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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

FRANZ CHAVEZ HIDALGO, an individual; on
behalf of himself and all others similarly situated;

Plaintiff,

v.

OROZCO'S AUTO SERVICE, INC., a California
Corporation; SERVANDO OROZCO, an
individual; CINDY OROZCO, an individual; and
DOES 1 to 100, inclusive;

Defendants.

Case Number: 22STCV21211

[Honorable Stuart M. Rice; Department 1]

**PLAINTIFF FRANZ CHAVEZ
HIDALGO'S UNOPPOSED NOTICE
OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;**

**MEMORANDUM OF POINTS &
AUTHORITIES;**

*[Filed concurrently with Declaration of
Sarkis Sirmabekian; and [Proposed] Order]*

Hearing:

Date: March 10, 2023

Time: 10:30 a.m.

Dept.: 1

Complaint Filed: June 29, 2022

TO THE HONORABLE COURT AND TO ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that pursuant to *Rule 3.769 of the California Rules of Court*, on
March 10, 2023 at 10:30 a.m., in Department 1 at Spring Street Courthouse, located at 312 N. Spring
Street, Los Angeles, California 90012, Plaintiff FRANZ CHAVEZ HIDALGO ("Plaintiff")
individually and on behalf of a similarly situated class of individuals, will and herby does move this
Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;
2. Pursuant to *Section 382 of the California Code of Civil Procedure*, provisional certification of the Settlement Class defined as follows:
 - “all persons employed by OAS in California and classified as current and former hourly non-exempt employees who worked for OAS during the period from April 2, 2017 through the date of Preliminary Approval of this Settlement”;
3. Preliminary appointment of Plaintiff FRANZ CHAVEZ HIDALGO as Class Representative;
4. Preliminary appointment of Sarkis Sirmabekian, Esq. of the Sirmabekian Law Firm, PC as Class Counsel;
5. The scheduling of a hearing to consider whether the class settlement should be finally approved and to award an amount for the incentive payment to the Class Representative, and attorneys’ fees and costs to Class Counsel;
6. Appointment of “Phoenix Settlement Administrators” as the third-party settlement administrator for mailing class notices; and
7. Approval of the proposed “Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval”, and an order that they be disseminated to the proposed Class Members as provided in the *Class Action and PAGA Settlement Agreement and Class Notice* (“Settlement Agreement”), executed on August 19, 2022.

This motion is based on this notice of motion, the attached memorandum of points and authorities, the supporting Declaration of Sarkis Sirmabekian, Esq. and exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

DATED: February 10, 2023

SIRMABEKIAN LAW FIRM, PC

By: 
Sarkis Sirmabekian, Esq.
Attorney for Plaintiff and the Proposed Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff FRANZ CHAVEZ HIDALGO, (“Plaintiff”) respectfully requests that this Court
4 grant preliminary approval of the proposed class action settlement of claims against Defendants
5 OROZCO’S AUTO SERVICE, INC. and SERVANDO OROZCO and CINDY OROZCO
6 (“Defendants”) (collectively with Plaintiff, the “Parties”), pursuant to *California Rules of Court*
7 (*“CRC”*) 3.769(d) and (e). The basic terms of the Joint Stipulation for Class Action Settlement
8 (“Settlement Agreement”) provide for the following:

- 9 (1) A Gross Settlement Amount (the “Gross Settlement Fund”) One Hundred Thirty
10 Thousand Dollars and Zero Cents (\$130,000.00);
- 11 (2) Reasonable attorneys’ fees of up to, and not in excess of, 33.33% of the Gross Settlement
12 Amount of Forty-Three Thousand Three Hundred and Thirty-Three Dollars and Forty-
13 Two Cents (\$43,333.33);
- 14 (3) Reimbursement of Class Counsel Litigation Expenses incurred from prosecution of this
15 action by Class Counsel of up to Five Thousand Dollars (\$5,000.00), which shall be paid
16 from the Gross Settlement Fund;
- 17 (4) A Class Representative Enhancement Payment up to Five Thousand Dollars and No
18 Cents (\$5,000.00) from the Gross Settlement Fund;
- 19 (5) Settlement-Administration Expenses (Claims Administration Costs) not to exceed Six
20 Thousand Five Hundred Dollars and No Cents (\$6,500.00) to be paid out of the Gross
21 Settlement Funds; and
- 22 (6) An LWDA/PAGA Payment shall be allocated and paid from the Gross Settlement Fund
23 in the amount of Ten Thousand Dollars and No Cents (\$10,000.00) to the resolution of
24 any Class Members’ claims arising under PAGA. Seventy-five percent (75%) of this
25 sum (\$7,500.00) will be paid to the California Labor Workforce Development Agency
26 (“LWDA”), and the remaining twenty-five (25%) (\$2,500.00) will be part of the Net
27 Settlement Amount¹. *Sarkis Decl.* ¶ 13.
- 28

As discussed below, the proposed Settlement satisfies all criteria for preliminary approval under California law and falls well within the range of reasonableness. The Settlement was reached through informed, arms-length bargaining at and after mediation (on May 11, 2022 with mediator Nikki Tolt, Esq. of ACT Mediation), and between experienced attorneys of both parties. As a result, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement, conditionally certify the proposed Class for settlement purposes only, appoint Plaintiff as the Class Representative, appoint Plaintiff’s counsel as Class Counsel, appoint “Phoenix Settlement Administrators” as the Settlement Administrator, authorize the Settlement Administrator to send Notice Packets to Class Members, and set a final approval hearing date.

