties’ Counsel are experienced in wage and hour employment law and class actions.⁹

17 **iv. The Proposed Settlement is a Reasonable Compromise of Claims**

18 An understanding of the amount in controversy is an important factor into whether the
19 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of the
20 claims and the risks of the particular litigation.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168
21 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
22 Cal.App.4th 399, 409. The most important factor in this regard is “the strength of the case for plaintiffs
23 on the merits, balanced against the amount offered in settlement.” *Id.*

24 In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to “decide
25 the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the
26 attorneys.” *Kullar, supra*, 168 Cal.App.4th at 133. Finally, *Kullar* does not require an explicit

27 _____
28 ⁹ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Class
Notice has been provided to the class and they have had an opportunity to respond. This information
will be provided to the Court in conjunction with the final approval motion.

statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims, provided there is a record which allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” *Munoz*, 186 Cal.App.4th at 409. Put differently, “as the court does when it approves a settlement as in good faith under Code of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, 168 Cal.App.4th at 133, citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500. As the following subsections show, the Parties’ investigation and discovery revealed plenty of reasons to discount claims and agree to this settlement.

1. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiffs’ Case and the Risks and Costs of Further Litigation

The proposed settlement was only possible following significant discovery, an evaluation of Defendants’ relevant policies and procedures, and Plaintiffs’ independent investigation. This permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. The discovery conducted resulted in Plaintiffs’ central theories of liability, which are predicated on Plaintiffs’ claims that Defendants failed to provide Class Members with compliant meal and rest periods and failed to pay them for all time worked. As explained above, Defendant maintains that the discovery produced demonstrates that it would succeed at both class certification and on the merits.

Although, Plaintiffs believe this case is suitable for certification on the claimed bases that the relevant contracts at issue are all uniform, and that there are company-wide policies and practices applicable to Class Members, both of which result in the requisite amount of control to render Class Members as employees under California Law, Defendants’ counter-arguments and affirmative defenses raise uncertainties with respect to both class certification and success on the merits. As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court’s sound discretion. Decisions following *Sav-On* have reached different conclusions, with respect to certification of wage and hour claims.¹⁰ While remaining

¹⁰ See, e.g., *Harris v. Superior Court* (2007) 154 Cal. App. 4th 164 (reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal. App. 4th 1440 (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal. App. 4th 121 (reversing denial of certification); *Dunbar v. Albertson’s Inc.* (2006) 141 Cal. App. 4th 1422 (affirming denial of

1 confident in the strengths of their claims, all of these factors led Plaintiffs to discount the following
2 maximum potential damage claims.

3 **2. Exposure and the Risks for Core Claims**

4 In addition to being able to discover the strengths and vulnerabilities associated with Plaintiffs'
5 claims, Defendants provided Plaintiffs with information and data points which Plaintiffs submitted to
6 an expert to establish a representative damage model, as explained below. At the time of mediation,
7 there were approximately 7,434 Class Members who worked approximately 250,000 workweeks, with
8 an average hourly pay rate of \$14.26. Mara Dec. ¶ 24.

9 **A. Rest Periods**

10 Plaintiffs allege that Defendants have failed to provide employees with compliant rest periods
11 because they do not account for the time it takes employees to navigate Defendants' massive facility
12 to get to and from a suitable rest area, and thus violates California's mandate that employees be
13 provided a *net* 10 minutes of rest time, as well as fail to provide the requisite number of rest periods
14 based on shift length. Based on these allegations, for each and every shift worked, Class Members
15 would be entitled to a premium under California Labor Code § 226.7 per shift for failure to provide a
16 compliant rest period. Therefore, the *maximum potential exposure* under this theory of liability would
17 be **\$14,348,155** (1,006,182 shifts over 3.5 hours in length x \$14.26 = \$14,348,155). Mara Dec. ¶ 25.
18 This maximum potential exposure, however, had to be discounted considerably in light of Defendant's
19 arguments, which are outlined below.

