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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN
UNLIMITED JURISDICTION

Leticia Romero, Hilda Mancilla de Magana,
Maria Linares, and Maria de Jesus Becerra,
on behalf of themselves and others similarly
situated and the general public,

Plaintiffs,

v.

Morada Produce Company, L.P.; and DOES
1 through 50, inclusive,

Defendants.

Case No. STK-CV-UOE-2020-9623

**NOTICE OF MOTION AND MOTION
FOR FINAL APPROVAL OF CLASS
SETTLEMENT**

Hearing Date: April 30, 2025

Hearing Time: 9:00 A.M.

Judge: Hon. George J. Abdallah

Dept.: 10A

Action Filed: November 17, 2020

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This motion will be made and based upon: (1) this notice of motion; (2) the memorandum of points and authorities in support thereof; (3) the declaration of Class Counsel Arlo Garcia Uriarte, as appointed by the Court in its preliminary approval order, and the exhibits attached thereto, all of which are filed and served concurrently herewith; as well as (4) the records, pleadings, and papers on file in this action, and upon such other matters as may be presented at the time of hearing on this motion.

all

Arlo Garcia Uriarte
Liberation Law Group, P.C.
Attorney for Plaintiffs

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I. INTRODUCTION

Plaintiffs Leticia Romero, Hilda Mancilla de Magana, Maria Linares, and Maria de Jesus Becerra (“Plaintiffs”) respectfully request final approval of the proposed \$3,600,000 class and representative action settlement¹ reached between them and Defendant Morada Produce Company, L.P. (“Defendant”) (collectively “the Parties”). The Court granted preliminary approval on January 27, 2025, and certified the following Settlement Class: “all current and former hourly-paid or nonexempt employees of Defendant Morada Produce Company, L.P. (hereinafter “Defendant”) in California employed during the Class Period² and did not request exclusion from this Settlement.”

The settlement administrator, Simpluris, Inc., (hereinafter “Simpluris”), mailed the Court-approved notice form to putative Settlement Class members (sometimes abbreviated “SCM”) on March 7, 2025. [Butler Dec.³ ¶ 8]. Employee reaction to the settlement has been excellent thus far⁴; to date, no one has requested exclusion and there are no objections. [*Id.* at ¶¶ 12-13]. Trial courts find settlement terms to be presumptively fair when there are no objections or very few objections. *See, Carter v. City of L.A.* (2014) 224 Cal. App. 4th 808, 822 citing *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1802; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.

Settlement Class members are set to recover \$306.68 each on average, and the highest projected individual recovery is \$8,111.75. [Butler Dec. ¶ 15]. This is in exchange for a limited

¹ The Class and PAGA Action Settlement Agreement and Release (hereinafter “Agreement” and abbreviated “AGMT”) contains the terms of the proposed settlement (hereinafter “Settlement”) and is attached as Exhibit “1” to the Declaration of Arlo Uriarte (hereinafter “Uriarte Dec.”), which is filed concurrently herewith.

² The Class Period is defined as November 17, 2016, through October 14, 2024. [*See*, AGMT ¶¶ A(7)-(8)].

³ “Butler Dec.” means the declaration of Mary Butler. Ms. Butler is employed by Simpluris as a Senior Project Manager. [*Id.* at ¶ 1]. Her declaration is attached as Exhibit “2” to the declaration of Arlo Garcia Uriarte (hereinafter “Uriarte Dec.”), which is filed concurrently herewith.

⁴ The notice period concludes on April 21, 2025. [Butler Dec. ¶ 11]. Plaintiffs will file an updated administrator declaration before the scheduled hearing.

1 release. Plaintiffs describe the SCM release as limited because it only reaches the claims that
2 were “...expressly pleaded in the Action, LWDA Letter, and all other claims, such as those
3 under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that
4 could have been asserted based on the facts pleaded in the Action...” [AGMT ¶ A(33)]. The
5 release only applies to the Class Period. [*Id.*]. Class Members will retain any individual claims
6 that are not related to Plaintiffs’ lawsuit, wrongful termination causes of action for example.
7 Plaintiffs and Class Counsel respectfully submit that SCM are best served by the instantly
8 proposed settlement rather than by further litigation and the ensuing substantial risks.

9 Furthermore, Plaintiffs’ requests for attorneys’ fees and costs are fully supported by
10 California case law. Courts routinely approve fee awards of up to 33.33% of the common fund,
11 particularly when the results achieved are meaningful and counsel assumed the full risk of
12 litigation on contingency. Both conditions are satisfied here. First, Settlement Class members
13 will receive real monetary relief while releasing only those claims tied to Plaintiffs’ operative
14 allegations—despite the significant litigation hurdles that would have followed absent
15 settlement. Second, Class Counsel prosecuted this matter on a pure contingency basis and bore
16 all financial risk. [Uriarte Dec. ¶ 19].

17 Plaintiffs’ requested service awards are also justified. They devoted time and energy to
18 advancing this case on behalf of the class and played a meaningful role in achieving a favorable
19 resolution. Moreover, each Plaintiff executed a general release—including a waiver under
20 California Code of Civil Procedure § 1542—that exceeds the scope of the class release. [See,
21 AGMT ¶ F(2)]. For these reasons and those discussed above, Plaintiffs respectfully request that
22 the Court grant final approval of the settlement and award the requested attorneys’ fees,
23 litigation costs, and service enhancements.

24 **II. CASE BACKGROUND**

25 Defendant is one of California’s largest packers/shippers of cherries, onions, and bell
26 peppers. [Uriarte Dec. ¶ 3]. Plaintiffs worked as non-exempt, seasonal employees for Defendant,
27 packing and sorting some or all of the aforementioned products. [Uriarte Dec. ¶ 4].
28

1 Plaintiffs initiated this action on November 17, 2020. It is a putative class action and a
2 representative action under PAGA. The complaint includes the following causes of action: (1)
3 failure to pay all hours worked; (2) failure to pay overtime compensation; (3) failure to pay
4 compensation for meal period violations; (4) failure to pay compensation for rest break
5 violations; (5) wage statement violations; (6) waiting time penalties; (7) civil penalties pursuant
6 to the Private Attorneys General Act (Labor Code §§2698, et seq.); and (8) Unfair Competition
7 in Violation of Cal. Business and Professions Code §§17200, et seq. Causes of action one
8 through four are based on two central allegations made by Plaintiffs: (1) Defendant fails to
9 compensate putative class members for pre and post-shift work; and, (2) Defendant routinely
10 commits meal and rest period violations by providing truncated breaks to putative class
11 members. Causes of action five through eight are derivative of causes of action one through four.

