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12 *Aggrieved Employees, and the State of California*

13 **SUPERIOR COURT OF CALIFORNIA**
14 **COUNTY OF SOLANO**

15 MARIA R. MARTINEZ, on behalf of herself
16 the Class Members, Aggrieved Employees,
17 and State of California,

18 Plaintiff,

19 vs.

20 MARIANI PACKING CO. INC.,

21 Defendant.

Case No.: FCS056622

Hon. Christine A. Carringer
Dept. 12

**NOTICE OF UNOPPOSED MOTION
AND UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

6
Date: June 3, 2024
Time: 8:30 a.m.
Dept.: 12

Complaint Filed: June 2, 2021
Trial Date: None Set

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on June ⁶~~3~~, 2024, or as soon thereafter as the matter may be
3 heard in Department 12 of the above-captioned Court located at the Courtroom 1, 580 Texas Street,
4 Fairfield, California 94533, the Honorable Christine A. Carringer presiding, and pursuant to Cal.
5 Code Civ. Proc. § 382, Cal. Rules of Court, Rule 3.769, and Cal. Lab. Code § 2699(1)(2), Plaintiff
6 Maria Martinez will and hereby does move the Court for an Order granting final approval of the
7 proposed class action and Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, *et seq.*
8 (“PAGA”), settlement between Plaintiff and Defendant Mariani Packing Co. Inc. Defendant does
9 not oppose this motion.

10 Specifically, Plaintiff requests that the Court enter an Order:

11 1. Granting final approval of the Class Action Settlement Agreement and Release
12 (“Settlement” or “Settlement Agreement”) attached as **Exhibit 1** to the previously filed Declaration
13 of Carolyn H. Cottrell in Support of Plaintiff’s Unopposed Motion for Preliminary Approval of
14 Class Action and PAGA Settlement;

15 2. Finding that dissemination of the Notice of Class Action Settlement (“Settlement
16 Notice,” attached as **Exhibit A** to the Settlement) was accomplished as directed and met the
17 requirements of due process;

18 3. Ordering that the Class is certified for settlement purposes;¹

19 4. Finally appointing Plaintiff Maria Martinez as Class representative for settlement
20 purposes;

21 5. Finally appointing Schneider Wallace Cottrell Konecky LLP (“SWCK”) as Class
22 Counsel for settlement purposes;

23 6. Finally approving a service award payment of \$10,000.00 to Plaintiff Maria Martinez
24 from the Gross Settlement Amount;

25 7. Finally approving an award of attorneys’ fees in the amount of \$682,500.00 from the
26 Gross Settlement Amount;

27 8. Finally approving an award of litigation costs in the amount of \$34,910.71 from the
28 Gross Settlement Amount;

29 9. Finally approving an award of \$40,000.00 for penalties under the PAGA from the
30 Gross Settlement Amount;

31
32 ¹ Capitalized terms not defined herein have the meanings ascribed to them in the Settlement Agreement.

10. Finally approving Phoenix Class Action Administration Solutions (“Phoenix”) as the Settlement Administrator for the Class;

11. Finally approving payment of \$22,500 to Phoenix as the Settlement Administrator;

12. Entering a final judgment consistent with the terms of the Settlement and this Motion, and retaining jurisdiction over this Action for purposes of overseeing all settlement administration matters; and

13. Finally approving the proposed implementation schedule for the Settlement administration process:

Event	Deadline
Deadline for Defendant to pay the Gross Settlement Payment in the QSF	The First Installment of \$487,500.00 will be paid by December 31, 2023. The Second Installment of \$487,500.00 will be paid by January 31, 2024. The Third Installment of \$487,500.00 will be paid by January 31, 2025. The Fourth Installment of \$487,500.00 will be paid by January 31, 2026.
Effective Date	The later of: (a) if there are no objections submitted, entry by the Court of a final approval order and judgment finally certifying the Settlement Class and approving the settlement, or (b) if there are objections to the settlement, thirty-five (35) calendar days after the Court enters a final approval order and judgment approving the settlement, or (c) if any appeal, writ, or other appellate proceeding opposing the Court’s final approval order approving the settlement has been filed, five (5) business days after any appeal, writ, or other appellate proceedings opposing the settlement have been finally and conclusively dismissed with no right to pursue further remedies or relief.
Deadline for Phoenix to calculate the employer share of taxes and provide Defendant with the total amount of Defendant’s Payroll Taxes	As soon as practicable
Deadline for Phoenix to make payment for Service Award under the Settlement to the Class Representative	At the time of the “First Disbursement” of \$975,000, within 5 business days after the scheduled Second Installment or within 5

Event	Deadline
	business days of the Effective Date, whichever is later
Deadline for Phoenix to make payments from the PAGA Payment under the Settlement to the LWDA and to Aggrieved Employees	At the time of the “Third Disbursement” of \$487,500, within 5 business days after the scheduled Fourth Installment or within 5 business days of the Effective Date, whichever is later
Deadline for Phoenix to make payments under the Settlement to Class Counsel for Class Counsel’s Costs	At the time of the First Disbursement
Deadline for Phoenix to make payments under the Settlement to Class Counsel for Fee Award	50% during the First Disbursement; 25% during the “Second Disbursement” of \$487,500, within 5 business days after the scheduled Third Installment or within 5 business days of the Effective Date, whichever is later; 25% during the Third Disbursement
Deadline for Phoenix to make payments under the Settlement to itself for Settlement Administrator Costs	Equal payments during the First, Second, and Third Disbursement
Deadline for Phoenix to make payments under the Settlement to Settlement Class Members	During the First, Second, and Third Disbursements
Check-cashing deadline	180 days after issuance
Deadline for Phoenix to provide written certification of completion of administration of the Settlement to counsel for all Parties and the Court	Within 10 business days after the check-cashing deadline
Deadline for Phoenix to tender uncashed check funds to the California State Controller Unclaimed Property Fund under the names of the Settlement Class Members	As soon as practicable following the check-cashing deadline associated with the Third Distribution
Deadline for Plaintiff to file a Post-Distribution Accounting	Within 21 days after the Third Distribution

Plaintiff brings this motion pursuant to Cal. Code Civ. Proc. Section 382. This Motion is based upon this Notice; the accompanying Memorandum of Points and Authorities; the Declaration of Carolyn H. Cottrell in Support of Unopposed Motion for Final Approval of Class Action and PAGA Settlement; the Declaration of Kevin Lee of Phoenix Settlement Administrators Re: Notice

1 and Settlement Administration; the Declaration of Jeffrey Foreman; the Declaration of Maria R.
2 Martinez; the pleadings and other records on file with the Court in this matter; and any other
3 evidence or argument the Court may properly receive at or before the hearing on this motion.
4

5 Date: May 8, 2024

Respectfully Submitted,

6 **SCHNEIDER WALLACE**
7 **COTTRELL KONECKY LLP**

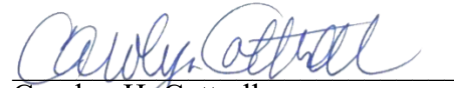
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 After over two years of intense litigation, including discovery, motion practice, amendments
4 to the complaint, two mediations with experienced mediator Jeffrey Krivis, exhaustive pre-
5 mediation discovery and outreach, and extensive arm's-length negotiations between counsel, the
6 Parties have reached a Settlement of this wage and hour class and Private Attorneys General Act
7 ("PAGA") action.² Plaintiff Maria Martinez ("Plaintiff") now seeks final approval of the Settlement.