20 Plaintiffs' rest period claims are subject to risks of obtaining certification and on the merits.
21 Defendants argue that employees were unquestionably provided with legally compliant rest periods.
22 First, Defendants point out that its policy provides for 15-minute, not 10-minute, rest periods, which
23 leaves plenty of time for employees to travel to and from a suitable rest area. Second, despite the
24 written policy in its handbook not explicitly providing for net 10-minute rest periods, nothing in its
25 policy restricts employees from taking net 10-minute rest breaks. In fact, Defendants point out that no
26 one is disciplined for not making it back to their workstation in under 10 minutes because they were
27 taking a net 10-minute rest break, and that individualized issues would predominate because the Court
28 would have to ask each and every class member whether they thought they were not permitted to take
_____ certification).

1 a net-10 minute rest break under this policy. Third, Defendants note that their written policy provides
2 the requisite number of rest periods under California law depending on shift length, despite Plaintiffs’
3 allegations of any purported policy to the contrary. Mara Dec. ¶ 26.

4 Due to the risks Plaintiffs’ rest period claims face at certification and on the merits, Plaintiffs
5 had to discount the maximum potential exposure of this claim. Taking these considerations into
6 account, as well as Plaintiffs’ Counsel’s experience, Plaintiffs believes a realistic potential exposure
7 for this claim is **\$2,152,223** which is fifteen percent (15%) of the maximum potential exposure. Mara
8 Dec. ¶ 27.

9 **B. Meal Periods**

10 Plaintiffs argue that Defendants fail to provide employees with a full 30 minute meal period
11 “in which they are relieved of any duty or employer control.” Defendants expect employees to clock
12 out and in for meal periods. However, there are no timeclocks in the breakroom. This means employees
13 must spend several minutes of their meal periods walking back to the timeclock to clock back in for
14 work and waiting in line in order to clock back in after their meal periods. All of this time spent under
15 Defendants’ control cuts into the employee’s 30 minute meal period. Based on these allegations, for
16 each and every shift worked, Class Members would be entitled to a premium under California Labor
17 Code § 226.7 per shift for failure to provide a compliant meal period. Therefore, the **maximum**
18 **potential exposure** under this theory of liability would be **\$11,240,915** (788,283 shifts with meal
19 periods of 35 minutes or less x \$14.26 = \$11,240,915). Mara Dec. ¶ 28. This maximum potential
20 exposure, however, had to be discounted considerably in light of Defendants’ arguments, which are
21 outlined below.

22 Plaintiffs’ meal period claims are also subject to risks of obtaining certification and on the
23 merits. Defendants assert that, just as with rest periods, employees are provided with meal periods in
24 accordance with California law. Defendants once again point out that the handbook notes that nothing
25 in Defendants’ meal period policy prevents employees from taking additional time beyond the
26 minimum allocated 30 minutes, and that no one is disciplined for not clocking in precisely at the 30-
27 minute mark upon their return from a meal period, nor would it be feasibly possible to expect
28 employees to do so, highlighting the absurdity of Plaintiffs’ claims here. Defendants also argue that

1 Plaintiffs would have to ask each employee whether they thought the policy Plaintiffs rely upon
2 actually meant that employees were required to clock back in to work after a 30-minute meal period,
3 despite Defendants' meal period policy explicitly providing for a minimum of 30 minutes, not a
4 maximum. Because each employee would have to testify as to their understanding of the policy, class
5 certification would be denied for lack of predominance. Mara Dec. ¶ 29.

6 Due to the risks Plaintiffs' meal period claims face at certification and on the merits, Plaintiffs
7 had to discount the maximum potential exposure of this claim. Taking these considerations into
8 account, as well as Plaintiffs' Counsel's experience, Plaintiffs believes a realistic potential exposure
9 for this claim is **\$1,124,091** which is ten percent (10%) of the maximum potential exposure. Mara Dec.
10 ¶ 30.