12 The Parties exchanged written discovery, including form and special interrogatories, as
13 well as requests for production of documents. [Uriarte Dec. ¶8]. Plaintiff Romero and two Person
14 Most Knowledgeable (“PMK”) witnesses designated by Defendant were deposed. [Id]. In
15 advance of mediation, Defendant provided the following: (1) employment handbooks containing
16 all relevant wage and hour policies pertaining to the Class Period; (2) a meal period waiver
17 agreement form; (3) an arbitration agreement form; (4) two “hours worked verification” forms;
18 and, (5) a 30 percent timekeeping and payroll sample (thirty percent of putative class members).
19 Defendant also shared these data points regarding the putative class: (1) 7,487 total employees;
20 (2) 332 current employees; (3) 7,155 separated employees; (4) 170,790 aggregate workweeks;
21 (5) 111,165 pay periods (PAGA); and, (6) 16.32 is the average hourly rate of pay. [Id].

22 Mediation occurred on August 14, 2024, before Steven Serratore, a well-respected
23 mediator with extensive experience handling class and representative actions. [Uriarte Dec. ¶ 9].
24 After the Parties initially reached an impasse, Mr. Serratore issued a mediator’s proposal, which
25 both sides accepted on August 16, 2024. [Id]. Thereafter, a memorandum of understanding was
26 drafted and fully executed. Counsel for the Parties subsequently worked to prepare and finalize
27 the formal Settlement Agreement, which was executed on October 25, 2024. [AGMT ¶ H].
28 Thereafter, the Parties solicited proposals from three reputable settlement administrators

(Simpluris, Inc., CPT Group, Inc., and Phoenix Administrators); Simpluris, Inc.’s bid was the most competitive. [Uriarte Dec. ¶12]. Finally, the Parties collaboratively drafted and approved the now Court-approved Class Notice form. [Uriarte Dec. ¶14]. Preliminary approval was granted on January 27, 2025. Plaintiffs now move for final approval.

III. OVERVIEW OF THE SETTLEMENT AGREEMENT

The Parties have reached a settlement totaling \$3,600,000. From this gross amount, Plaintiffs seek approval of the following deductions: (1) attorneys’ fees in the amount of \$1,199,880, representing 33.33% of the total settlement; (2) reimbursement of \$25,499.46 in accrued litigation costs; (3) up to \$38,320⁵ in settlement administration fees payable to Simpluris, Inc.; (4) service awards equaling \$10,000 each to Plaintiffs (\$40,000 total); and (5) a \$50,000 allocation⁶ under the Private Attorneys General Act (“PAGA”), of which \$32,500 will be paid to the Labor and Workforce Development Agency (“LWDA”) pursuant to Labor Code § 2699(i), with the remaining \$17,500 distributed to aggrieved employees who worked during the PAGA Period.

All remaining settlement funds will be distributed on a *pro rata* basis to Class Members who do not exclude themselves from the Settlement—no claims process is required. [AGMT ¶ E(7)]. Each participating Class Member will receive an individual settlement payment and, where applicable, a PAGA payment, unless a Request for Exclusion is submitted. [AGMT ¶ E(4) and E(5)]. However, even individuals who opt out will still receive a PAGA payment if they worked during the PAGA Period. [AGMT ¶ D(2)(c)].

For tax purposes, 10% of each individual settlement payment will be allocated to wages, and the Settlement Administrator will make the required tax withholdings for that portion. [AGMT ¶ E(5)(e)]. The remaining 90% will be allocated to penalties and interest. *Id.* The

⁵ Simpluris will charge \$27,064 if a single distribution to Class Members is sufficient. An additional \$11,256 will be required if a second distribution becomes necessary.

⁶ Plaintiffs previously briefed the rationale behind this allocation in detail. [Pl. PAM 19:26–22:2.] They respectfully rely on those arguments for final approval of the PAGA allocation.

1 Settlement Administrator will issue the appropriate IRS Form W-2 for the wage portion and
2 Form 1099 for the remainder. *Id.*

3 Defendant is obligated to fund the full settlement by July 31, 2025, provided the
4 Effective Date has occurred. [AGMT ¶ E(8)]. Defendant has also agreed to use best efforts to
5 fund the Settlement within thirty (30) days of the Effective Date. *Id.* The Settlement
6 Administrator will then distribute payments to Class Members who did not request exclusion no
7 later than forty-five (45) days after receiving the gross settlement amount. [AGMT ¶ E(5)(d)].

8 Some individual checks will likely go uncashed due to circumstances beyond the Parties’
9 control. If less than ten percent (10%) of the Net Settlement Fund (“NSF”) remains uncashed, the
10 remaining balance will be distributed to a *cy pres* recipient. [AGMT ¶ E(5)(d)]. If more than ten
11 percent (10%) remains uncashed, the funds will instead be redistributed to Class Members who
12 did cash their checks. *Id.*

13 Plaintiffs request that the Court approve La Raza Centro Legal (“LRCL”) as the *cy pres*
14 recipient. [Uriarte Dec. ¶ 13]. LRCL is a non-profit legal services provider that serves low-
15 income and immigrant communities in California, including agricultural workers and other
16 hourly laborers similar to the Settlement Class. [<https://www.lrcl.org/mission-vision-values>].
17 Plaintiffs’ counsel and their firm have no financial interest or management role in LRCL and are
18 not affiliated with the organization. [*Id.*].