8 This Action is based on Defendant Mariani Packing Co. Inc.'s ("Defendant") alleged
9 violations of California wage and hour laws, resulting in the underpayment of wages and the failure
10 to provide compliant meal and rest periods to approximately 376 of Defendant's current and former
11 non-exempt employees who worked for Defendant in California at any time between June 2, 2017,
12 and July 4, 2023. With this non-reversionary settlement of \$1,950,000 to be paid over four separate
13 installments, the Parties are resolving numerous wage and hour claims unlikely to have been
14 prosecuted as individual actions. The Settlement provides an excellent benefit to the Class and an
15 efficient outcome in the face of expanding litigation, particularly given that Defendant's weakened
16 financial condition. The Settlement easily falls within the range of reasonableness required for
17 preliminary approval, and the proposed Class satisfies all the criteria for class certification under
18 Cal. Code Civ. Proc. § 382. Accordingly, Plaintiff respectfully requests that the Court preliminarily
19 approve the Settlement, certify the proposed Class for settlement purposes, authorize distribution of
20 Settlement Notice, approve the proposed schedule for administering the Settlement, and set a Final
21 Approval Hearing.

22 **II. FACTUAL AND PROCEDURAL BACKGROUND**

23 Plaintiff worked for Defendant as a utility worker in Vacaville, California, from
24 approximately March 2020 to December 2020. Declaration of Maria R. Martinez ("Martinez
25 Decl."), ¶ 3. Plaintiff's duties included sorting products, donning and doffing personal protective
26 equipment, moving raw materials and finished goods, and performing cycle counts. *Id.*

27 On May 13, 2021, Plaintiff provided written notice to the California Labor and Workforce
28 Development Agency ("LWDA") of her intent to pursue PAGA claims against Defendant. Cottrell
29 Decl., ¶ 7. On June 2, 2021, Plaintiff filed this lawsuit as a California class action in Solano County
30 Superior Court, alleging that Defendant: (1) failed to pay for all hours worked; (2) failed to pay

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32 ² The Class Action Settlement Agreement and Release ("Settlement") is attached as **Exhibit 1** to
the Declaration of Carolyn H. Cottrell in Support of Plaintiff's Unopposed Motion for Preliminary
Approval of Class Action and PAGA Settlement (filed Sep. 1, 2023).

1 minimum wages; (3) failed to pay overtime wages; (4) failed to provide legally compliant meal
2 breaks or premium payment in lieu thereof; (5) failed to provide accurate, itemized wage statements;
3 and (6) failed to timely pay all wages due upon separation from employment. *Id.* Plaintiff filed a
4 first amended complaint on July 22, 2021, adding the PAGA claims. *Id.*, ¶ 8. Defendant filed its
5 answer on September 2, 2021, denying Plaintiff’s allegations. *Id.* Pursuant to stipulated order,
6 Defendant filed its amended answer to Plaintiff’s first amended complaint on September 6, 2022,
7 and Plaintiff filed a Second Amended Complaint on September 30, 2022. *Id.*

8 The parties have engaged in significant discovery and motion practice, in this case, including
9 Plaintiff’s formal requests to Defendant, Defendant’s document production and responses thereto,
10 extensive informal discovery in connection with mediation, and Plaintiff’s motion to compel
11 production and Defendant’s motion to compel arbitration, both of which Plaintiff succeeded in
12 obtaining orders in her favor. *Id.*, ¶¶ 10-14. Plaintiff’s Counsel has reviewed Defendant’s wage-and-
13 hour policies, site maps, training information, work schedules, meal period waivers, employee time
14 and pay records for nearly 25% of the Class, and information related to the scope of the proposed
15 Class and the number of workweeks and pay periods in the Class Period. *Id.*

16 The parties agreed to mediate, and, on June 30, 2022, the parties conducted a full-day
17 mediation session before employment mediator Jeffrey Krivis. *Id.*, ¶ 15. The mediation session was
18 unsuccessful, and the parties continued to litigate the action. *Id.* On May 5, 2023, the parties
19 conducted a second full-day mediation session before Mr. Krivis. *Id.* The parties agreed on
20 settlement terms at this second mediation and executed a confidential memorandum of
21 understanding of the substantive terms of the settlement that day. *Id.*, ¶ 16. The parties then
22 memorialized those terms in the Settlement Agreement, executed on August 24, 2023. *Id.*

23 On September 14, 2023, the Court granted preliminary approval of the Settlement. *Id.*, ¶ 19;
24 *see also* Settlement, ¶¶ 2(cc)-(dd), 18(b)-(g), 35-36. On October 16, 2023, Phoenix Class Action
25 Administration Solutions (“Phoenix”) received a class list from Defendant. *Id.*, ¶ 22. On October
26 27, 2023, Phoenix mailed the Notice of Settlement to 349 Class Members via mail and via mail to
27 the extent such Class Members had email addresses. *Id.* Phoenix also set up a settlement website
28 and toll-free number for Class Members to review all Settlement-related documents and to make
29 any inquiries. *Id.*, ¶ 23. An additional two Class Members were mailed a Notice of Settlement,
30 making the total Class 351. *Id.* The notice deadline expired on December 26, 2023, and no
31 objections, requests for exclusions, and no workweek disputes were submitted as of that date. *Id.*, ¶
32 24.

On February 15, 2024, however, Class Counsel was informed that Defendant had inadvertently excluded approximately 100 Class Members from the class list. *Id.*, ¶ 24. Following the Parties' meet and confer efforts, the Parties determined that the Escalator Clause was in fact triggered by the inclusion of these additional Class Members. *Id.* Defendant chose to reduce the release period proportionally, pursuant to the Escalation Clause, thus modifying the class period from June 2, 2017 to July 23, 2023, to June 2, 2017 to July 21, 2021. *Id.* Pursuant to the April 16, 2024 stipulated order, Defendant subsequently provided Phoenix the corrected Class List on approximately April 17, 2024, and Phoenix provided supplemental notice on April 24, 2024. *Id.* The modified notice deadline is set to expire on May 24, 2024. *Id.*, ¶ 25. Plaintiff will provide an update on the outcome of the supplemental notice process, as well as Phoenix's declaration, by May 31, 2024. *Id.*

III. BASIC TERMS OF THE SETTLEMENT

Defendant agreed to pay a non-reversionary Gross Settlement Payment of \$1,950,000 in four equal installments, in addition to Defendant's Payroll Taxes on Settlement Awards to Settlement Class Members, to fully resolve the Settlement Class Members' and Aggrieved Employees' respective Released Claims with respect to Defendant and any of its affiliated entities and individuals ("Releasees"). *See* Settlement, ¶¶ 2(q), 25 (a)(ii)-(iv). The total of the Gross Settlement Payment, and any interest gained on it, is the "Gross Settlement Amount." *Id.*, ¶¶ 2(z), 25. Further details regarding the terms of the Settlement follow here:

- The Class is all current and former non-exempt employees who worked for Defendant in California between June 2, 2017 and July 21, 2021. *See* Settlement, ¶¶ 2(c), (g), 25.b.(b), and Court's April 16, 2024 Order following Joint Statement. Settlement Class Members are all Class Members who do not opt-out of the Settlement. *Id.*, ¶ 2.ff.
- Aggrieved Employees are Class Members who worked between June 2, 2020 and July 21, 2021. *See id.*, ¶¶ 2(b), (v), 25.b.(b), and Court's April 16, 2024 Order following Joint Statement.
- Settlement Class Members' Released Claims include all rights and claims arising out of the claims pleaded or could have been pleaded in the operative complaint based on the facts asserted in this Action. *Id.*, ¶ 14.
- Aggrieved Employees' Released Claims include all rights and claims to recover civil penalties on behalf of the Aggrieved Employees and the LWDA for violations alleged or could have been alleged in the complaints filed in this Action or PAGA letters arising from the claims pleaded in the operative complaint. *Id.*, ¶¶ 14-15.
- Plaintiff's Release. In the event a Service Award is awarded to the Class Representative, Plaintiff Martinez, also will release and discharge unknown claims covered by Cal. Code Civ. Proc. § 1542. *Id.*, ¶ 17.