11 C. Unpaid Wages

12 Plaintiffs claim that Defendants do not pay Class Members for all time worked. Specifically,
13 they are not paid for the time spent waiting in line to clock in to start their shift, traveling from the
14 breakroom to the timeclock during their unpaid meal periods, and waiting in line to clock back in for
15 work during their unpaid meal periods. All of this time is spent under Defendants' compensable
16 control, but remains unpaid. Based on these allegations, for each and every shift worked, Class
17 Members would be entitled to approximately 10-minutes worth of additional wages per shift.
18 Accordingly, Defendants' *maximum* exposure under Plaintiffs' unpaid wages claim is **\$2,530,981**
19 (1,064,929 shifts x 10 minutes of total unpaid time x \$14.26 = \$2,530,981). Mara Dec. ¶ 31.

20 Defendants argue that beyond the limited accusations of Plaintiffs, there is no evidence that
21 Class Members performed *any* work-related tasks for which they were not compensated, and that
22 Defendants have uniform practices and policies *forbidding* employees from working off the clock.
23 Defendant claims that Plaintiffs' "investigation" is wholly inaccurate, and that the time spent engaging
24 in the above activities takes merely seconds, not minutes. Due to this brevity, Defendants asserts that
25 it is not reasonably required to compensate employees for this time, and would assuredly devolve into
26 individualized issues as to whether an employee actually ever waited in any purported lines. Mara
27 Dec. ¶ 32.

28 Due to the risks Plaintiffs' unpaid wages claims face at certification and on the merits, Plaintiffs

1 had to discount the maximum potential exposure of this claim. Taking these considerations into
2 account, as well as Plaintiffs' Counsel's experience, Plaintiffs believes a realistic potential exposure
3 for this claim is **\$253,098** which is ten percent (10%) of the maximum potential exposure. Mara Dec.
4 ¶ 33.

5 **D. PAGA**

6 Plaintiffs are also seeking PAGA penalties. PAGA allows the private enforcement of certain
7 California Labor Code sections relating to wage and hour violations. PAGA Section 2699(f)(2)
8 provides for a standard penalty amount where a civil penalty is not otherwise specified by statute:

9 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay
10 period for the initial violation and two hundred dollars (\$200) for each aggrieved
11 employee per pay period for each subsequent violation.

12 Plaintiffs allege that Defendant has three (3) core violations – unlawful meal periods, unlawful rest
13 periods, and failure to pay all time worked – of the Labor Code sections which give rise to PAGA
14 penalties. The statute of limitations for PAGA violations goes back one year. Plaintiffs calculated
15 Defendants' potential maximum exposure under PAGA as follows:

16 \$100 x 3 PAGA violations x 65,893 pay periods during the one-year statutory period = \$19,767,900
17 Mara Dec. ¶ 34.

18 Plaintiffs' PAGA claims are subject to the same risks on the merits as Plaintiffs' non-PAGA
19 claims. In addition, Labor Code § 2699, subdivision (e)(2) provides that "[i]n any action by an
20 aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court
21 may award a lesser amount than the maximum penalty amount specified by this part if, based on the
22 facts and circumstances of the particular case, to do otherwise would result in an award that is unjust,
23 arbitrary, oppressive, or confiscatory." In *Thurman v. Bayshore Transit Management, Inc.*
24 ("*Thurman*") (2012) 203 Cal. App. 4th 1112, the court determined that an award of the maximum
25 penalty allowed may be unjust in circumstances outside of when a defendant cannot afford to pay the
26 maximum amount. *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th 1112,
27 1135-1136. The *Thurman* court found that penalties may be reduced when a defendant has taken its
28 obligations to comply with the law seriously. *Id.* Defendants maintain that if the case were to continue
in litigation, they would be able to show that they took their obligations to comply with the law

1 seriously. As such, if Plaintiffs were able to prevail on the merits of their PAGA claims, it is likely
2 that the Court would reduce the maximum penalty allowed.