19 Assuming the Court approves all requested deductions, the Net Settlement Fund is
20 projected to be \$2,263,800.54. Based on this projection, participating Class Members will
21 receive an average payment of approximately \$306.68 (highest payment should be \$8,111.75)
22 [Butler Dec. ¶ 15]. Plaintiffs maintain that this represents a meaningful recovery for
23 hardworking, hourly employees—particularly given that participation requires only the release of
24 the wage and hour claims asserted in this action or those directly related thereto. [AGMT ¶
25 A(33)]. Plaintiffs are proud to have secured a favorable resolution for the Class. Continued class
26 and representative litigation would carry inherent risks and uncertainties. Plaintiffs and their
27 counsel firmly believe the Settlement is fair, reasonable, and adequate. [Uriarte Dec. ¶ 17].
28

1 **IV. FINAL SETTLEMENT APPROVAL IS APPROPRIATE**

2 **A. Class Action Settlements Are Favored; Federal Authority Properly Informs**
3 **California Class Action Law**

4 Courts consistently recognize that voluntary settlement is particularly appropriate in the
5 class action context. As one court explained, “voluntary conciliation and settlement are the
6 preferred means of dispute resolution.” *7-Eleven Owners for Fair Franchising v. Southland*
7 *Corp.* (2000) 85 Cal. App. 4th 1135, 1151, *quoting Officers for Justice v. Service Comm’n of*
8 *City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. *See also, Pilkington v.*
9 *Cardinal Health, Inc., (In re Syncor ERISA Litig.)* (9th Cir. 2008) 516 F.3d 1095, 1101; *Van*
10 *Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950 (“there is an overriding public
11 interest in settling and quieting litigation,” and this is “particularly true in class action suits.”).

12 California courts routinely look to federal authority interpreting Federal Rule of Civil
13 Procedure 23 for guidance in adjudicating class actions under Code of Civil Procedure § 382 and
14 California Rules of Court 3.769. *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Dunk v.*
15 *Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01. *See also, Bell v. Farmers Ins. Exchange*
16 (2004) 115 Cal.App.4th 715, 740, *citing City of San Jose v. Superior Court* (1974) 12 Cal.3d
17 447, 453 (“the California Supreme Court has urged trial courts to be procedurally innovative in
18 determining whether to allow class suits, encouraging them to incorporate procedures from
19 outside sources in particular Rule 23 of the Federal Rules of Civil Procedure”) (internal
20 quotations omitted).

21 **B. Class Action Settlements Should Be Fair, Reasonable, and Adequate**

22 “A settlement or compromise of an entire class action...requires the approval of the court
23 after hearing.” [California Rules of Court, rule 3.769]. Specifically, “a two-step process is
24 required. First, the court preliminarily approves the settlement, and the class members are
25 notified as directed by the court...Second, the court conducts a final approval hearing to inquire
26 into the fairness of the proposed settlement...If the court approves the settlement, a judgment is
27 entered with provision for continued jurisdiction for the enforcement of the judgment.”
28 *Cellphone Termination Fee Cases* (2009) 180 Cal. App. 4th 1110, 1118, *quoting California*

1 Rules of Court, rule 3.769.

2 Although courts have “broad discretion” in determining whether to approve a proposed
3 settlement, the essence of the inquiry is to ensure the settlement is not the product of collusion
4 and is “fair, reasonable and adequate to all concerned.” *Cho v. Seagate Technology Holdings,*
5 *Inc.* (2009) 177 Cal. App. 4th 734, 742-743, *quoting Officers for Justice*, 688 F.2d at 624. *See*
6 *also, Dunk v. Ford Motor Company* (1996) 48 Cal. App. 4th 1794, 1801 (whether a proposed
7 settlement is “fair, adequate, and reasonable” is the paramount concern). Deference is warranted
8 to a negotiated resolution because all together, “the [trial] court’s determination is nothing more
9 than ‘an amalgam of delicate balancing, gross approximations and rough justice.’” *Dunk*, *supra* at
10 1801, *quoting Officers for Justice*, 688 F.2d at 624. *See also, Wershba v. Apple Computer* (2001)
11 91 Cal. App. 4th 224, 246 (“The proposed settlement is not to be judged against a hypothetical or
12 speculative measure of what might have been achieved had plaintiffs prevailed at trial.”).

13 **C. All Relevant Factors Weigh in Favor of Final Approval**

14 When evaluating the fairness of a class settlement, courts apply a flexible, case-specific
15 balancing of “well-recognized factors,” including: (1) the strength of plaintiff’s case; (2) the risk,
16 expense, complexity and likely duration of further litigation; (3) the risk of maintaining class
17 action status through trial; (4) the amount offered in settlement; (5) the extent of discovery
18 completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the
19 presence of a governmental participant; and (8) the reaction of the class members to the proposed
20 settlement. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128, *citing Dunk* 48
21 Cal.App.4th at 1801; Newberg on Class Actions, §§ 11:41, 11:43, 13:68 (4th ed. 2002). These
22 factors are neither exhaustive nor rigidly applied; they are intended to guide a trial court’s
23 discretion in assessing the overall fairness of the compromise.

24 Plaintiffs briefed the relevant *Kullar* factors when they moved for preliminary approval.
25 [See, Pl. PAM 11:6-18:20]. Since preliminary approval was granted, nothing has occurred to cast
26 doubt on the Court’s positive determination. The notice process is under way and has shown a
27 very positive employee reaction: no objections and zero requests for exclusion. A presumption of
28 fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2)

1 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
2 counsel are experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*,
3 *supra* at 1802.

4 **1. The Parties Reached the Proposed Settlement Aided by an**
5 **Experienced Mediator**

6 The Parties reached this settlement with the guidance of Steven Serratore, a highly
7 experienced and well-regarded class action mediator. [Uriarte Dec. ¶ 9]. After initial
8 negotiations reached an impasse, Mr. Serratore issued a mediator’s proposal, which both sides
9 accepted on August 16, 2024. A memorandum of understanding was then drafted and fully
10 executed. Counsel for the Parties subsequently collaborated to finalize the long-form Settlement
11 Agreement, which was executed on October 25, 2024. [AGMT ¶ H]. The adversarial and arms-
12 length nature of these negotiations further supports the conclusion that the Settlement is fair,
13 reasonable, and adequate.