- Net Settlement Amount is currently estimated to be \$1,160,089, is the Gross Settlement Amount less: Plaintiff Martinez's Service Award (up to \$10,000 to Plaintiff Martinez); Class Counsel's Fee Award (up to \$682,500, or 35% of the Gross Settlement Payment) and Class Counsel's Costs (estimated to be \$34,910.71); the Settlement Administrator Costs (estimated to be \$22,500); the PAGA Payment (\$40,000, pursuant to PAGA, 75%, or \$30,000, of this sum will be paid to the LWDA, and 25%, or \$10,000, will be allocated to the Net PAGA Amount. Settlement, ¶¶ 2(e), 2(l), 2(r)-(s), 2(u), 2(bb), 2(dd), 26(a)-(e), 28-30; Cottrell Decl., ¶ 21; Lee Decl., ¶ 19.³
- Pro Rata Individual Settlement Awards. Settlement Class Members will receive a *pro rata* portion of the Net Settlement Amount based on the number of workweeks he or she worked for Defendant during the Class Period. Settlement, ¶¶ 29, 30(a)(ii)-(iii). Settlement Class Members who are also Aggrieved Employees will also receive a *pro rata* portion of the Net PAGA Amount, based on the number of pay periods the respective Aggrieved Employee worked for Defendant during the PAGA Period. *Id.*, ¶ 30(b).
- Installment Payments by Defendant under the Settlement. The four installments are scheduled to be paid by December 31, 2023, January 31, 2024, January 31, 2025, and January 31, 2026. *Id.*, ¶ 25(a)(i), (ii), (iii), and (iv). The settlement payment schedule is necessitated by Defendant's current financial condition, which further supports the reasonableness of the proposed Settlement. *See* Cottrell Decl., ¶ 20(b) Declaration of Jeffrey Foreman ("Foreman Decl."), ¶ 2. The first two installments have already been received by the Settlement Administrator. *See* Lee Decl., ¶ 23.
- Disbursements of All Awards under the Settlement. Three disbursements from the Gross Settlement Amount will be made, such that (1) the First Disbursement of \$975,000 will be made within 5 business days after the Effective Date, *see id.*, ¶ 2(k); (2) the Second Disbursement of \$487,500 will be made within 5 business days after the scheduled Third Installment or the Effective Date, whichever is later; and (3) the Third Disbursement of \$487,500 will be made within 5 business days after the scheduled Fourth Installment or the Effective Date, whichever is later. *Id.*, ¶ 25(c). Payments for Plaintiff's Service Award, Class Counsel's Costs, and portions of Class Counsel's Fee Award, the Settlement Administrator's Costs, and Individual Settlement Awards to the Class will be paid with the First Disbursement. *Id.*, ¶ 26. Payments for portions of Class Counsel's Fee Award, the Settlement Administrator's Costs, and Individual Settlement Awards to the Class will be paid with the Second Disbursement. *Id.* Payments from the PAGA Payment to the LWDA and Aggrieved Employees, and for portions of Class Counsel's Fee Award, the Settlement Administrator's Costs, and Individual Settlement Awards to the Class will be paid with the Third Disbursement. *Id.*; *see also* Cottrell Decl., ¶ 20.c.
- Settlement Residue. Individual Settlement Award checks will remain valid for 180 days from the date of their issuance. Settlement, ¶ 37. Such checks distributed during the First Distribution that are returned as undeliverable or remain uncashed for more than 180 days after issuance will be redistributed to the appropriate Settlement Class Member at the time of the subsequent Second Distribution, such that their uncashed amount will be added to their Settlement Award check as part of the Second Distribution. *Id.*, ¶ 38(a). Likewise, any undeliverable or uncashed Settlement Award checks from the Second

³ The Lee Decl. calculated the Net Settlement Amount using Class Counsel Costs of \$40,000; this was determined to be \$34,910.

1 Distribution will be added to the Settlement Award checks as part of the Third
2 Distribution. *Id.*, ¶ 38(b). However, any undeliverable or uncashed Settlement Award
3 checks from the Third Distribution will be tendered to the State of California Controller’s
4 Office, Unclaimed Property Fund, in the name of the Settlement Class Member(s) for
whom the funds were intended. *Id.*, ¶ 38(c).

5 **IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT**

6 A class action may not be dismissed, compromised, or settled without the approval of the
7 court. Any settlement of a PAGA action must also be approved by a court. Cal. Lab. Code §
8 2699(1)(2). Here, the Court has already granted preliminary approval, notice has been mailed to the
9 Class Members, and the Settlement Class has responded overwhelmingly in favor of the Settlement.
10 With this Motion, Plaintiff requests that the Court take the final step in the settlement approval
11 process by granting final approval of the Settlement, the Service Award, and Class Counsel’s fees
12 and costs.

13 **A. The Best Practicable Notice Was Provided to the Class.**

14 Notice of a class action settlement should be the best “practicable under the circumstances
15 including individual notice to all members who can be identified through reasonable effort.” *Torrissi*
16 *v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1374; *Wershba v. Apple Computer, Inc.*
17 (2001) 91 Cal.App.4th 224, 251 (“*Wershba*”) (the standard is whether the notice has a reasonable
18 chance of reaching a substantial percentage of the class members). The notice is adequate where the
19 notice is given in a “form and manner that does not systematically leave an identifiable group
20 without notice.” *Mandujano v. Basic Vegetable Prod., Inc.* (9th Cir. 1976) 541 F.2d 832, 835.
21 Sending individual notices to settlement class members’ last-known addresses meets this standard
22 and is an adequate means of providing notice. *Grunin v. International House of Pancakes* (8th Cir.
23 1975) 513 F.2d 114, 121 (referring to *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-77).

24 Here, pursuant to the Court’s September 14, 2023 order granting preliminary approval, and
25 April 16, 2024 stipulated order, the Notice of Settlement and Amended Notice of Settlement or
26 postcard was mailed (and emailed where provided) to the 413 Class Members according to the terms
27 of the Settlement. *See* Lee Decl., ¶¶ 6, 18. The Notice provided a description of the case and the
28 proposed Settlement, informed Class Members of their individual workweeks and estimated
29 individual settlement payment, explained how Settlement Class Members could receive payment
30 under the Settlement, exercise their right to opt-out, object, or dispute their workweeks, and
31 identified Class Counsel and the anticipated attorneys’ fees and costs. *See id.* Phoenix also set up a
32 toll-free number and website for Class Member inquiries. *Id.*, ¶¶ 4, 7.

1 Following the initial mailing to all potential Class Members, *zero notices* were returned as
2 undeliverable. *Id.*, ¶ 14. Phoenix followed all of the procedures set forth in the Court-approved
3 notice plan. Reasonable steps have been taken to ensure that all Class Members receive the notice
4 packets. Accordingly, the notice process satisfies the “best practicable notice” standard.

5 **B. Final Approval is Appropriate Because the Settlement is Fair, Reasonable, and**
6 **Adequate.**

7 California law strongly favors settlements, particularly in the class action context. *In re*
8 *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (noting that public policy
9 favors “the compromise of complex class action litigation”); *see also Ferguson v. Lieff, Cabraser,*
10 *Heimann & Bernstein* (2003) 30 Cal.4th 1037, 1054. For final approval, a Court must ensure that
11 “the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
12 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
13 *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027; *see also* Cal. Rules of Court, Rule
14 3.769. Courts must consider several relevant factors, including: the strength of plaintiffs’ case; the
15 risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class-
16 action status through trial; the amount offered in settlement; the extent of discovery completed and
17 the stage of the proceedings; the experience and views of counsel; the presence of a governmental
18 participant; and the reaction of the class members to the proposed settlement. *Kullar v. Foot Locker*
19 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 (“*Kullar*”) (citing *Dunk v. Ford Motor Co.* (1996) 48
20 Cal.App.4th 1794, at 1801). “The list of factors is not exclusive and the court is free to engage in a
21 balancing and weighing of the factors depending on the circumstances of each case.” *Wershba*, 91
22 Cal.App.4th at 245.