3 In addition, as the PAGA violations asserted by Plaintiffs are predicated on the same unlawful
4 conduct that Plaintiffs base their other claims, Plaintiffs' PAGA claims are subject to the same risks
5 on the merits as Plaintiffs' class claims. If Plaintiffs are ultimately unable to prevail on any one of
6 their class claims, their recovery under the PAGA as to that violation would also fail. The likelihood
7 of the Court reducing the PAGA damages awarded to Plaintiffs and the aggrieved employees –
8 assuming liability is proven as to each of Plaintiffs' claims – is also higher in this case where these
9 same individuals will also be receiving money for the same unlawful conduct under the class claims.
10 *See Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO,
11 2018 U.S. Dist. LEXIS 6142 *17 (“Because the PAGA penalties sought are at least partially
12 duplicative of penalties granted by the underlying Labor Code violations, *see, e.g.*, Cal. Lab. Code §§
13 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what amount to award
14 PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiffs recognize that the potential PAGA
15 penalties are highly uncertain.”).

16 Taking the risks Plaintiffs' claims face on the merits, the potential manageability issues, and
17 the fact that the Court may reduce any PAGA penalties awarded, Plaintiffs had to discount the
18 maximum potential exposure of this PAGA claims. Based on these considerations, and based upon
19 Plaintiff's Counsel's experience, a realistic value of these claims is **\$988,395** which represents five
20 percent (5%) of the maximum potential exposure. Mara Dec. ¶ 35.

21 **3. The Settlement Amount of \$2,000,000 is Reasonable**

22 Based upon the risks just discussed, Plaintiffs had to discount their maximum potential
23 exposure. Plaintiffs also had to consider that, should the Court agree with their theories and grant
24 certification as to each of their claims, they may not be awarded the full exposure at trial. All of these
25 factors led Plaintiffs to reduce the realistic potential exposure in order to gain a definite monetary
26 recovery for the class. Therefore, the total reasonable maximum exposure for the core Class and PAGA
27 claims was calculated to be **\$4,517,807**. As a result, Class Counsel believes that the settlement of these
28 claims in an amount of \$2,000,000, which is nearly 45% of the realistic maximum exposure, is in the
best interests of the class as fair, reasonable, and adequate. Mara Dec. ¶ 36.

1 A settlement is not judged **solely** against what might have been recovered, had the plaintiffs
2 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and
3 reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250; *Rebney v. Wells*
4 *Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139; “Compromise is inherent and necessary in the
5 settlement process...even if the relief afforded by the proposed settlement is substantially narrower
6 than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because
7 the public interest may indeed be served by a voluntary settlement in which each side gives ground in
8 the interest of avoiding litigation.” *Wershba, supra*, at 250; *Officers for Justice v. Civil Serv. Comm’n*
9 (9th Cir. 1982) 688 F.2d 615, 628 (“It is well-settled law that a cash settlement amounting to only a
10 fraction of the potential recovery does not...render the settlement inadequate or unfair”).

11 **c. Provisional Class Certification Should be Granted**

12 Under California law, a class action is appropriate when the class is ascertainable and there is
13 “a well-defined community of interest in the questions of law and fact involved affecting the parties
14 to be represented.” Cal. Civ. P. Code § 382. State law requirements under California Code of Civil
15 Procedure § 382 for class certification follow federal law according to Rule 23 of the Federal Rule of
16 Civil Procedure: numerosity, typicality of the class representatives’ claims, adequacy of
17 representation, predominance of common issues, and superiority. Fed. R. Civ. P. 23(a); *see also*
18 *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. It should be noted that while a court
19 must certify a class for settlement purposes if a class has not already been certified, “it is well
20 established that trial courts should use different standards to determine the propriety of a settlement
21 class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used
22 for settlement cases.” *Glob. Minerals & Metals Corp. v. Superior Court* (2013) 113 Cal.App.4th 836,
23 859 *citing Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807, fn. 19.

24 Plaintiffs contend, and Defendants do not dispute for settlement purposes only, each of these
25 elements are present. *See Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224, 237-38. Plaintiffs
26 seek approval of the following Class for settlement purposes only: All current and former non-exempt,
27 hourly employees of Defendants who were employed in California at any time from May 26, 2016 to
28 November 24, 2022.