14 **2. The Strengths and Weaknesses of Plaintiffs’ Claims Have Been**
15 **Carefully Considered**

16 a. Unpaid Off-the-Clock Work

17 Plaintiffs allege uncompensated pre-shift and post-shift work. Defendant’s handbooks
18 require employees to be at their workstations, ready to work, by the start of their shifts —
19 effectively compelling early arrival and preparation in Plaintiffs’ view. [Uriarte Dec. ¶5].
20 Similarly, Plaintiffs allege that post-shift, employees cease work when machinery stops, then
21 clock out and discard PPE, wash, change, and exit the building. *Id.* The time spent on work-
22 related tasks post-clock out is problematic for Defendant if proven.

23 Under Wage Order No. 8, “hours worked” includes time when employees are under the
24 employer’s control, even if not actively working. (IWC Wage Order No. 8, § 2(G).) The
25 California Supreme Court reaffirmed that compensability turns on the level of employer control,
26 not merely on whether the activity is required. (*Huerta v. CSI Elec. Contractors, Inc.* (2024) 15
27 Cal.5th 908, 918–919; *see also, Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 587.)

1 This framework supports Plaintiffs’ theory. However, Defendant raises several factual and
2 certification challenges:

- 3 • The allegations largely concern the busy season, potentially limiting damages.
- 4 • Defendant contends that walking from the parking lot is non-compensable. (*See,*
5 *Overton v. Walt Disney Co.* (2006) 136 Cal.App.4th 263, 271.)
- 6 • Multiple time clocks were available, reducing the need for pre/post-shift unpaid work.
7 [Uriarte Dec. ¶5].
- 8 • Plaintiffs rely on a “practice-over-policy” theory across a large class (~7,500 members),
9 requiring representative testimony. If the Court finds that individual inquiries
10 predominate, certification will be denied. (*See, Wesson v. Staples the Office Superstore,*
11 *LLC* (2021) 68 Cal.App.5th 746, 764 [courts may deny class claims where trials would
12 be unmanageable].)

13 b. Meal and Rest Period Violations

14 Plaintiffs allege that breaks were routinely shortened to maximize productivity. Meal and
15 rest periods were tied to line stoppages, during which employees removed PPE and walked off
16 the floor. Supervisors summoned them back roughly five minutes before machines resumed.
17 [Uriarte Dec. ¶ 6]. This alleged practice was corroborated by a subset of Class Member
18 declarations. [Uriarte Dec. ¶ 18]. Although Defendant had facially compliant written policies, the
19 lack of additional break time for donning/doffing PPE rendered actual breaks shorter than
20 required. [Uriarte Dec. ¶ 6]. Courts have held that employers may not undermine lawful written
21 policies through non-compliant practices. *See, Brinker Rest. Corp. v. Superior Court* (2012) 53
22 Cal.4th 1004, 1040; *Cicairos v. Summit Logistics, Inc.* (2005) 133 Cal.App.4th 949, 962–963.)

23 However, prevailing on a classwide basis in this context is difficult. Employers must only
24 “provide” breaks—not ensure they are taken. (*Brinker*, supra, at 1040.) Claims based on
25 unwritten practices are harder to certify than those based on formal policy. (*See, Payton v. CSI*
26 *Electrical Contractors, Inc.* (2018) 27 Cal.App.5th 832, 840; *Duran v. U.S. Bank Nat’l Assn.*
27 (2014) 59 Cal.4th 1, 29.) Federal courts have repeatedly denied certification in cases alleging
28 break violations based on informal practices. (*See, e.g., Mateo v. V.F. Corp.* (N.D. Cal. 2009)

2009 U.S. Dist. LEXIS 105921, at 18–19 & n.2, *citing Salazar v. Avis Budget Grp., Inc.* (S.D. Cal. 2008) 251 F.R.D. 529, 534; *Kenny v. Supercuts, Inc.* (N.D. Cal. 2008) 252 F.R.D. 641, 646; *Brown v. Fed. Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 586–587.)

The key challenge is proving that all 7,487 Class Members were subject to the same operational constraints. Plaintiffs obtained only limited declarations. [Uriarte Dec. ¶ 18]. Without a larger, representative sample or reliable survey data, Plaintiffs may not be able to show commonality. They must also propose a viable trial plan that allows for common proof and fair presentation of Defendant’s defenses. (*See Duran, supra*, 59 Cal.4th at 27.) Even if survey evidence were used, individual testimony—both from employees and supervisors—would likely be required, making mini-trials hard to avoid. (*See, Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, 536.) In short, while Plaintiffs’ liability theory has legal support, prevailing on certification and manageability grounds—especially at trial—would be a significant challenge.

3. Significant Investigation and Evaluation Supports the Recommendation of the Settlement

The proposed settlement was agreed to after some pre-certification discovery, a pre-mediation information exchange (to help bridge the gap from discovery to mediation), and a mediation that necessitated a mediator’s proposal. [Uriarte Dec. ¶ 11]. Prior to mediation, Plaintiffs received sufficient information to adequately prepare their strategy and negotiating position.

Defendant produced: (1) employment handbooks containing all relevant wage and hour policies pertaining to the Class Period; (2) a meal period waiver agreement form; (3) an arbitration agreement form; (4) two “hours worked verification” forms; and, (5) a 30 percent timekeeping and payroll sample (thirty percent of putative class members). Defendant also shared these data points regarding the putative class: (1) 7,487 total employees; (2) 332 current employees; (3) 7,155 separated employees; (4) 170,790 aggregate workweeks; (5) 111,165 pay periods (PAGA); and, (6) 16.32 is the average hourly rate of pay. [Uriarte Dec. ¶ 8].