II. SUMMARY OF THE LITIGATION

This matter was initially filed on April 2, 2021 as a single plaintiff lawsuit alleging wage and hour violations against Defendants. However, the Parties later agreed to settle the case as a class action lawsuit. *Sarkis Decl.* ¶6.

On June 29, 2022, Plaintiff filed its class-action complaint against Defendants in the Superior Court of the State of California, County of Los Angeles, alleging violations of California wage and hour law. The operative Complaint alleges causes of action for: 1. Violation of Private Attorney General Act (“PAGA”); 2. Failure to Pay Minimum Wage (Class Claim; Cal. Lab. Code §§ 1182.12, 1194, 1197 & 1198, et seq.); 3. Failure to Pay Overtime Compensation (Class Claim; Cal. Lab. Code §§ 1198 & 510, et seq.); 4. Failure to Pay Meal Period Compensation (Class Claim; Cal. Lab. Code §§ 226.7, 512(a) & 1198 et seq.); 5. Failure to Pay Rest Period Compensation (Class Claim; Cal. Lab. Code §§ 226.7 & 1198 et seq.); 6. Failure to Furnish Accurate Wage and Hour Statements (Class Claim; Cal. Lab. Code § 226); 7. Failure to Maintain Accurate Payroll Records (Class Claim; Cal. Lab. Code §§ 226(a), 1174(d) and 1198, et seq.); 8. Failure to Pay Wages Upon Discharge (Class Claim; Cal. Lab. Code §§ 201 & 202, et seq.); 9. Failure to Indemnify (Class Claim; Cal. Lab. Code § 2802); and 10. Unfair Competition (Class Claim; Business and Professions Code § 17200 et seq.);. *Sarkis Decl.* ¶7.

On October 26, 2022, Defendants OROZCO’S AUTO SERVICE, INC., SERVANDO OROZCO, and CINDY OROZCO filed a Notice of Appearance. *Sarkis Decl.* ¶8.

1 Defendants deny all material allegations set forth in the operative complaint, deny any failure
2 to comply with the laws identified in in the Operative Complaint, and deny any and all liability for
3 the causes of action alleged. Notwithstanding, and in the interest of avoiding further litigation, the
4 Parties have agreed to fully and finally settle all actual or potential claims by the Class Members.
5 Putative Class Counsel in the Action diligently investigated the proposed Class Members' claims
6 against Defendants, including any and all applicable defenses and the applicable law. The
7 investigation included, inter alia, the exchange of information pursuant to formal and informal
8 discovery methods, analysis of Class Members' time and pay records, and review of numerous
9 corporate policies and practices.

10 On May 11, 2022, the Parties participated in private mediation before mediator Nikki Tolt,
11 Esq. of ACT Mediation (the "Mediator"), a well know, well versed, and respected mediator of wage
12 and hour class actions. *Sarkis Decl.* ¶ 9. The Parties came to an agreement following the mediation,
13 in which the Parties stipulated to the material terms of the Settlement Agreement now before this
14 Court. Attached to the Declaration of Sarkis Sirmabekian, Esq. as "EXHIBIT 1" is a true and correct
15 copy of the "Class Action and PAGA Settlement Agreement and Class Notice", fully executed on
16 August 19, 2022 ("Settlement Agreement"). *Sarkis Decl.* ¶ 10; *Sarkis Decl. Exhibit 1*.

17 The settlement discussions during and after mediation were conducted at arm's length, and
18 the settlement is the result of an informed and detailed analysis of Defendants' potential liability of
19 total exposure in relation to the costs and risks associated with continued litigation. *Id. at* ¶10.

20 Based on the data produced pursuant to informal discovery, as well as Class Counsel's own
21 independent investigation and evaluation and the Mediator's efforts, Class Counsel believe that the
22 settlement with Defendants for the consideration and on the terms set forth in this Settlement
23 Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in light
24 of all known facts and circumstances, including the risk of significant delay and uncertainty
25 associated with litigation, various defenses asserted by Defendants, and numerous potential appellate
26 issues. *Id. at* ¶ 11.

1 **III. SUMMARY OF THE SETTLEMENT**

2 **A. Terms of the Settlement**

3 Plaintiff and Defendants agreed to the foregoing settlement in exchange for a Gross
4 Settlement Amount of \$130,000.00, to be paid by Defendants in full satisfaction of all claims arising
5 from the Action. *Sarkis Decl.* ¶13. The Gross Settlement Amount includes: (1) all Individual
6 Settlement Payments to Participating Class Members²; (2) the Class Representative Service
7 Payment, (3) Claims Administration Expenses, (4) PAGA penalties in the amount of Ten Thousand
8 Dollars (\$10,000.00) of which 75% or Seven Thousand Five Hundred Dollars (\$7,500.00) will be
9 paid to the Labor Workforce Development Agency (“LWDA”) and 25% or Two Thousand Five
10 Hundred Dollars (\$2,500.00) to Participating Class Members, and (5) Class Counsel Fees and Cost.
11 *Id. at 14.*