1 **i. The Proposed Settlement Class is Ascertainable**

2 Plaintiffs contend that the proposed Settlement Class is ascertainable because of all of the class
3 members have performed work for Defendants and have been identified through Defendants’ own
4 records. *See Rose v City of Hayward* (1981) 126 Cal.App.3d 926,932 (finding that “Class Members
5 are ‘ascertainable’ where they may be readily identified without unreasonable expense or time by
6 reference to official records.”); *Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919 (“[c]lass
7 members are ‘ascertainable’ where they may be readily identified without unreasonable expense or
8 time by reference to official [or business] records.”). Thus, the ascertainability requirement is met.

9 **ii. The Proposed Settlement Class is Sufficiently Numerous**

10 The numerosity requirement is met if the class is so large that joinder of all members would be
11 impracticable. *Gay v. Waiters’ & Dairy Lunchmen’s Union* (N.D. Cal. 1980) 489 F. Supp. 282, *aff’d*
12 (9th Cir. 1982) 694 F.2d 531. “There is no set number required to maintain a class action, and the
13 statutory test is whether a class is so numerous that ‘it is impracticable to bring them all before the
14 court.’” *Henderson v. Ready to Roll Transportation, Inc.* (2014) 228 Cal.App.4th 1213, 1223
15 (reversing superior court ruling that nine class members was too few); *Bowles v. Superior Court* (1995)
16 44 Cal.2d 574 (upholding a class of ten members). “The numerosity requirement is more readily met
17 when a class contains employees suing their present employer . . . This is because class members may
18 be unwilling to sue their employer individually out of fear of retaliation.” *Romero v. Producers Dairy*
19 *Foods* (E.D. Cal. 2006) 235 F.R.D. 474, 485. As explained by the California Supreme Court, “fear of
20 retaliation for individual suits against an employer is a justification for class certification in the arena
21 of employment litigation, even when it is otherwise questionable that the numerosity requirements
22 were satisfied . . . It needs no argument to show that fear of economic retaliation might often operate
23 to induce aggrieved employees quietly to accept substandard conditions.” *Gentry v. Superior Court*
24 (2007) 42 Cal.4th 443, 460 (citation omitted), overruled on other grounds in *Iskanian v. CLS Transp.*
25 *Los Angeles, LLC* (2014) 59 Cal.4th 348.

26 Here, Defendant’s records show that the proposed Settlement Class has approximately one
27 seven thousand four hundred and thirty-four (7,434) members. Plaintiffs contend that joinder of all
28 Settlement Class Members is impracticable and, therefore, a class wide proceeding is preferable. *See*

1 *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030 (noting that there is no set minimum to meet
2 the numerosity prerequisite, but that a class of as few as 28 is acceptable.). In fact, a class of ten (10)
3 has been certified as a class action. *Id.*, citing *Bowles v. Superior Court* (1995) 44 Cal.2d 574. Several
4 federal cases on this issue have held that classes of over forty (40) individuals are numerous enough
5 to meet the numerosity requirement. *See Ikonen v. Hartz Mountain Corp.* (S.D. Cal. 1988) 122 F.R.D.
6 258, 262. Accordingly, the Class that is comprised of approximately one hundred and sixty-one (161)
7 members is sufficient to satisfy the numerosity requirement.

8 **iii. The Commonality Requirement is Met**

9 The commonality requirement is met if there are questions of law and fact common to the class.
10 *Hanlon, supra*, 150 F.3d at 1019 (“The existence of shared legal issues with divergent factual
11 predicates is sufficient, as it a common core of salient facts coupled with disparate legal remedies
12 within the class.”). “Predominance is a comparative concept, and ‘the necessity for class members to
13 individually establish eligibility and damages does not mean individual fact questions predominate.’”
14 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 334. Commonality exists if there
15 is a predominant common legal question regarding how an employer’s policies impact its employees.
16 *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal.App.4th 1524, 1536 (2008) (“[T]he common legal
17 question remains the overall impact of Diva’s policies on its drives.”). Whether Plaintiff is likely to
18 prevail on his theory of recovery is irrelevant at the certification stage since the question is “essentially
19 a procedural one that does not ask whether an action is legally or factually meritorious.” *Linder v.*
20 *Thrifty Oil Co.* (2003) 23 Cal.4th 429, 439-440.