Plaintiffs are still confident in their evaluation of damages, which they carefully detailed

1 for preliminary approval [See, Pl. PAM 16:26-18:20]. Plaintiffs submit that they thoroughly
2 investigated the claims, carefully evaluated potential outcomes, and negotiated diligently to
3 maximize recovery without jeopardizing the prospects of certification. [Uriarte Dec. ¶ 16]. Had
4 Plaintiffs attempted to certify the class and been denied, their putative case would be worth zero
5 dollars. In light of the foregoing, Plaintiffs and Class Counsel are confident that the settlement is
6 fair, reasonable, and adequate and in the best interests of the Settlement Class. [Uriarte Dec. ¶¶
7 16, 17].

8 **4. Class Counsel is Experienced and Endorses the Settlement**

9 Class Counsel submits that given the constraints and realities of the case and his
10 significant class action experience, the Parties have been able to arrive at a settlement that is fair,
11 reasonable, adequate, and in the best interests of SCM. [Id]. Courts should rely upon the
12 judgment of experienced counsel when assessing the adequacy of proposed class action
13 settlements. *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal. App. 4th 785, 786 (“A court
14 should give considerable weight to the competency and integrity of counsel and the involvement
15 of a neutral mediator in assuring itself that a class action settlement agreement represents an
16 arm's-length transaction entered without self-dealing or other potential misconduct.”);
17 *Weinberber v. Kendrick* (2d Cir. 1982) 698 F.2d 61, 74 (“The court is entitled to rely heavily on
18 the assessment of able counsel negotiating at arms' length...When a settlement is achieved
19 through arms-length negotiations between experienced counsel, the court should be hesitant to
20 substitute its own judgment for that of counsel absent a showing of fraud, collusion or other
21 forms of bad faith.”). *See also, Rodriguez v. W. Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 965
22 (courts have long deferred to the judgment of counsel when approving class settlements so long
23 as they are experienced and well-informed).

24 Class Counsel has considerable class action experience, specifically regarding actions
25 involving the application of California's wage and hour laws. [Uriarte Dec. ¶¶ 21-23]. Class
26 Counsel's experience renders him qualified to evaluate the class claims and defenses at hand.
27 Counsel is confident that the proposed settlement meets all applicable requirements of California
28

1 law, and given the unique circumstances present, it is in the best interests of the Settlement
2 Class. [Uriarte Dec. ¶¶ 16, 17].

3 **5. Class Member Reaction Has Been Very Positive**

4 The reaction of the Settlement Class clearly supports final approval. No one has objected,
5 and no one has requested exclusion. [Butler Dec. ¶¶ 12-13]. Courts have found settlement terms
6 to be presumably fair when there is an absence or even a low percentage of objectors. *Carter v.*
7 *City of Los Angeles* (2014) 224 Cal.App.4th 808, 820, *citing Dunk, supra*, 48 Cal.App.4th at p.
8 1802. *See also, Custom LED, LLC v. eBay, Inc.* (N.D. Cal. June 24, 2014) 2014 U.S. Dist.
9 LEXIS 87180, *16; *Jones v. Agilysys, Inc.* (N.D. Cal. May 19, 2014) 2014 U.S. Dist. LEXIS
10 68562, *6-7; *Rosales v. El Rancho Farms* (E.D. Cal. July 21, 2015), *43 (absence of objections
11 raises a strong presumption that the terms of a proposed settlement are favorable to the class
12 members).

13 Additionally, Class Counsel has been in communication with certain SCM who have
14 asked questions about the notice form or settlement [Uriarte Dec. ¶ 15]. Class Counsel has
15 endeavored to provide the right guidance to these SCM whenever possible. *Id.* Plaintiffs submit
16 that these efforts have been important in ameliorating objections or requests for exclusion.

17 **D. The Court Approved Notice Plan Will Be Executed Satisfactorily, Satisfying**
18 **Due Process Standards**

19 Courts have broad discretion when ordering a notice plan as long as it meets the dictates
20 of the California Rules of Court. CRC 3.769(f) (“If the court has certified the action as a class
21 action, notice of the final approval hearing must be given to the class members in the manner
22 specified by the court. The notice must contain an explanation of the proposed settlement and
23 procedures for class members to follow in filing written objections to it and in arranging to
24 appear at the settlement hearing and state any objections to the proposed settlement.”).

25 Class notice procedures “must fairly apprise the class members of the terms of
26 compromise and the options open to dissenting class members.” *Trotsky v. Los Angeles Fed. Sav.*
27 *& Loan Assoc.*, (1975) 48 Cal. App. 3d 134, 151-52. Class notice should strike a balance
28 between thoroughness and the need to avoid unduly complicating its content. *Wershba, supra* 91

1 Cal. App. 4th at 252. Generally, “notice is satisfactory if it...describes the terms of the settlement
2 in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and
3 be heard.” *Churchill Village, LLC v. General Electric* (9th Cir. 2004) 361 F.3d 566, 575 (internal
4 quotations omitted).

5 Here, the Court-approved notice procedures have met all the aforementioned requirements.
6 As previously determined by the Court during preliminary approval, the relevant form contains
7 all required information. A website was also used to make that key information more accessible.
8 [Uriarte Dec. ¶ 14]. Moreover, SCM will have sufficient time to decide whether to opt-out or
9 object to the settlement, specifically forty-five days. [Butler Dec. ¶¶ 8, 11].

10 **E. The Court Should Confirm its Certification of the Class**

11 California Rules of Court, rule 3.769(d) provides: “[t]he court may make an order
12 approving...certification of a provisional settlement class after the preliminary settlement
13 hearing.” For the instant action, the Court provisionally certified the Settlement Class in its
14 Preliminary Approval order on January 27, 2025. No subsequent event has occurred to disrupt
15 the soundness of that initial determination. As such, Plaintiffs ask the Court to confirm its grant
16 of class certification for settlement purposes only.