12 In addition to the Gross Settlement Amount, Defendants have agreed to pay Plaintiff and his
13 counsel an additional sum of \$20,000.00 (“Individual Settlement Amount”) to resolve Plaintiff’s
14 claim for wrongful termination, in Case No. 21STCV12681 (this amount is separate, and in addition
15 to the Gross Settlement Amount). All other claims will be extinguished through approval of
16 settlement of this Action. *Id. at 15.*

17 The Administrator will make and deduct the following payments from the Gross Settlement
18 Amount, in the amounts specified by the Court in the Final Approval: Class Representative Service
19 Payment to the Class Representative of not more than \$5,000.00 (in addition to any Individual Class
20 Payment [and any Individual PAGA Payment] the Class Representative is entitled to receive as a
21 Participating Class Member). OAS will not oppose Plaintiff’s request for a Class Representative
22 Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees
23 Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class
24 Representative Service Payments no later than [16 court] days prior to the Final Approval Hearing.
25 If the Court approves a Class Representative Service Payment less than the amount requested, the
26 Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay

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² “Individual Settlement Payment” means each Participating Class Member’s share of the Net Settlement Amount, to be distributed to Plaintiff and Class Members who do not request exclusion from the settlement.

1 the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility
2 and liability for employee taxes owed on the Class Representative Service Payment. *Settlement*
3 *Agreement at ¶13.3.*

4 A Class Counsel Fees Payment of not more than 33.33%, which is currently estimated to be
5 \$43,333.33 and a Class Counsel Litigation Expenses Payment of not more than \$5,000.00. OAS will
6 not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or
7 Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses
8 Payment no later than [16 court] days prior to the Final Approval Hearing. If the Court approves a
9 Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the
10 amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount.
11 Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from
12 any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses
13 Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses
14 Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability
15 for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses
16 Payment and holds OAS harmless, and indemnifies OAS, from any dispute or controversy regarding
17 any division or sharing of any of these Payments.

18 An Administrator Expenses Payment not to exceed \$6,500.00 except for a showing of good
19 cause and as approved by the Court. To the extent the Administration Expenses are less or the Court
20 approves payment less than \$6,500.00, the Administrator will retain the remainder in the Net
21 Settlement Amount.

22 An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the
23 total number of Workweeks worked by all Participating Class Members during the Class Period and
24 (b) multiplying the result by each Participating Class Member's Workweeks. 33.33% of each
25 Participating Class Member's Individual Class Payment will be allocated to settlement of wage
26 claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported
27 on an IRS W-2 Form. The 66.66% of each Participating Class Member's Individual Class Payment
28 will be allocated to settlement of claims for [e.g., interest and penalties] (the "Non-Wage Portion").

1 The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099
2 Forms. Participating Class Members assume full responsibility and liability for any employee taxes
3 owed on their Individual Class Payment. *Id. at ¶3.3.4.1.*

4 Non-Participating Class Members will not receive any Individual Class Payments. The
5 Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement
6 Amount for distribution to Participating Class Members on a pro rata basis. *Id. at ¶3.3.4.2.*

7 PAGA Penalties in the amount of \$10,000.00 to be paid from the Gross Settlement Amount,
8 with 75% (\$7,500.00) allocated to the LWDA PAGA Payment and 25% (\$2,500.00) allocated to the
9 Individual PAGA Payments. *Id. at ¶3.3.5.*

10 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount
11 of the Aggrieved Employees' 25% share of PAGA Penalties \$2,500.00 by the total number of PAGA
12 Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b)
13 multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved
14 Employees assume full responsibility and liability for any taxes owed on their Individual PAGA
15 Payment. *Id. at ¶3.3.5.1.*

16 If the Court approves PAGA Penalties of less than the amount requested, the Administrator
17 will allocate the remainder to the Net Settlement Amount. The Administrator will report the
18 Individual PAGA Payments on IRS 1099 Forms. *Id. at ¶3.3.5.2.*

19 **B. Notice to Class Members**

20 Not later than 15 days after the Court grants Preliminary Approval of the Settlement, OAS
21 will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel
22 spreadsheet. *Id. at ¶4.1.* No later than three (3) business days after receipt of the Class Data, the
23 Administrator shall notify Class Counsel that the list has been received and state the number of Class
24 Members, PAGA Members, Workweeks, and Pay Periods in the Class Data. *Id. at ¶8.4.1.* Using
25 best efforts to perform as soon as possible, and in no event later than [14] days after receiving the
26 Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-
27 class United States Postal Service ("USPS") mail, the Class Notice substantially in the form attached
28 to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the

dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database. *Id. at* ¶8.4.2.

Not later than [3] business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time. *Id. at* ¶8.4.3.

The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional [14] days beyond the [60] days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice. *Id. at* ¶8.4.4.

If the Administrator, OAS or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than [14] days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later. *Id. at* ¶8.4.5.