23 Similarly, in the PAGA settlement approval context, but with less scrutiny because the PAGA
24 is not subject to class certification procedures, the Court must simply review the settlement and
25 approve it if it is “fair, reasonable, and adequate in view of PAGA’s purposes to remediate present
26 labor law violations, deter future ones, and to maximize enforcement of state labor laws.” *Moniz v.*
27 *Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77; *see also* Cal. Lab. Code § 2699(1)(2) (no other
28 standard for review). In reviewing PAGA settlements, courts have recognized that PAGA
29 settlements must be viewed in light of the PAGA’s public purpose, namely augmenting the state’s
30 enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring
31 noncompliance with California’s labor law. (*See, e.g., Vargas v. Central Freight Lines* (S.D. Cal.
32 Sept. 25, 2017) No. 16-cv-00507-JLB, 2017 WL 4271893, *6; *Ramirez v. Benito Valley Farms, LLC*

(N.D. Cal. Aug. 25, 2017) No. 16-CV-04708-LHK, 2017 U.S. Dist. LEXIS 137272, *6-7.) “[T]he Court will approve the PAGA settlement upon a showing that the settlement terms are fundamentally fair, adequate, and reasonable in light of PAGA’s policies and purposes.” (*Jordan v. NCI Group* (C.D. Cal. Jan. 5, 2018) No. EDCV 16-1701 JVS (SPx), 2018 U.S. Dist. LEXIS 25297, at *5.)

The decision to approve or reject a proposed settlement is committed to a court’s broad discretion. *Wershba*, 91 Cal.App.4th at 234-35. As long as the Court has sufficient information about the nature and magnitude of the claims being settled, as well as impediments to recovery, the Court should be able to make an independent assessment of the reasonableness of the terms agreed upon. *Kullar*, 168 Cal.App.4th at 133. Plaintiff provides the necessary information regarding the claims being settled and recognizes and appreciates the risks of continued litigation.

1. The terms of the Settlement are fair, and the result for the members of the Settlement Class is substantial.

A presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802. All conditions are satisfied here.

a) The Settlement was reached through arm’s length bargaining after extensive investigation, discovery, and analysis of the Class claims.

A presumption of fairness exists where, as it does here: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Kullar, supra*, at 128; *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.

Here, the parties engaged in extensive arm’s length settlement negotiations and participated in two formal, full-day mediation sessions conducted by well-respected mediator, Jeffrey Krivis, who is experienced in complex labor and employment disputes. Cottrell Decl., ¶¶ 15-18. To facilitate settlement negotiations, Class Counsel investigated the applicable law and the facts in this case and extensively analyzed the potential damages that might be recovered following the exchange of documents and information with Defendant. *Id.*, ¶ 12, 17. Defendant provided thousands of pages of informal discovery including a 25% sampling of the timekeeping and payroll records of the Class, as well as Defendant’s general policies, and other information necessary for a damages analysis. *Id.* Class Counsel also interviewed Plaintiff and other Class Members to gather facts and identify

1 potential witnesses. *Id.*, ¶ 12. Class Counsel propounded formal written discovery requests and
2 reviewed Defendant's responses. *Id.* Plaintiff used this information to perform a careful and
3 extensive analysis of the effects of Defendant's compensation policies and practices on Class
4 Members' pay. *Id.*, ¶ 12.

5 The Settlement is based on this large volume of investigation, evidence, and analysis, which
6 is more than sufficient to allow counsel and the Court to act intelligently. *Kullar*, 168 Cal.App.4th
7 at 128; *see id.*, ¶ 29. Class Counsel has extensive experience in wage-and-hour class actions under
8 California law. *Id.*, ¶¶ 4, 54, 61. Based on Class Counsel's knowledge and expertise in this area of
9 law, Class Counsel believes this Settlement will provide an excellent benefit to the Class Members
10 and Aggrieved Employees. *Id.*, ¶ 29. The Class agrees, as apparent by the absence of any objectors
11 or requests for exclusion from the Settlement. *See id.*, ¶ 24. Accordingly, the *Kullar* factors are
12 satisfied, and the Settlement is entitled to a presumption of fairness.

13 Here, all of the above factors weigh in favor of preliminary approval.

14 **b) Class Counsel are experienced class action litigators.**

15 In reaching the proposed Settlement, Class Counsel also relied on their substantial litigation
16 experience and experience in similar wage-and-hour class actions. Cottrell Decl., ¶ 5. Based on
17 Class Counsel's knowledge and expertise in this area of law, Class Counsel believes this Settlement
18 will provide a substantial benefit to the Class Members. Cottrell Decl., ¶ 29.

19 **c) The Class approves the Settlement.**

20 Class Members approve of the Settlement, and there have been no objections or requests for
21 exclusion to the Settlement, and there have been no workweek disputes. Lee Decl., ¶¶ 15-17. The
22 lack of objections and opt-outs show widespread support for the Settlement among the Class
23 Members and gives rise to a presumption of fairness. *See Dunk*, 48 Cal.App.4th at 1802.

24 **2. Litigation of this action not only would delay recovery, but would be**
25 **expensive, time-consuming, and would involve substantial risk.**

26 The Settlement yields a prompt, certain, and substantial recovery for Settlement Class
27 Members. Cottrell Decl. at ¶ 35. Absent this Settlement, Class Members would be forced to wait
28 years for the case to make its way through litigation (including discovery, class certification,
29 dispositive motions, trial, and appeal). The amount offered in the Settlement is particularly
30 reasonable in light of the risks, costs, and likely duration of further litigation, including the risk of
31 not obtaining class certification and not surviving decertification. Absent this Settlement, it is
32 estimated Plaintiff's Counsel's fees and costs would far exceed \$2,000,000 to pursue these claims

1 on behalf of Class Members. *Id.*, ¶ 30. Litigating the Class claims in this action would require
2 substantial additional preparation and discovery, involving the depositions of Class Members and
3 experts, presentation of witnesses at trial, and the analysis, preparation, and presentation of
4 voluminous documentary evidence. *Id.* Such efforts would likely take many more months, if not
5 years, and would necessitate expert witness testimony and significant additional litigation, including
6 potential appellate litigation. *Id.*

7 Additionally, Plaintiff's derivative claims regarding waiting time penalties, accurate wage
8 statements, and PAGA penalties rise and fall with Plaintiff's other wage payment claims. *Id.*, ¶ 31.
9 For example, Plaintiff would recover nothing under Cal. Lab. Code § 203 if they were unable to
10 prove the underlying claims or defeat a "good faith" dispute defense. *See* Cal. Code Regs. Tit. 8, §
11 13520. While Plaintiff believes that she would prevail on these issues and others, Plaintiff
12 recognizes the risk that a fact finder may find for Defendant on one or more of these issues and may
13 find damages to be significantly less than what Plaintiffs claim. By way of another example,
14 Defendants would likely argue that no penalties for waiting-time violations can be awarded unless
15 the failure to pay wages is "willful," an element that Plaintiff acknowledge would have been difficult
16 to prove given Defendants' policies and enforcement.⁴

17 Furthermore, as it has maintained throughout settlement negotiations and mediation,
18 Defendant, represented by experienced employment lawyers, believes that this case is not suitable
19 for class treatment and that it fully complied with its wage obligations with respect to Plaintiff, the
20 Class Members, and the Aggrieved Employees. Settlement, ¶ 9. Specifically, Defendant maintains
21 (among other things) that: individual inquiries⁵ regarding the Class Members' alleged off-the-clock
22 work, why the Class Members did not record their time, and whether Defendant had knowledge of
23 the Class Members' off-the-clock work will preclude class certification; Plaintiff and many of the
24 Class Members executed meal-period waivers that preclude Plaintiff's meal-break claims; the
25 record contains no evidence of unrecorded off-the-clock work; and Defendant pays meal and rest
26

27 ⁴ *See* Cal. Lab. Code § 203; 8 C.C.R. 13520 ("[a] willful failure to pay wages within the meaning
28 of Labor Code section 203 occurs when an employer intentionally fails to pay wages to an employee
29 when those wages were due."); *Smith v. Rae Venter Law Grp.* (2002) 29 Cal.4th 345, 354 n.2
30 (holding that a good faith dispute that any wages are due will preclude an award of waiting time
penalties). Defendants would also have argued that an employer's failure to pay wages is not willful
unless it reached the standard of "gross negligence or recklessness." *See Amaral v. Cintas* (2008)
163 Cal.App.4th 1157, 1201.