17 **V. PLAINTIFFS’ REQUESTED DEDUCTIONS SHOULD BE GRANTED**

18 **A. Common Fund Fee Recovery is Appropriate and Recommended**

19 **1. Legal Standard for Attorneys’ Fee Awards in Similar Cases**

20 The U.S. Supreme Court has recognized that “a lawyer who recovers a common fund for
21 the benefit of persons other than himself or his client is entitled to a reasonable attorneys’ fee
22 from the fund as a whole.” *Boeing Co. v. Van Gemert* (U.S. 1980) 444 U.S. 472, 478. *Accord*,
23 *Serrano v. Priest* [Serrano III] (1977) 20 Cal.3d 25, 38 (trial courts have equitable power to
24 award attorneys’ fees and costs when a litigation proceeding in a representative capacity secures
25 a substantial benefit). The purpose of the “common fund doctrine” is not only to reward
26 effective legal advocacy but to “spread litigation costs proportionally among all of the
27 beneficiaries” preventing unjust enrichment. *Vincent v. Hughes Air West, Inc.* 557 F.2d 759, 769
28 (9th Cir. 1977).

1 In *Laffitte v. Robert Half Internat., Inc.*, the California Supreme Court “join[ed] the
2 overwhelming majority of federal and state courts in holding that when class action litigation
3 establishes a monetary fund for the benefit of the class members, and the trial court in its
4 equitable powers awards class counsel a fee out of that fund, the court may determine the
5 amount of a reasonable fee by choosing an appropriate percentage of the fund created.” *Laffitte*
6 *v. Robert Half Internat., Inc.* (2016) 1 Cal. 5th 480, 503.

7 Our state’s Supreme Court highlighted some of the many advantages of the percentage
8 method: “relative ease of calculation, alignment of incentives between counsel and the class, a
9 better approximation of market conditions in a contingency case, and the encouragement it
10 provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation.”
11 *Id.* If they so choose, trial courts are empowered to use a lodestar cross-check as “a mechanism
12 for bringing an objective measure of the work performed into the calculation of a reasonable
13 attorney fee.” *Id.*

14 In Plaintiffs’ view, *Lafitte* stands for the proposition that a trial judge may rely on his or
15 her discretion and utilize either the percentage method, the lodestar method, or both to calculate
16 a reasonable attorneys’ fee. Here, Plaintiffs ask the Court to rely on the percentage method to
17 assess a reasonable fee award. *Laffitte* affirmed a fee award representing 33 and 1/3 percent of
18 the common fund. *Id.* at 506.

19 2. The Common Fund Method Should Be Applied Here

20 The common fund doctrine is appropriately applied here because the following
21 conditions are present: (1) the class of beneficiaries is sufficiently identifiable; (2) the benefits
22 can be accurately traced; and (3) the fee can be shifted with some exactitude to those benefiting.
23 *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886 F.2d 268, 271. *Accord, Lealao v.*
24 *Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 30-31. Courts find these conditions “easily met”
25 when “each member of a certified class has an undisputed and mathematically ascertainable
26 claim to part of a lump-sum recovered on his [or her] behalf.” *Paul, Johnson, Alston & Hunt,*
27 *supra.*

1 In this case, all three elements of the common fund doctrine are satisfied. The Settlement
2 Class is readily identifiable through Defendant's business records, which have already been
3 reviewed and utilized by the Settlement Administrator. [See, Butler Dec. ¶ 6]). The benefits are
4 traceable, as monetary payments to Settlement Class Members are calculated pursuant to a
5 defined formula set forth Agreement ¶¶ E5(a)-(b)). Finally, the fee can be shifted with precision,
6 as Class Counsel seeks a fixed percentage of the gross settlement fund, which will be distributed
7 in full to the Class following Court-approved deductions.

8 **B. 33.33% of the Common Fund is a Reasonable Fee Award**

9 Once a court determines that the common fund doctrine is applicable, then that court
10 must assign a reasonable percentage amount for the fee award. Plaintiffs seek 33.33% of the
11 common fund on behalf of Class Counsel for multiple key reasons: (1) the positive results
12 achieved; (2) to recognize the risks associated with contingency fee representation; (3) the
13 requested fee percentage mirrors Class Counsel's own contingency fee retainers; and (4)
14 numerous courts in this locality have made similar awards when adjudicating the propriety of
15 similar wage and hour settlements. [Uriarte Dec. ¶ 19].

16 1. Favorable Results Were Achieved in the Face of Significant
17 Challenges

18 Plaintiffs and Class Counsel devoted substantial time and effort to securing a \$3,600,000
19 all-cash, non-reversionary settlement, an outcome that ensures direct monetary relief to the
20 Settlement Class. The projected average individual recovery is \$306.68, with the highest
21 estimated payment reaching \$8,111.75. [Butler Dec. ¶ 15.] This is a strong result when weighed
22 against the real litigation risks and the defenses asserted.

23 Plaintiffs allege that pre- and post-shift work, as well as shortened breaks due to
24 operational demands, resulted in systematic undercompensation. While California law supports
25 compensation for time under employer control regardless of whether the activity is required,
26 Defendant has identified several case-specific vulnerabilities. Key allegations are tied to the busy
27 season, which may limit damages. Defendant also points to multiple time clocks and non-
28 compensable walking time from the parking lot. More critically, Plaintiffs rely on a practice-

1 over-policy theory that must be proven across a class of over 7,400 employees, which raises
2 manageability concerns. Courts have consistently declined to certify claims based on informal
3 practices unless supported by broad, representative evidence. *See, e.g., Duran v. U.S. Bank*
4 *National Association*, 59 Cal.4th 1 (2014). Here, Plaintiffs obtained only a limited number of
5 declarations to bolster negotiations at mediation. Without a statistically significant sample or
6 detailed survey data, there is a substantial risk that the Court would find individual issues
7 predominate and deny certification outright.

8 Plaintiffs' break claims are susceptible to the same problem. Although Class Member
9 declarations support the allegation that PPE removal and early return reduced break time,
10 Defendant maintained facially compliant written policies and is likely to argue that any variation
11 in practice was site-specific or supervisor driven. Proving a common, classwide constraint under
12 may be untenable. Even with certification, trial would likely involve individual testimony from
13 employees and managers, undermining any proposed common proof model.