C. Disputes, Exclusion Process and Objections

Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than [60] days after the Administrator mails the Class Notice (plus an additional [14] days for Class Members

1 whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her
2 representative that reasonably communicates the Class Member's election to be excluded from the
3 Settlement and includes the Class Member's name, address and email address or telephone number.
4 To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response
5 Deadline. *Id. at ¶8.5.1.*

6 The Administrator may not reject a Request for Exclusion as invalid because it fails to
7 contain all the information specified in the Class Notice. The Administrator shall accept any Request
8 for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a
9 Class Member and the Class Member's desire to be excluded. The Administrator's determination
10 shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has
11 reason to question the authenticity of a Request for Exclusion, the Administrator may demand
12 additional proof of the Class Member's identity. The Administrator's determination of authenticity
13 shall be final and not appealable or otherwise susceptible to challenge. *Id. at ¶8.5.2.*

14 Every Class Member who does not submit a timely and valid Request for Exclusion is
15 deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound
16 by all terms and conditions of the Settlement, including the Participating Class Members' Releases
17 under Paragraphs 6.2 and 6.3 of this Agreement, regardless whether the Participating Class Member
18 actually receives the Class Notice or objects to the Settlement. *Id. at ¶8.5.3.*

19 Every Class Member who submits a valid and timely Request for Exclusion is a Non-
20 Participating Class Member and shall not receive an Individual Class Payment or have the right to
21 object to the class action components of the Settlement. Because future PAGA claims are subject to
22 claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved
23 Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are
24 eligible for an Individual PAGA Payment. *Id. at ¶8.5.4.*

25 Only Participating Class Members may object to the class action components of the
26 Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or
27 amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment
28 and/or Class Representative Service Payment. *Id. at ¶8.7.1.*

1 Participating Class Members may send written objections to the Administrator, by fax, email,
2 or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to
3 appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class
4 Member who elects to send a written objection to the Administrator must do so not later than [60]
5 days after the Administrator's mailing of the Class Notice (plus an additional [14] days for Class
6 Members whose Class Notice was re-mailed). *Id. at* ¶8.7.2. Non-Participating Class Members have
7 no right to object to any of the class action components of the Settlement. *Id. at* ¶8.7.3.

8 **D. Proposed Release**

9 Effective on the date when Defendants fully funds the entire Gross Settlement Amount and
10 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
11 Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties. *Id. at*
12 ¶6.

13 Plaintiff and his or her respective former and present spouses, representatives, agents,
14 attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released
15 Parties from all claims, transactions, or occurrences [that occurred during the Class Period],
16 including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based
17 on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably
18 could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA
19 Notice, [or ascertained during the Action and released under 6.2, below]. ("Plaintiff's Release.")
20 Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any
21 claims for vested benefits, unemployment benefits, disability benefits, social security benefits,
22 workers' compensation benefits that arose at any time, or based on occurrences outside the Class
23 Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition
24 to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that
25 Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or
26 additional facts or Plaintiff's discovery of them. *Id. at* ¶6.1.

27 All Participating Class Members, on behalf of themselves and their respective former and
28 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release

Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint [and ascertained in the course of the Action] [including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.]. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period. *Id.* at ¶6.2.

All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint[,] [and] the PAGA Notice [and ascertained in the course of the Action][including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.]. *Id.* at ¶6.3.

IV. LEGAL ARGUMENTS SUPPORTING PRELIMINARY APPROVAL

A. Provisional Certification of the Class is Appropriate

California law authorizes class certification when a class representative has proven the existence of an ascertainable and sufficiently numerous classes, a well-defined community of interest among class members, and certification is a fair and efficient means of adjudicating the action, rendering proceeding as a class superior to alternative means. *Brinker Restaurant Corp. v. Superior Court* (2012), 53 Cal.4th 1004 at 1021.

1. The Proposed Class is numerous and ascertainable

Whether a class is “ascertainable” is “determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members.” *Reyes v. Bd. of Supervisors* (1987), 196 Cal.App.3d 1263, 1271.

In this case, the proposed Settlement Class consists of “all persons employed by OAS in California and classified as current and former hourly non-exempt employees who worked for OAS during the period from April 2, 2017 through the date of Preliminary Approval of this Settlement.”

1 *Settlement Agreement* ¶1.5 and 1.12. Also see *Sarkis Decl.* ¶16. Based on a review of its records to
2 date, OAS estimates there are 124 Class Members who collectively worked a total of 6972
3 Workweeks, and 72 of Aggrieved Employees who worked a total 1697 of PAGA Pay Periods.
4 Further, the class is readily ascertainable from Defendants’ business records because all Class
5 Members are current or former employees of Defendants. *Id. at 4.1.*

6 Class Counsel is not aware of any class, representative or other collective action in any other
7 court in this or any other jurisdiction that asserts claims similar to those asserted in this action on
8 behalf of a class or group of individuals some or all of whom would also be members of the class
9 defined in this action. *Sarkis Decl.* ¶12.

10 **a. A well-defined community of interest exists among Class Members**

11 “[T]he ‘community of interest requirement embodies three factors: (1) predominant common
12 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
13 (3) class representatives who can adequately represent the class.’” (*Fireside Bank v. Superior Court*
14 (2007), 40 Cal.4th 1069, 1089 (quoting *Richmond v. Dart Industries, Inc.* (1981), 29 Cal.3d 462,
15 470). The application of each of these factors is discussed below.