21 Here, Plaintiffs contend that the proposed Class Members’ claims all stem from the same
22 allegedly unlawful policies and practices, which were addressed previously in this motion. Plaintiffs
23 seek the same legal remedies under state law on behalf of themselves and all Class Members. As
24 liability as to all Class Members is predicated on the same policies and practices, which Plaintiffs
25 allege violates California law, the commonality requirement has been satisfied.

26 **iv. The Typicality Requirement is Met**

27 The typicality requirement is met if the claims of the named representative are typical of those
28 of the class, though, “they need not be substantially identical.” *Hanlon, supra*, 150 F.3d at 1020;

1 *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47. Plaintiffs contend that their claims are typical of
2 the Class Members' claims because they arise from the same factual basis and are based on the same
3 legal theory as those applicable to the Class Members. *See Wehner v. Syntex Corp.* (N.D. Cal. 1987)
4 117 F.R.D. 641, 644. Each Class Member is challenging the same policies and practices. Plaintiffs
5 allege that Defendants' unlawful wage and hour policies and practices uniformly applied to all Class
6 Members. Factual differences may exist between Plaintiffs and the Class Members so long as the
7 claims arise from the same events or course of conduct and are based on the same legal theories.
8 *Hanlon, supra*, 150 F. 3d at 1020; *see also Wehner, supra*, 117 F.R.D. at 644; *Newberg on Class*
9 *Actions*, 4th ed. § 3:15, p.335 [When it is alleged that the same unlawful conduct was directed at or
10 affected both the named plaintiff and the class sought to be represented, the typicality requirement is
11 usually met irrespective of varying fact patterns which underlie individual claims.] As such, the
12 typicality requirement is satisfied.

13 **v. The Adequacy Requirement is Met**

14 The adequacy requirement is met if Plaintiffs have no interests adverse to the interests of the
15 proposed Class Members and is committed to vigorously prosecuting the case on behalf of the class.
16 *Hanlon, supra*, 150 F.3d at 1020; *McGhee v. Bank of America* (1976) 70 Cal.App.3d 442, 450-51.
17 Plaintiffs contend those standards are met here. Plaintiffs do not have any conflicts of interest with the
18 Class. They have been and continue to be committed to vigorously prosecuting this case. If any Class
19 Member wishes to opt-out of the Settlement, he or she may do so. Therefore, there is no conflict of
20 interest between Plaintiffs and the Class Members.

21 **vi. Notice to Class Members Complies with California Rule of Court 3.769(f)**

22 California Rule of Court 3.769(f), provides:

23 If the court has certified the action as a class action, notice of the final approval hearing
24 must be given to class members in the manner specified by the court. The notice must
25 contain an explanation of the proposed settlement and procedures for class members to
26 follow in filing written objections to it and in arranging to appear at the settlement
hearing and state any objections to the proposed settlement.

27 The proposed Class Notice meets all of these requirements. The proposed Class Notice advises
28 the class of their rights to participate in the settlement, how to and when to object to or request

1 exclusion from the settlement, and the date, time, and location of the final approval hearing. The
2 proposed Class Notice is attached as **Exhibit A** to the Settlement.

3 **V. CONCLUSION**

4 Plaintiffs respectfully submit that the proposed settlement is in the best interests of the class
5 and class members, as it is fair, adequate, and reasonable, and one that should ultimately be granted
6 final approval. Under the applicable class action criteria and guidelines, the proposed settlement
7 should be preliminarily approved by the Court, the class should be conditionally certified for purposes
8 of settlement only, and the Notice of Class Action Settlement should be approved.

9
10 Respectfully Submitted,

11 **MARA LAW FIRM, PC**

12
13 Date: November 22, 2022

Signed: 

David Mara, Esq.
Matthew Crawford, Esq.
Attorneys for Plaintiffs