14 Finally, even if Plaintiffs prevailed at certification and trial, there remains the risk of
15 reversal on appeal—further delaying relief or eliminating it altogether. Given these substantial
16 litigation risks, the guaranteed, immediate, and substantial monetary recovery achieved here
17 represents an outstanding result for the Class.

18 2. Contingent Representation – No Fees or Costs if No Recovery

19 Another factor supporting the requested fee award is the contingent nature of Class
20 Counsel's representation. [Uriarte Dec. ¶ 2]. Class Counsel undertook this case on pure
21 contingency basis. Neither he nor his firm has received any compensation or reimbursement to
22 date and will do so only if the case results in a successful outcome and the Court approves a fee
23 and cost award. *Id.* "The contingent fee compensates the lawyer not only for the legal services he
24 renders but for the loan of those services." *Cates v. Chiang* (2013) 213 Cal. App. 4th 791, 823
25 (internal quotations omitted).

26 Counsel's willingness to litigate on contingency deserves recognition, particularly in
27 cases like this one that require extensive time and effort over several years. Contingency
28 arrangements are often the only practical means by which employees can pursue complex wage

1 and hour claims, as very few are in a position to pay hourly legal fees. Indeed, Class Counsel’s
2 class action representatives have never paid hourly fees nor will Plaintiffs here. [Uriarte Dec. ¶
3 2]. Attorneys should be incentivized to undertake these matters, especially in the employment
4 context, to help empower ill-treated employees with little leverage against powerful employers to
5 ensure that the latter act fairly and appropriately under the law. Therefore, the economic realities
6 of the work at hand should be closely considered.

7 3. The Fee Request is Similar to Class Counsel’s Actual Rate and is
8 Consistent with Previous Local Awards and Other Awards in
9 California

10 In determining a reasonable fee award, courts aim to approximate what capable counsel
11 would receive in the private market for similar services. *Lealao, supra* at 47-48, citing *Gaskill v.*
12 *Gordon* (7th Cir. 1998) 160 F.3d 361, 363 (“When a fee is set by a court rather than by contract,
13 the object is to set it at a level that will approximate what the market would set...The judge, in
14 other words, is trying to mimic the market in legal services.”). Viewed through that lens, the
15 requested fee is entirely appropriate. Class Counsel seeks 33.33% of the common fund—a rate
16 that aligns with the contingency fee terms used in their standard retainer agreements. [Uriarte
17 Dec. ¶ 19].

18 The requested fee falls well within the range commonly awarded in class action
19 litigation. The upper limit on a reasonable fee award from a common fund is normally 50%,
20 depending on the circumstances of the case. Newberg, *Newberg on Class Actions*, 4th Ed., 2002,
21 vol. 4, p. 550. Overall, the goal should be to attempt to “award the fee that informed private
22 bargaining, if it were truly possible, might have reached.” The following are recent, instructive
23 wage and hour class action or representative action cases (PAGA) where 33% or greater of the
24 common fund was awarded:

25 *Garza v. Cen-Cal Fire Sys.*, 2021 Cal. Super. LEXIS 16539 (Alameda Superior Court,
26 No. RG20070111) (wage and hour class action with PAGA where the Court awarded 1/3 of the
27 common fund in attorneys’ fees to class counsel equaling \$116,666.66.)
28

1 *Lacy v. Agro Merchs. Oakland*, 2021 Cal. Super. LEXIS 150810 (Alameda Superior
2 Court, Case No. RG18909127) (wage and hour class action where the Court awarded \$594,000
3 in attorneys’ fees, 33.33% of the common fund, without performing a lodestar crosscheck.)

4 *Davenport v. Gary Krezman Elec.*, 2021 Cal. Super. LEXIS 125487, *5 (Sacramento
5 Superior Court, No. 34-2020-00287380-CU-OE-GDS) (“Specifically, the Court approves
6 Counsel’s request for attorneys’ fees in the amount of \$66,666.67 [33% of settlement amount]
7 and costs in the amount of \$9,816.06.”)

8 *Tellier v. El Dorado Enters.*, 2021 Cal. Super. LEXIS 73870, *13 (Los Angeles Superior
9 Court, No. 18TRCV00076) (“The [approved] fee request represents 33 1/3% of the gross
10 settlement amount, which is the average generally awarded in class actions.”)

11 *Pena v. U.S. Bancorp*, 2019 Cal. Super. LEXIS 1264, *2-3 (San Francisco Superior
12 Court, No. CGC-17-556646 (wage and hour class action where the Court awarded Class Counsel
13 a 33.33% contingency fee that necessitated a 1.8 lodestar multiplier.)

14 *Roe v. Heritage Mgmt. Servs.*, 2019 Cal. Super. LEXIS 16293, *2-3 (San Francisco
15 Superior Court, No. CGC-16-555733) (wage and hour class action where the Court awarded
16 Class Counsel a 33.33% contingency fee after a lodestar cross check.)

17 *Thompson v. Ontario 947, Inc.* (San Bernardino Superior Court, Case No. CIVDS
18 1604818, Jan. 8, 2019) (PAGA representative action that led to a class settlement; counsel was
19 awarded 35% of the common fund “in light of the substantial risks and significant work
20 undertaken...and the positive results obtained for the class.”)

21 *Cubillas v. Dav-El Los Angeles* (Los Angeles Superior Court, Case No. BC427918, June
22 14, 2018) (wage and hour class action with causes of action nearly identical to the instant action;
23 the court awarded \$1,120,000 in attorneys’ fees equaling 40% of the common fund).

24 *Jimenez v. Max’s World, Inc.* (San Francisco Superior Court, Case No. CGC-13-530509,
25 Apr. 23, 2015) (the representative plaintiff alleged three wage and hour causes of action for
26 unpaid wages, wage statement violations, and PAGA. The Court awarded a fee percentage award
27 equaling 33 1/3% of the gross settlement amount stating that the percentage is appropriate under
28 California law for awarding attorney’s fees in class actions).