31 ⁵ *See, e.g., In re AutoZone, Inc., Wage & Hour Emp't Practices Litig.* (N.D. Cal. 2012) 289 F.R.D.
526, 539, *aff'd*, (9th Cir. Oct. 4, 2019) No. 17-17533, 2019 WL 4898684 ; *Kilbourne v. Coca-Cola*
32 *Co.* (S.D. Cal. July 29, 2015) No. 14CV984-MMA BGS, 2015 WL 5117080, at *14; *York v.*
Starbucks Corp. (C.D. Cal. Nov. 23, 2011) No. CV 08-07919 GAF PJWX, 2011 WL 8199987, at
*30.

1 premiums and otherwise complies with its obligation to provide duty-free meal and rest breaks. *Id.*,
2 ¶ 25.

3 Although Plaintiff believes that she would ultimately prevail on the merits and at class
4 certification, proceeding in this litigation nonetheless carries risks and would require significant
5 additional time and resources. *Id.* By contrast, the Settlement will yield a prompt, certain, and
6 substantial recovery for Plaintiff, the Class Members, and the Aggrieved Employees, benefiting the
7 parties, the Court, and the State of California. *Id.*

8 As to Plaintiff's PAGA claims, Plaintiff also faces risks in proving her claims in this manner,
9 including showing that trial can move forward without violating any due process concerns, as
10 suggested in the California Superior Court's recent decision in *Estrada v. Royalty Carpet Mills, Inc.*
11 (Jan. 18, 2024) No. S274340, 2024 Cal. LEXIS 123, at *42.

12 For these reasons, the Settlement is entitled to a presumption of fairness, falls within the
13 required range of reasonableness, and should be.

14 **3. The proposed Settlement is within the range of reasonableness.**

15 "The most important factor is the strength of the case for plaintiffs on the merits, balanced
16 against the amount offered in settlement." *Kullar*, 168 Cal.App.4th at 130. A preliminary review of
17 the Settlement reveals the fairness of its terms. Cottrell Decl., ¶ 27. The estimated \$1,160,089 Net
18 Settlement Amount and \$10,000 Net PAGA Amount (for a total of \$1,170,089), derived from a
19 Gross Settlement Payment of \$1,950,000, will result in fair and just relief to all Settlement Class
20 Members and Aggrieved Employees. *Id.* This amount will be available to the estimated 413 Class
21 Members and Aggrieved Employees, exclusive of attorneys' fees and costs, administrative costs,
22 and the service awards, and provides an excellent, estimated average recovery of \$2,815, assuming
23 full participating of all Class Members in the Settlement. *Id.*

24 The Gross Settlement Payment of \$1,950,000 represents approximately 25% of the
25 \$7,785,120 total estimated potential exposure in this action, and over 34% of the total estimated
26 substantive exposure of \$5,703,216. *Id.*, ¶ 28. For purposes of estimating these damages, Plaintiff's
27 Counsel prepared a damages analysis with the following assumptions based on its investigation:
28 that Plaintiff will fully prevail on all causes of action, can prove 3 minutes of off-the-clock work per
29 Class Member spent donning and doffing personal protective equipment, and approximately 70%
30 meal and rest break violations (less the number of penalties allegedly paid during the Class period).
31 *Id.*

32 The recovery of 25% of the total exposure easily falls within the range of reasonableness.

1 *See, e.g., Kullar*; 168 Cal.App.4th at 133 (citing *Tech-Bilt, Inc. v. Woodward-Clyde & Assoc.*
2 (1985) 38 Cal.3d 488, 499-500 (“the court must at least satisfy itself that the class settlement is
3 within the “ballpark” of reasonableness”)). “It is well-settled law that a cash settlement amounting
4 to only a fraction of the potential recovery does not *per se* render the settlement inadequate or
5 unfair.” *In re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459 (internal quotations and
6 citations omitted). Indeed, courts routinely approve settlements that provide a fraction of the
7 maximum potential recovery.⁶

8 It is equally well-settled that a proposed settlement is not to be measured against a
9 hypothetical ideal result that might have been achieved. *See, e.g., 7-Eleven Owners for Fair*
10 *Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150. “[I]t is the very uncertainty of
11 outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual
12 settlements. The proposed settlement is not to be judged against a hypothetical or speculative
13 measure of what might have been achieved by the negotiators.” *Id.* (quoting *Linney v. Cellular*
14 *Alaska P’ship* (9th Cir. 1998) 151 F.3d 1234, 1242). Ultimately, the excellent result here easily
15 satisfies these standards, both in the class and PAGA context, and should be approved.

16 **C. The Requested Service Award Is Reasonable and Should Be Approved.**

17 It is well-established that representative plaintiffs are eligible for reasonable incentive
18

19 ⁶ *See, e.g., Officers for Justice v. Civil Serv. Com.* (9th Cir. 1982) 688 F.2d 615, 628; *Viceral v.*
20 *Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016) No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS
21 140759, at *7 (approving wage-and-hour settlement representing 8.1% of the total verdict value);
22 *see also Stovall-Gusman v. W.W. Granger, Inc.* (N.D. Cal. June 17, 2015) No. 13-cv-02540-HSG,
23 2015 U.S. Dist. LEXIS 78671, at *12 (approving and finding within the range of reasonableness
24 settlement representing 10% or less of the maximum recovery); *Balderas v. Massage Envy*
25 *Franchising, LLP* (N.D. Cal. July 21, 2014) No. 12-cv-06327 NC, 2014 U.S. Dist. LEXIS 99966,
26 at *16 (same); *Ma v. Covidien Holding, Inc.* (C.D. Cal. Jan. 31, 2014) No. SACV 12-02161-DOC
27 (RNBx), 2014 U.S. Dist. LEXIS 13296, at *12 (same); *Escalante v. Urth Payroll Servs.* (Super. Ct.
28 L.A. Cnty. May 5, 2023) No. 20STCV25106, 2023 Cal. Super. LEXIS 30449, at *7 (same).
29 Additionally, the Settlement’s amount to the PAGA component is fair to those affected. *Moniz v.*
30 *Adecco U.S., Inc.* (2021) 72 Cal.App.5th 56 at 77. The \$40,000 PAGA Payment represents 2% of
31 the Gross Settlement Payment, well within PAGA settlements previously approved by California
32 courts, and is a fair, reasonable, and adequate compromise for the Aggrieved Employees, who are
encompassed by the Class and will also receive compensation as Class Members unless they request
exclusion. *See, e.g., Johnson v. Dispensaries* (Super. Ct. L.A. Cnty. Nov. 1, 2022) No.
21SMCV00156, 2022 Cal. Super. LEXIS 76537, at *4, 20 (approving PAGA allocation of \$40,000,
with \$10,000 going to the Aggrieved Employees); *Schiller v. David’s Bridal, Inc.* (E.D. Cal. 2012)
2012 U.S. Dist. LEXIS 80776, at *35-36 (approving PAGA settlement of \$7,500 or 0.14% of the
total settlement). Indeed, the LWDA has stated it “is not aware of any existing case law establishing
a specific benchmark for PAGA settlements, either on their own terms or in relation to the recovery
on other claims in the action.” *Ramirez v. Benito Valley Farms, LLC* (N.D. Cal. Aug. 25, 2017) No.
16-CV-04708-LHK, 2017 U.S. Dist. LEXIS 137272, at *3) (quoting from the LWDA response in
O’Connor v. Uber Techs. Inc. (N.D. Cal. 2016) 201 F.Supp.3d 1110).