16 **a. Common questions predominate**

17 To assess whether common questions predominate, courts focus on whether the theories of
18 recovery advanced are likely to prove amenable to class treatment. *Sav-On Drug Stores, Inc. v.*
19 *Superior Court* (2004), 34 Cal.4th 319, 327. In other words, courts determine whether the elements
20 necessary to establish liability are susceptible of common proof, even if the class members must
21 individually prove their damages. *Brinker*, 53 Cal.4th at 1021-1022, 1024. Here, there are common
22 questions of law and fact including, but not limited to, the following: Whether Defendants failed to
23 pay the minimum wage; Whether Defendants failed to compensate for all hours worked; Whether
24 Defendants failed to provide meal periods or pay meal period premiums in lieu thereof; Whether
25 Defendants failed to provide rest periods or pay meal period premiums in lieu thereof; Whether
26 Defendants failed to provide proper wage statements to Class Members; Whether Defendants failed
27 to furnish accurate wage and hour statements; Whether Defendants failed to pay Class Members’
28 wages upon termination, giving rise to waiting time penalties; Whether Defendants failed to pay

overtime to Class Members; Whether Defendants engaged in unfair or unlawful business practices; and Whether Defendants failed to comply with Private Attorneys General Act. *Sarkis Decl.* ¶17.

b. Plaintiff's claims are typical of the Class Claims

Typical claims rely on legal theories and facts that are substantially similar to other class members. *See Classen v. Weller* (1983), 145 Cal.App.3d 27, 46. Here, Plaintiff's claims are typical of the class claims. Plaintiff alleges that Defendants maintained company-wide employment practices that deprived Class Members of minimum wages, overtime wages, meal period compensation and/or rest period compensation. *Sarkis Decl.* ¶18.

In the instant case, Plaintiff's allegations present common legal and factual questions of, inter alia, whether Defendants applied the same policies and/or practices regarding the foregoing to all class members; whether those policies and/or practices or their implementation resulted in violations of various laws; whether Defendants' conduct was intentional; and whether Class Members are entitled to penalties. These questions could be resolved by using Defendants' payroll records, testimony from Class Members, and testimony from corporate representatives. *Sarkis Decl.* ¶19. Thus, the Court can and should exercise its discretion to grant conditional class certification here, for settlement purposes. *See Brinker*, 53 Cal.4th at 1033 ("[c]laims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment.").

Further, and pursuant to the Settlement Agreement, the Parties stipulate to class certification for purposes of this Settlement only. *Sarkis Decl.* ¶39.

c. Plaintiff and Plaintiff's counsel will adequately represent the interests of the Proposed Class

Certification requires adequacy of both the proposed class representative and proposed class counsel. With respect to the class representative, a plaintiff must adequately represent and protect the interests of other members of the class and demonstrate that his or her claim is not inconsistent with the claims of other members of the class. *See Capitol People First v. Dept. of Developmental Services* (2007), 155 Cal.App.4th 676, 697. In the present case, Plaintiff and Plaintiff's Counsel will adequately represent the interests of the proposed class. Plaintiff's interests are coextensive with the

1 interests of the Class. Plaintiff has already demonstrated his ability to advocate for the interests of
2 the Class by initiating this litigation and obtaining a fair settlement on behalf of himself and Class
3 Members. Likewise, the Sirmabekian Law Firm, PC have expended considerable time and effort on
4 this case and will continue to do so through final approval. *Sarkis Decl.* ¶20. Accordingly, Plaintiff
5 FRANZ CHAVEZ HIDALGO should be appointed Class Representative, and Sirmabekian Law
6 Firm, PC should be appointed Class Counsel.

7 **3. A Class Action is superior to a multitude of individual lawsuits**

8 Class treatment is superior to other methods of adjudication when the probability is small
9 that each class member will come forward to prove his or her claim and when the class approach
10 would deter and redress the alleged wrongdoing. *Linder v. Thrifty Oil Co.* (2000), 23 Cal.4th 435,
11 446; *Ghazaryan v. Diva Limousine, Ltd.* (2008), 169 Cal.App.4th 1524, 1537-1538. Here, the Class
12 Members had little incentive to litigate wage and hour claims on an individual basis where the out-
13 of-pocket expense and personal commitment would outweigh the potential recovery. *See Section*
14 *IV.B.2, below.* Thus, a class action is the superior method of seeking relief.

15 **B. The Proposed Settlement Meets the Standards for Preliminary Approval**

16 Preliminary approval is warranted if the settlement falls within a “reasonable range.” *See*
17 *North County Contractor’s Ass’n., Inc. v. Touchstone Ins. Serv.* (1994), 27 Cal.App.4th 1085, 89-
18 90, Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) (“Newberg”). In
19 reviewing the fairness of a class action settlement, due regard should be given to what is “otherwise
20 a private consensual agreement between the parties.” *In re Cellphone Termination Fee Cases* (2010),
21 186 Cal.App.4th 1380, 1389. The inquiry “must be limited to the extent necessary to reach a
22 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
23 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and
24 adequate to all concerned.” *Id.*

25 Reasonableness and fairness are presumed where (1) the settlement is reached through
26 “arms-length bargaining”; (2) investigation and discovery are “sufficient to allow counsel and the
27 court to act intelligently”; (3) counsel is “experienced in similar litigation”; and (4) the percentage
28 of objectors “is small.” *Dunk v. Ford Motor Co.* (1996), 48 Cal.App.4th 1794, 1802. The Settlement

here already satisfies the first three factors. Plaintiff will analyze the fourth factor in his motion for final approval.