1 *Dill v. Mainz Brady, Grp.* (San Mateo Superior Court, Case No. CIV 527099, June 24,
2 2015) (wage and hour class action where the Court awarded \$126,000 in attorney’s fees and
3 costs, representing 35% of the Settlement Sum, regarding it as “in the range of the prevailing
4 market rate for contingency litigation in the employment or wage and hour context”).

5 **C. The Litigation and Administration Costs Reimbursement Request is Fair,**
6 **Adequate, and Reasonable**

7 An attorney who creates or preserves a common fund is entitled to reimbursement of
8 litigation costs. *Mills v. Elec. Auto-Lite Co.* (1970) 396 U.S. 375, 391-393. This reimbursement
9 is done proportionately by the fund’s beneficiaries. *Id.* See also, Herbert B. Newberg, Attorney
10 Fee Award (1986) § 2.19: "Costs Reimbursement in Common Fund Fee Determinations" at 69.

11 Plaintiffs seek reimbursement on behalf of Class Counsel for accrued litigation expenses
12 totaling \$25,499.46 and up to \$38,320 in settlement administration fees payable to Simpluris,
13 Inc. Class Counsel attests that these expenses were reasonably and necessarily incurred in
14 prosecuting the action and securing the proposed Settlement. [Uriarte Dec. ¶ 20]. The litigation
15 expenses fall into well-established categories routinely approved by courts as compensable:
16 mediation fees, court filing fees, copying and postage, legal research, and other case-related
17 costs. [See, Exhibit “3” to Uriarte Dec. for an itemized list].

18 The requested amount for the Settlement Administrator is likewise reasonable and within
19 the typical range for a class of this size. Simpluris, Inc. has already performed substantial work,
20 including processing the class list, finalizing and mailing the Notice Forms, maintaining a
21 customer service phone line and settlement website, handling undeliverable mail through skip
22 tracing, and calculating estimated payments for each Class Member. [See *generally*, Butler Dec.]
23 Following final approval, Simpluris will also be responsible for distributing settlement payments
24 and continuing to support class members throughout the distribution process.

25 **D. Plaintiffs’ Enhancement Requests are Fair, Adequate, and Reasonable**

26 Plaintiffs seek enhancement awards of \$10,000 each, for a total of \$40,000. These awards
27 serve several purposes: they compensate for time and effort devoted to the case, acknowledge the
28 reputational and financial risks of serving as class representatives, and recognize that Plaintiffs

1 accepted broader release terms. *Rodriguez v. West Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948,
2 958. *See also, Radcliffe v. Experian Info. Solutions* (9th Cir. 2013) 715 F.3d 1157, 1163 (an
3 incentive award should not be so large when compared to class member payments so that
4 representatives are more interested in their enhancement than in advancing the interests of the
5 class).

6 Courts have approved enhancement awards in the \$10,000 range in wage and hour class
7 actions where the representative plaintiffs played an active role and assumed risk. In
8 *Bellinghausen v. Tractor Supply Co.* (N.D. Cal. 2015) 306 F.R.D. 245, the court approved a
9 \$15,000 award where the plaintiff contributed significant time and faced potential workplace
10 retaliation. In *Glass v. UBS Financial Services, Inc.* (N.D. Cal. Jan. 26, 2007) 2007 WL 221862,
11 the court approved \$25,000 awards in a wage and hour class action, finding the awards
12 reasonable in light of the assistance provided and their small share of the total settlement fund. In
13 *Covillo v. Specialty's Café & Bakery, Inc.* (N.D. Cal. Mar. 6, 2014) 2014 WL 954516, the court
14 approved \$8,000 enhancement awards where the plaintiffs had helped counsel and undertaken
15 reputational risks, even though average class payments were under \$500. Finally, in *In re Online*
16 *DVD-Rental Antitrust Litig.* (9th Cir. 2015) 779 F.3d 934, 947–48, the Ninth Circuit upheld a
17 \$5,000 award where class members received as little as \$12, noting that incentive awards of that
18 size are presumptively reasonable.

19 All four Plaintiffs played an active role throughout the litigation. They retained counsel,
20 collected and shared key documents, participated in extensive pre-suit interviews, completed
21 multiple intake processes, and assisted with investigation. [Uriarte Dec. ¶ 10; *see also*, Romero
22 Dec.⁷ ¶¶ 5-6, Magana Dec. ¶¶ 6-7, Linares Dec. ¶¶ 7-8, and Becerra Dec. ¶¶ 6-7.] Each Plaintiff
23 spent over 25 to 30 hours supporting the case. They also took part in pre-mediation strategy
24 sessions, attended mediation, and assisted with negotiations by responding to mediator questions.
25 Romero Dec. ¶ 7, Magana Dec. ¶ 8, Linares Dec. ¶ 9, and Becerra Dec. ¶ 8] Their contributions
26 were critical to the resolution reached.

27
28 ⁷ Plaintiffs' declarations are attached as Exhibit "4" to Uriarte Dec.

Moreover, Plaintiffs understood and accepted the responsibilities of class representation, including putting the interests of the class ahead of their own. Romero Dec. ¶ 4, Magana Dec. ¶ 6, Linares Dec. ¶ 6, and Becerra Dec. ¶ 5]. They also agreed to and executed general releases, including a California Civil Code § 1542 waiver, which is broader than the limited release applicable to the Settlement Class. [See, Agreement ¶ F.]. Given the risks undertaken, the breadth of the releases signed, and the essential support Plaintiffs provided in advancing the interests of the class, the requested awards are reasonable and justified.

V. CONCLUSION

For the reasons stated above, and pursuant to Code of Civil Procedure section 382, Plaintiffs respectfully request that the Court grant final approval of the Settlement and enter judgment disposing of this action in its entirety. This outcome furthers the interests of justice, promotes judicial efficiency, and delivers meaningful relief to the affected workers. In compliance with California Rules of Court, rule 3.771(b), the Settlement Administrator will post the final judgment on the Settlement website to ensure notice to the Settlement Class.

Dated: April 8, 2025



Arlo Garcia Uriarte
Liberation Law Group, P.C.
Class Counsel