1 payments to compensate them for the time, expense, and risk they incur in conferring a benefit on
2 other members of the class. *See, e.g., Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186
3 Cal.App.4th 399, 412. Courts award enhancement awards to further public policy by encouraging
4 individuals to perform their civic duty in protecting the rights of class members, as well as to
5 compensate class representatives for their time, effort, and inconvenience. *Diaz v. Tak Commc'ns*
6 *CA, Inc.* (Super. Ct. Alameda Cnty. Nov. 17, 2020) No. RG20064706, 2020 Cal. Super. LEXIS 8916,
7 at * 207 (internal citation omitted); *Munoz, supra*, at 412.

8 Here, Plaintiff Martinez has contributed an estimated 40-56 hours to this case. Martinez
9 Decl., ¶ 15. She has provided extensive information and produced documents, in anticipation of
10 discovery and in preparation for mediation. *Id.*, ¶¶ 4-7, 10-11. She also assisted Class Counsel in
11 their preparation for mediation and answered Class Counsel's questions in developing Plaintiff's
12 position for mediation. *Id.*, ¶ 12. Plaintiff has taken part in the Settlement decision and has remained
13 apprised of the case at all times since she chose to serve as representative of the Class. *Id.*, ¶¶ 9, 13-
14 17. Plaintiff also took the significant risk of coming forward to represent the interests of her fellow
15 employees by filing and prosecuting their actions. *Id.*, ¶¶ 7-8, 16. She has subjected herself to risk
16 with regards to future employment opportunities and her reputation in the community by
17 participating in this action. *See id.* If she did not serve as Plaintiff and Class Representative or assist
18 in the prosecution of her case, Class Members may not be getting any recovery, and Defendant's
19 alleged conduct may have gone unchecked. *Id.*

20 The proposed service award is well within the range of service awards approved in
21 comparable cases. *See, e.g., Sano v. Southland Mgmt. Grp., Inc.* (Cal. Super. Dec. 02, 2013) No.
22 BC489112, 2013 WL 7231686, at *3 (approving two \$15,000 service awards in context of class
23 action settlement); *Benedict v. Reachlocal, Inc.* (Cal. Super. Dec. 09, 2011) No. BC 432721, 2011
24 WL 9155053 (approving \$12,500 and \$10,000 service awards); *Wilson v. Rock-Tenn Co.* (Cal.
25 Super. Dec. 12, 2017) No. BC488456, 2017 WL 9342358, at *2 (approving five \$10,000 service
26 awards). Defendant does not oppose this request, and neither does the Class. Accordingly, payment
27 to Plaintiff in the amount of \$10,000 is reasonable in light of the broader release she has agreed to,
28 and the efforts she made and the risk she took in prosecuting this action to obtain the \$1,950,000.00
29 Settlement. *See* Martinez Decl., ¶ 17; Settlement, ¶ 17.

30 **D. The Requested Attorneys' Fees and Costs are Reasonable and Should be**
31 **Approved.**

32 The excellent result did not come without extensive effort, skill, and substantial risk of Class

Counsel. Defendant raised myriad procedural and substantive defenses, as described above. Absent the Settlement, Plaintiff would face considerable risk in preparing for class certification and proving their claims on their merits. For their efforts and the substantial risk they undertook in obtaining this Settlement, and the considerable monetary compensation to the Class Members, Class Counsel seeks an award of 35% of the Gross Settlement Payment, or \$682,500 as well as reasonable litigation expenses of \$34,910.71. Cottrell Decl., ¶ 41. These fees and costs are warranted under the law and within the range commonly awarded in similar cases.

1. The requested fee award is fair and reasonable in light of the excellent result achieved and the risks inherent in this action.

Among the factors considered in determining whether the requested fee percentage is reasonable are: (1) the results achieved; (2) the risk of further litigation; (3) the skill required of plaintiff's counsel and the quality of work performed by plaintiff's counsel; (4) the contingent nature of the fee and the financial burden carried by the plaintiff; and (5) awards made in similar cases. *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-50. All these factors support an award here of one-third of the common fund. *See* Cottrell Decl., ¶¶ 58.

First, as discussed above, Class Counsel's efforts resulted in a substantial settlement by any standard, and an especially good result in light of the challenges Plaintiff would face in litigating the claims on a representative basis. *Id.*, ¶¶ 27-29. The average payout per class member is approximately \$2,833.15. *Id.*, ¶ 27. This result was achieved by the work and success of Class Counsel, who negotiated the Settlement after extensive preparation, investigation, review of voluminous documents produced by Defendant, and two mediation sessions. *Id.*, ¶¶ 15-17, 29.

Second, Plaintiff faced significant risks going forward with the litigation. *Id.*, ¶ 29. Defendant raised numerous defenses throughout this litigation, any one of which, if successful, could have decimated the case. *Id.* Accordingly, Plaintiff faced serious risks going forward, and it would have likely taken several more years to realize any recovery. *Id.*

Third, Class Counsel are experienced class action litigators. *Id.*, ¶¶ 4-5, 54. This experience and expertise, combined with the high quality of work performed in this case by Class Counsel, resulted in the Settlement achieved. *Id.*

Fourth, Class Counsel have been representing Plaintiff (and the State of California) in this matter on a strictly contingency basis, and had to forego opportunities to litigate other cases, incurred the risk of non-recovery after a substantial investment of time, money, and resources, and have done so since the inception of the cases without any payment or compensation. *Id.*, ¶ 42. This

1 is no easy burden for any firm. If, despite these hardships and risks, Class Counsel are paid only
2 basic hourly rates multiplied by the number of hours worked on the case, they would not be fairly
3 compensated for the hardships and serious risks they incurred. *See* Posner, *Economic Analysis of*
4 *the Law*, 534, 567 (4th ed. 1992) (“A contingent fee must be higher than a fee for the same legal
5 services paid as they are performed ... because the risk of default (the loss of the case, which cancels
6 the debt of the client to the lawyer) is much higher than that of conventional loans”).

7 Fifth, as discussed below, the request for attorneys’ fees in the amount of less than 35% of
8 the common fund falls well within the range accepted by state and federal courts in California in
9 comparable wage-and-hour actions. *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480, 503.

10 For all of these reasons, a common-fund fee award in the amount of up to 35 percent of the
11 Gross Settlement Payment, or \$682,500, created by Plaintiff and her attorneys is fair and reasonable.

12 **2. California courts routinely approve attorneys’ fees awards of one-**
13 **third of the common fund.**

14 The California Supreme Court has “join[ed] the overwhelming majority of federal and state
15 courts in holding that when class action litigation establishes a monetary fund for the benefit of the
16 class members, . . . the court may determine the amount of a reasonable fee by choosing an
17 appropriate percentage of the fund created. *Laffitte, supra*, at 503 (approving award of attorney’s
18 fees in the amount of one third of the gross \$19 million settlement under the common-fund theory).
19 By awarding counsel a percentage of the total recovery, rather than fees based on hours worked, the
20 common-fund method encourages attorneys to efficiently litigate to achieve the best results possible
21 for the class. *See id.* at 492-494.

22 The request for 35% of the Gross Settlement Amount is substantially within the range
23 customarily approved by courts in California and should be approved. *See Ellsworth v. Leclair*
24 *Fitness II LLC* (Sac. Cty. 2022) 2022 Cal. Super. LEXIS 59587, *8 (“The percentage of the gross
25 settlement equates to 35% which is generally in line with percentage fees in similar litigation.”).⁷
26 This amount is in line with what California courts routinely uphold as reasonable.⁸ Moreover,
27

28 ⁷ *See also, Thompson v. Restoration Hardware, Inc.; RH which Will Do Business in California as*
29 *Restoration Hardware Holdings, Inc.*, Marin County Super. Ct., No. CIV2200970, Dec. 29, 2023
(preliminarily approving a 35% award in a wage and hour class and PAGA action).