1. The Settlement is entitled to a presumption of fairness

a. The settlement is the result of arm's-length negotiations

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. *Newberg*, § 11.51. Here, On May 11, 2022, the Parties participated in private mediation before mediator Nikki Tolt, Esq. of ACT Mediation (the "Mediator"), a well know, well versed, and respected mediator of wage and hour class actions. *Sarkis Decl.* ¶9. The settlement discussions during and after mediation were conducted at arm's length, and the settlement is the result of an informed and detailed analysis of Defendants' potential liability of total exposure in relation to the costs and risks associated with continued litigation. *Sarkis Decl.* ¶10.

b. Class Counsel conducted sufficient investigation and discovery

Plaintiff's Counsel conducted significant investigation of the facts and law during the prosecution of this action. In particular, Plaintiff's Counsel assessed the value of the class claims using production by Defendants of applicable policies and procedures and a sampling of data relevant to class claims. Plaintiff's Counsel analyzed all facts, theories, data, documents and information on which the Action is based to determine the merits of the class claims. *Sarkis Decl.* ¶22. Further, Plaintiff's Counsel interviewed and investigated the claims alleged in this lawsuit by speaking to Class Members, conducting interviews and gathering necessary declarations needed for class certification, and obtained time and payroll records to assess damages before mediation. *Sarkis Decl.* ¶23. Accordingly, Plaintiff's Counsel fully understood the strengths and weaknesses of the class claims before the parties reached the Settlement. *Sarkis Decl.* ¶24.

c. Class Counsel is experienced in similar litigation

Plaintiff is represented by the Sirmabekian Law Firm, PC ("Class Counsel" and "Plaintiff's Counsel"). Class Counsel almost exclusively prosecutes wage and hour actions (including class actions) on behalf of hard-working California employees. Though Class Counsel is yet to obtain any class certification orders due to their relative youth, Class Counsel, either on its own or with co-

counsel, have served or are currently serving as Plaintiff's counsel of record in numerous different wage and hour class action cases. Thus, Class Counsel has extensive experience in similar litigation. *Sarkis Decl.* ¶3. Furthermore, Class Counsel has trial experience, and has extensive wage and hour experience in litigation, law and motion, deposition, summary judgment, and discovery. *Sarkis Decl.* ¶4.

2. The Proposed Settlement Is Reasonable Given the Strengths of Plaintiff's Claims and the Risks and Expense of Litigation

Courts have discretion to approve class settlements by assessing several well-recognized factors, including the "strength of plaintiffs' case, risk, expense, complexity and likely duration of further litigation and risk of maintaining the class action through trial." *Munoz v. BCI Coca-Cola Bottling Co.* (2010), 186 Cal.App.4th 399, 407; see *Kullar v. Foot Locker Retail, Inc.* (2008), 168 Cal.App.4th 116, 129.

While Plaintiff believed and continues to believe this is a strong case for certification, Plaintiff and Plaintiff's Counsel recognize the expense and length of continued proceedings necessary to litigate the disputes through arbitration and through any possible appeals. Plaintiff has taken into account the uncertainty and risk of the outcome of further litigation, the uncertain merits of class claims, and the difficulties and delays inherent in litigation. Plaintiff and Plaintiff's Counsel are also aware of the burdens of proof necessary to establish liability for the class claims asserted in the present action, both generally and in response to Defendants' defenses thereto. Plaintiff has also taken into account the extensive settlement negotiations conducted and Defendants' agreement to enter into a Settlement that confers substantial relief upon the Class Members, even though Defendants strenuously maintain that they have fulfilled their obligations.

Conversely, Defendants have concluded that any further defense of this litigation would be protracted and expensive for all parties. Substantial amounts of time, energy and resources of Defendants have been spent and, unless the Settlement Agreement is agreed to, will continue to be devoted to the defense of the claims asserted by the Class. Defendants have also taken into account the risks of further litigation in reaching its decision. Accordingly, Defendants have agreed to settle in the manner and upon the terms set forth in the Settlement Agreement to put to rest the claims set

1 forth in this action.

2 In light of the foregoing, and despite the fact that the amount of the Class's maximum
3 potential damages – if proven – is substantial, the legitimate and serious risk above compelled a
4 considerable discount for settlement.

5 **a. Risk analysis**

6 A settlement does not have to provide 100% of the damages sought to be considered a fair
7 and reasonable settlement. *Rebney v. Wells Fargo Bank* (1991), 220 Cal.App.3d 1117, 1139. Rather,
8 compromise is expected:

9 Compromise is inherent and necessary in the settlement process...even if “the relief afforded
10 by the proposed settlement is substantially narrower than it would be if the suits were to be
11 successfully litigated,” this is no bar to a class settlement because “the public interest may
indeed be served by a voluntary settlement in which each side gives ground in the interest of
avoiding litigation.”

12 *Wershba v. Apple Computer, Inc.* (2001), 91 Cal.App.4th 224, 250.

13
14 Here, Plaintiff's Counsel calculated Defendants' total potential exposure assuming Plaintiff
15 prevailed on all aspects of his claims at trial but weighed the value against the chance of succeeding
16 at class certification and trial. *Sarkis Decl.* ¶28. Plaintiff's Counsel estimate of the total amount of
17 damages, monetary penalties or other relief that the class could reasonably expect to be awarded at
18 trial, taking into account the likelihood of prevailing and other risk totals. These estimates were
19 carefully weighed against the continued risk of proceeding to trial on the merits and failing to prevail
20 on claims. These estimates were further carefully weighed against the likelihood of the Court
21 granting certification to some or all of Plaintiff's claims. Plaintiff, along with the advice of his
22 counsel, weighed the benefits of putting money into the pockets of numerous California employees
23 within several months, with the cost and risk of continued litigation, and the possibility of appeal.
24 *Sarkis Decl.* ¶29.