30 ⁸ *See, e.g., Guillen v. Framing by Superior* (Riverside Super. Nov. 4, 2021) No.: RIC 1804201, 2021
31 Cal. Super. LEXIS 89153, *9 (finally approving of class counsel’s “request for an award for up to
32 33.3% of the Gross Settlement Amount” (Hon. Sunshine Sykes); *Perez v. Contera Constr. Corp.*
(Riverside Super. Nov. 24, 2021) No.: RIC2002575, 2021 Cal. Super. LEXIS 89085, *6-7 (finding
that the gross settlement fund is a true common fund as there is no claims process and money from
the settlement would not revert to defendant; also finding that the one-third common fund is fair,

1 federal courts and secondary sources confirm that attorneys’ fees in this range are reasonable.⁹ These
2 authorities establish that Class Counsel’s request for 35% of the Gross Settlement Amount is well
3 within the range customarily approved by courts in California.

4 **3. A lodestar cross-check confirms the reasonableness of the fee award.**

5 Although unnecessary here, a trial court may use an abbreviated lodestar “cross-check” for
6 common-fund awards if the court considers it useful. *Id.* at 504-05. The Supreme Court expressly
7 instructed that “the lodestar calculation, when used in this manner, does not override the trial court’s
8 primary determination of the fee as a percentage of the common fund and thus does not impose an
9 absolute maximum or minimum on the fee award.” *Id.* at 505. In conducting a lodestar cross-check,
10 the court is not “required to closely scrutinize each claimed attorney-hour.” *Id.* An evaluation may
11 be done by reviewing “counsel declarations summarizing overall time spent.” *Id.*

12 In conducting a lodestar cross-check, the Court first determines a lodestar value for the fees
13 by multiplying the time reasonably spent by plaintiffs’ counsel on the case by a reasonable hourly
14 rate. *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 556-57. To determine whether the
15 requested rate is reasonable, courts look to the prevailing rate for similar work in the pertinent
16 geographic region. *PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1096-97 (using prevailing
17 hourly rate in community for comparable legal services even though party used in-house counsel).
18 Here, Class Counsel’s hourly rates are comparable to those charged by other class action plaintiffs’
19 counsel and the firms defending class actions, and similar rates have been approved by numerous
20 federal and state courts.¹⁰

21
22 reasonable and appropriate and that the requested attorneys’ fees of are also reasonable under the
23 lodestar method given a negative multiplier of 1.406”) (Hon. Sunshine Sykes); *Asalati v. Intel*
24 *Corp.* (Santa Clara Super. Ct., Oct. 29, 2018) No. 16cv302615 (approving 33.3% fee award, at a
25 multiplier of 3.98 over lodestar); *Ochoa v. Haralambos Beverage Co.* (Los Angeles Super. Ct., Feb.
26 1, 2007) No. BC319588 (approving 33.3% fee award with no mention of lodestar crosscheck); *Big*
27 *Lots Overtime Cases* (San Bernardino Super. Ct., JCC Proceeding No. 4283, Feb. 4, 2004)
28 (approving award of attorney’s fees of 33% of the recovery); *Davis v. The Money Store, Inc.*
29 (Sacramento Super. Ct., No. 99AS01716, Dec. 26, 2000) (same); *Miskell v. Auto. Club of Southern*
30 *Cal.* (Orange County Super. Ct., No. 01CC09035, May 27, 2003) (same).

31 ⁹ See *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 297-98 (“Class
32 Counsel have also cited 73 district court opinions in which fees in the range of 30-50 percent of the
common fund were awarded.”); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379
(33% fee award); *Williams v. MGM-Pathe Commc’ns Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 (33%
of total fund awarded); Newberg on Class Actions, §11:24 (4th Ed. 2002); Manual for Complex
Litigation, §14:6 (4th Ed. 2004).

¹⁰ In particular, in a recent order, Judge John A. Mendez of the of the Eastern District of California
found that Schneider Wallace’s “hourly rates are within the prevailing range of hourly rates charged
by attorneys providing similar services in class action, wage-and-hour cases in California.” *Wright*
et al. v. Frontier Mgmt. LLC et al. (E.D. Cal. March 13, 2023) Case 2:19-cv-01767-JAM-CKD.
Moreover, the hourly rates for Schneider Wallace were found to be reasonable for purposes of a

1 Class Counsel's lodestar is currently estimated at approximately \$433,019.50 based on
2 approximately 572.4 hours of attorney and staff time. *See* Cottrell Decl., ¶ 43. Class Counsel's
3 aggregate lodestar will increase as a result of preparation for and attendance at the Final Approval
4 Hearing and the settlement administration process. *Id.*, ¶ 46. This represents a modest multiplier of
5 1.6. *Id.*, ¶ 57.

6 A cross-check of Class Counsel's lodestar, which results in the application of a 1.6 multiplier,
7 confirms that the requested fee award is a reasonable and fair payment. *See Wershba*, 91
8 Cal.App.4th at 255 (noting that multipliers can range from 2 to 4 or higher); *Van Vranken*, 901
9 F.Supp. at 298 ("Multipliers in the 3-4 range are common in lodestar awards for lengthy and
10 complex class action litigation"); *see also Vizcaino*, 290 F.3d at 1051 & n.6 (multipliers "ranging
11 from one to four are frequently awarded in common fund cases when the lodestar method is
12 applied"; affirming fees where the cross-check multiplier is 3.65).

13 Moreover, a court "*must* apply a risk multiplier to the lodestar 'when (1) attorneys take a case
14 with the expectation they will receive a risk enhancement if they prevail, (2) their hourly rate does
15 not reflect that risk, and (3) there is evidence that the case was risky. Failure to apply a risk multiplier
16 in cases that meet these criteria is an abuse of discretion.'" *Stetson v. Grissom* (9th Cir. 2016) 821
17 F.3d 1157, 1166 (quoting *Stanger v. China Elec. Motor, Inc.* (9th Cir. 2016) 812 F.3d 734, 741
18 (emphasis in original, internal quotation marks omitted)). In this matter, Class Counsel took on this
19 class action with an expectation that at least a modest risk enhancement would be applied to any fee
20 request, the hourly rates cited are not adjusted for risk and, as set forth above, this case involved
21 substantial risk. Accordingly, a multiplier would be appropriate.

22 **E. The Litigation Costs Are Fair and Reasonable.**

23 Class Counsel requests reimbursement of their actual out-of-pocket expenses incurred to
24 prosecute this action, in the amount of \$34,910.71. *See* Cottrell Decl., ¶ 21. Attorneys are permitted
25 to recover their litigation costs and expenses under the California Labor Code and the common-
26 fund doctrine. Cal. Lab. Code §§ 218.5, 226, 1194, 2699; *Serrano v. Priest* (1977) 20 Cal.3d 25, 35.

27
28 lodestar crosscheck by Judge William Q. Hayes of the Southern District of California in *Amaraut*
29 *v. Sprint/United Mgmt. Co.* (S.D. Cal. Aug. 5, 2021) No. 19-cv-411-WQH-AHG, 2021 U.S. Dist.
30 LEXIS 147176, at *18 [approving a one third fee award, and in August 2021, finding that "the fee
31 award is further supported by a lodestar crosscheck, whereby it finds that the hourly rates of
32 Schneider Wallace Cottrell Konecky LLP ... are reasonable, and that the estimated hours expended
are reasonable."]. Judge Hayes found that Class Counsel "has significant experience in class action
and wage and hour litigation and has demonstrated significant skill during this contentious
litigation." Judge Laurel Beeler also found Schneider Wallace's rates reasonable in *Villafan v.*
Broadpectrum Downstream Servs., Inc., et al. (N.D. Cal. Apr. 8, 2021) Case No. 3:18-cv-06741-
LB, ECF 150.

1 Class Counsel incurred costs including, for example, costs for filing and service, mediation costs,
2 document retrieval and printing costs, mailing costs, jury fees, and costs for submission of the PAGA
3 letter to the LWDA. Cottrell Decl., ¶ 66. These expenses were incidental and necessary to the
4 effective representation of the Class Members. *Id.*

5 In addition, reasonable litigation costs are ordinarily included with an award of attorneys'
6 fees under California wage-and-hour law. Plaintiff's Counsel requests less than the available
7 maximum of \$40,000.00 in costs. *See also*, Cottrell Decl., ¶ 67. All of Plaintiff's Counsel incurred
8 costs were reasonable and necessary to the prosecution of this case and are of the type customarily
9 billed to fee-paying clients. Plaintiff's Counsel requests reimbursement for these costs, which,
10 together with the requested attorneys' fees, are reasonable compensation for the excellent recovery
11 achieved. The requested fees and costs should therefore be preliminarily approved.