25 Defendants disputed the statistical analysis prepared by Plaintiff and also asserted that their
26 meal period policies were compliant with California law and that it did not prevent employees from
27 taking their timely meal periods. Defendants further contended that any analysis of alleged unpaid
28 overtime and unreimbursed business expenses would require an individualized inquiry of each

1 employee to determine whether there was any liability, such that class certification would not be
2 proper for these claims. *Sarkis Decl.* ¶30. *See also, Brinker Restaurant Corp. v. Super. Ct.* (2012),
3 53 Cal. 4th 1004.

4 Furthermore, Plaintiff realizes penalties are extremely discretionary, and are subject to
5 immense reduction by the Court, based on various factors that are different with each court. It is
6 additionally important to note that Defendants will claim penalties are derivative of the alleged
7 failure to pay overtime wages and reimbursement of overtime wages described above. Should
8 Plaintiff fail to prevail on their claims for damages, then the class would not be entitled to penalties.
9 This decreases the chances of ultimately obtaining an award of penalties, and factored into Plaintiff's
10 analysis of weighing risks and benefits of settlement at this juncture. *Sarkis Decl.* ¶31. Defendants
11 will further contend that wage statement penalties were not the result of a "knowing and intentional
12 failure" by Defendants to comply with Cal. Lab. Code § 226(a) as required by the statute, and that
13 the employees did not suffer injury for purposes of recovering penalties as required under *Cal. Lab.*
14 *Code §226(e)(2)(B)(i) and (ii)*. Defendants will further contend that the alleged failure to timely pay
15 final wages was derivative of the claims that are in dispute, such that there was not a willful showing
16 that the employer knew of its obligation and intentionally refused to act. *Sarkis Decl.* ¶32. *See also,*
17 *Baker v. American Horticulture Supply, Inc.* (2010), 186 Cal.App.4th 1059, 1076.

18 The PAGA claims presented even greater hurdles. The Court would have discretion to reduce
19 the PAGA award based on whether the amount of the award would be "unjust, arbitrary and
20 oppressive, or confiscatory." *Cal. Lab. Code § 2699(e)(2)*. In this case in particular, Plaintiff's
21 Counsel heavily discounted the PAGA claim based on the risk that Defendants would convince the
22 Court to dramatically reduce the PAGA penalties because Defendants made efforts to comply with
23 wage and hour laws through its employee handbook and there was no evidence that Defendants acted
24 with reckless disregard regarding the alleged claims. *Sarkis Decl.* ¶33. However, even if the Court
25 did not reduce the award based on discretionary factors, Defendants could argue that the "subsequent
26 violations" under PAGA only start to accrue after employers receive notice through a citation from
27 the Labor Commissioner. In that scenario, the PAGA penalties would reach only aggrieved
28 employees following the January 27, 2021 submission. *Sarkis Decl.* ¶34. *See also, Amaral v. Cintas*

1 Corp. No. 2 (2008), 163 Cal.App.4th 1157, 1209 (holding “[u]ntil the employer has been notified
2 that it is violating a Labor Code provision...the employer cannot be presumed to be aware that its
3 continuing underpayment of employees is a ‘violation’ subject to penalties.”). Notably, there are
4 very few California appellate cases discussing these issues.

5 The gross settlement amount Defendants shall have to pay in connection with this Settlement
6 is \$130,000.00. *Settlement Agreement* ¶1.22. Class Counsel considers this to be an excellent
7 settlement for class members, when taking into account all issues and risks related to liability and
8 class certification, and also considering the case law regarding fair, reasonable, and adequate
9 settlements. *Sarkis Decl.* ¶35. *See also, Rebney v. Wells Fargo Bank* (1990), 220 Cal.App.3d 1117,
10 1139 ["Compromise is inherent and necessary in the settlement process... even if the relief afforded
11 by the proposed settlement is substantially narrower than it would be if the suits were to be
12 successfully litigated, this is no bar to a class settlement because the public interest may indeed be
13 served by a voluntary settlement in which each side gives ground in the interest in avoiding
14 litigation."]; *Officers for Justice v. Civil Service Comm'n* (9th 1982) 688 F.2d 615,628 ["It is well-
15 settled law that a cash settlement amounting to only a fraction of the potential recovery does not. ..
16 render the settlement inadequate or unfair."].

17 C. The Requested Class Representative Service Payment

18 Plaintiff seeks a Class Representative Service Payment in exchange for the release of all
19 Class Released Claims and for the time and effort expended in bringing and prosecuting the present
20 matter. A named Plaintiff is eligible for payment that reasonably compensates her for undertaking
21 and fulfilling a fiduciary duty to represent absent class members. *In re Cellphone Termination Fee*
22 *Cases* (2010), 186 Cal.App.4th 1380, 1393; *Bell v. Farmers Ins. Exch.* (2004), 115 Cal.App.4th 715,
23 726. Here, Plaintiff FRANZ CHAVEZ HIDALGO assisted counsel in gathering the evidence
24 necessary to prosecute the class claims, met with Class Counsel to prepare for mediation, maintained
25 regular contact with counsel, and reviewed the Settlement to make sure it was fair to the class. *Sarkis*
26 *Decl.* ¶27. No action would likely have been taken by Class Members individually, and no
27 compensation would have been recovered for them, but for Plaintiff’s service on behalf of the Class
28 Members. *Sarkis Decl.* ¶28. Moreover, the amount of the incentive award was not negotiated until

1 after the parties agreed to the Gross Settlement Amount. *Sarkis Decl.* ¶29.

2 By actively pursuing this action, Plaintiff has furthered the California public policy goal of
3 enforcing the State’s wage and hour laws. *See Sav-On Drug Stores, Inc. Superior Court* (2004), 34
4 Cal.4th 319, 340. Plaintiff FRANZ CHAVEZ HIDALGO could have pursued his claims
5 individually. Instead, the Plaintiff chose to pursue this class action, delaying his own recovery. The
6 Settlement Agreement provides that subject to Court approval, the foregoing named Plaintiff shall
7 be paid a Class Representative Enhancement Payment of up to Five Thousand Dollars and No Cents
8 (\$5,000.00) in exchange for a general release, and in recognition of his effort and work in prosecuting
9 this action on behalf of Class Members and negotiating the Settlement. *Settlement Agreement* ¶3.3.1.
10 Class Representative Enhancement Payment” means the amount to be paid from the Gross
11 Settlement Amount to the named Plaintiff in exchange for executing a general release and in
12 recognition of their effort in prosecuting the Action on behalf of Class Members. Plaintiff will
13 request and Defendants will not oppose Plaintiff’s application to the court for a payment of Five
14 Thousand Dollars (\$5,000) for his willingness to serve as Class Representative. *Id.* The proposed
15 Class Representative Enhancement Payment, both for Plaintiff’s services as the class representatives
16 and for his general release of all employment claims, is reasonable and should be preliminarily
17 approved.

18 **D. The Requested Attorneys’ Fees**

19 The purpose of an attorneys’ fee award in class action litigation is to reward counsel who
20 invested in a case despite the risk of non-payment and achieved a substantial positive result for the
21 class. Attorneys’ fees are awarded as a matter of equity. California courts routinely award attorneys’
22 fees equaling one-third or more of the potential value of the common fund. *See Chavez v. Netflix,*
23 *Inc.* (2008), 162 Cal.App.4th 43, 66, n.11 (“Empirical studies show that, regardless of whether the
24 percentage method or the lodestar method is used, fee awards in class actions average around one-
25 third of the recovery”). In the present case, Plaintiff will seek Court approval, and Defendants agree
26 not to oppose or impede any application or motion by Class Counsel for Class Counsel Fees in the
27 amount of up to Forty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents
28 (\$43,333.33), plus the reimbursement of the actual costs and expenses associated with Class

1 Counsel's litigation and settlement of the Action, not to exceed Five Thousand Dollars (\$5,000). In
2 consideration of their awarded attorneys' fees and costs and expenses, Plaintiff and Class Counsel
3 waive any and all claims to any further attorneys' fees and expenses in connection with the Action.
4 *Settlement Agreement* ¶3.3.2. *Sarkis Decl.* ¶13(2). At final approval, Plaintiff's Counsel will fully
5 brief the merits of their request for attorneys' fees and litigation costs.

6 **V. CONCLUSION**

7 The parties have negotiated a fair and reasonable Settlement of the class claims. Because
8 Plaintiff has appropriately presented the materials and information necessary for preliminary
9 approval, he respectfully requests that the Court preliminarily approve the Settlement and schedule
10 a date to conduct the final approval hearing.

11
12
13 DATED: February 10, 2023

Respectfully submitted,

SIRMABEKIAN LAW FIRM, PC

14
15 By: 
16 Sarkis Sirmabekian, Esq.
17 *Attorney for Plaintiff and the Proposed Class*
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PROOF OF SERVICE
(§ 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am a citizen of the United States of America; I am over the age of eighteen years and not a party to the within entitled action; my business address is: 3435 Wilshire Boulevard, Suite 1710, Los Angeles, California 90010.

On the below-indicated date, I served the following document:

PLAINTIFF FRANZ CHAVEZ HIDALGO'S NOTICE OF MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;

MEMORANDUM OF POINTS & AUTHORITIES;

on the interested parties in said action by placing:

___X,___ a true and correct copy,

and addressed as set forth on the attached Service List and delivered by one or more of the means set forth below:

☒ **BY ELECTRONIC SERVICE IN LIEU OF SERVICE BY MAIL, EXPRESS MAIL, OVERNIGHT DELIVERY, OR FACSIMILE TRANSMISSION:** In accordance with California Code of Civil Procedure section 1010.6, I caused the document to be sent to the person(s) below at the e-mail address(es) listed below.

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

EXECUTED: <u>February 10, 2023</u> At Los Angeles, California	<u>Grigor Gregg Sirmabekhian</u> Grigor Gregg Sirmabekhian
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SERVICE LIST

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Labor and Workforce Development Agency Department of Industrial Relations LWDA Attn. PAGA Administrator 1515 Clay Street, Ste. 801 Oakland, California 94612	<i>Labor and Workforce Development Agency ("LWDA") filed/served online at:</i> <i>https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html</i>