12 **F. The Requested Settlement Administration Costs are Fair and Reasonable.**

13 Class Counsel also request that the Court approve payment of \$22,500 for costs necessary to
14 administer the Settlement. Phoenix's costs are approximately \$22,500. *Id.*, ¶ 21. Pursuant to the
15 Settlement, the Settlement Administrator's costs were estimated at \$22,500, and the supplemental
16 notice costs will not be borne from the Gross Settlement Amount. *Id.* These costs are reasonable
17 and uncontested by Defendants and the Class and should be approved.

18 **V. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES.**

19 California has a strong public policy in favor of using the class action device to enforce wage-
20 and-hour laws. *Sav-on Drug Stores, Inc. v. Super. Ct.* (2004) 34 Cal.4th 319, 340 ("*Sav-on*"). Cal.
21 Code Civ. Proc. § 382 provides: "[W]hen the question is one of a common or general interest, of
22 many persons, or when the parties are numerous, and it is impracticable to bring them all before the
23 court, one or more may sue or defend for the benefit of all." Cal. Code Civ. Proc. § 382. Plaintiff
24 must also show both an ascertainable class and a well-defined community of interest among class
25 members. *Sav-on, supra*, at 326. All of these requirements are met here.

26 **A. The Class is Sufficiently Ascertainable and Numerous**

27 In determining whether a class is "ascertainable," courts "examine the class definition, the
28 size of the class, and the means of identifying the class members." *Reyes v. Bd. of Supervisors* (1987)
29 196 Cal.App.3d 1263, 1274-75. "A class is ascertainable if it identifies a group of unnamed plaintiffs
30 by describing a set of common characteristics sufficient to allow a member of that group to identify
31 himself or herself as having a right to recover based on the description." *Bartold v. Glendale Fed.*
32 *Bank* (2000) 81 Cal.App.4th 816, 828. Here, the parties have agreed to define the Class according

1 to clear, objective criteria. As noted above, the Class is defined as all current and former hourly,
2 non-exempt employees who worked for Defendant in California at any time during the class period,
3 which has been further revised to be between June 2, 2017 and July 21, 2021. *See* Cottrell Decl., ¶
4 24; Settlement, ¶¶ 2(c), (g). The Class Members are thus easily identifiable and can be easily located
5 from Defendant’s records. As a result, Defendant will be able to easily identify the Class Members
6 to the Settlement Administrator. Likewise, potential Class Members will easily be able to identify
7 themselves as members of the Class based upon the parties’ agreed-upon Class definition. The Class
8 satisfies the numerosity element as well with approximately 376 Class Members. *See Rose v. City*
9 *of Hayward* (1981) 126 Cal.App.3d 926, 934; *Collins v. Rocha* (1972) 7 Cal.3d 232, 238.

10 **B. The Class Members Share a Well-Defined Community of Interest**

11 The “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.” *Sav-on, supra*, at 326. The
14 requirement “does not mandate that class members have uniform or identical claims.” *Capitol*
15 *People First v. Dep’t of Developmental Servs.* (2007) 155 Cal.App.4th 676, 692 (italics removed).

16 **1. Common Questions Predominate in this Action.**

17 “[T]he focus in a certification dispute is on what type of questions—common or individual—
18 are likely to arise in the action[.]” *Sav-on, supra*, at 427. The California Supreme Court has expressly
19 held that predominance does not require that all questions of law and fact be uniform for all members
20 of the class. *Id.*, at 338. Where, as in this case, uniform policies and procedures apply on a class-
21 wide basis, “the legal question to be resolved is not an individual one. To the contrary, the common
22 legal question remains the overall impact of [Defendant’s] policies on its [alleged employees]”
23 *Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1299.

24 Here, Plaintiff alleges that Defendant maintains common policies and practices equally
25 applicable to Plaintiff and all Class Members. Cottrell Decl., ¶ 33. Plaintiff’s Counsel’s review of
26 time records and other evidence reveals a systemic failure on Defendant’s part to provide timely,
27 uninterrupted, duty-free 30-minute meal and 10-minute rest breaks or premium payments in lieu
28 thereof, and to compensate Plaintiff and the Class Members for time spent donning and doffing
29 personal protective equipment and waiting in line for temperature checks before and after shifts. *Id.*
30 Plaintiff also contends that Class-wide common factual issues—such as whether Defendant failed
31 to pay Plaintiff and the Class Members for all hours worked, whether Defendant failed to pay
32 Plaintiff and the Class Members at the appropriate rate, whether Defendant maintained and provided

1 accurate payroll records, Plaintiff's and the Class Members' hours of work, and Plaintiff's and the
2 Class Members' general job duties—would provide key evidence in support of Plaintiff's claims.
3 *Id.*, ¶ 34. Plaintiff can rely on common proof (e.g., Defendant's time and payroll records) to show
4 these common violations. *Id.* The Court should therefore find that common questions predominate
5 over any individualized differences among the Class Members in this case.

6 **2. Typicality is Satisfied.**

7 Plaintiff also must establish that she is a typical member of the Class she seeks to represent.
8 *Chern v. Bank of America* (1976)15 Cal.3d 866, 874. A representative plaintiff's claims are "typical"
9 if they arise from the same event, practice, or course of conduct that gives rise to the claims of the
10 other class members and if their claims are based on the same legal theory. *Classen v. Weller* (1983)
11 145 Cal.App.3d 27, 46–47. The typicality requirement is not onerous and does not require the claims
12 to be identical. *Id.* Here, Plaintiff alleges, among other things, that she and the Class Members were
13 made to work off the clock by donning and doffing personal protective equipment during meal and
14 rest periods and before and after shifts without compensation. Plaintiff alleges that she and the Class
15 Members were subjected to the same illegal policies, and that the Class claims are based on the
16 same legal theories and alleged violations of the same Labor Code provisions as Plaintiff's
17 individual claims. Accordingly, Plaintiff is a member of the Class she seeks to represent, and her
18 claims are "typical" of those asserted by other Class Members.

19 **3. Adequacy is Satisfied.**

20 A plaintiff is an adequate class representative if his or her claims are not inconsistent with or
21 antagonistic to the claims of the class members. *See Johnson v. GlaxoSmithKline, Inc.* (2008) 166
22 Cal.App.4th 1497, 1509. Here, there is no conflict between Plaintiff and the Class Members. Cottrell
23 Decl., ¶ 39. Plaintiff's interests align with those of the Class, and Plaintiff seeks to recover damages
24 from Defendant's alleged unlawful conduct on her own behalf and on behalf of all Class Members.
25 *See id.* Plaintiff is thus an adequate representative of the Class. Likewise, as discussed in further
26 detail in the Cottrell Decl., Plaintiff's Counsel has extensive experience prosecuting class actions
27 and employment litigation, including wage-and-hour class actions, and is well-qualified to represent
28 the Class in this lawsuit. *Id.*, ¶¶ 4, 5, 54. For these reasons, Plaintiff requests that the Court confirm
29 Plaintiff Martinez as Class representative and Plaintiff's Counsel, Schneider Wallace Cottrell
30 Konecky LLP, as Class Counsel.

31 **VI. CONCLUSION**

32 For the foregoing reasons, Plaintiff respectfully requests that the Court grant this unopposed

1 motion for final approval, approve the proposed implementation schedule, and enter an Order
2 consistent with the Proposed Order submitted herewith.

3
4 Date: May 8, 2024

Respectfully Submitted,

5 **SCHNEIDER WALLACE**
6 **COTTRELL KONECKY LLP**

7
8 
9 _____
10 Carolyn H. Cottrell
11 Ori Edelstein

12 *Attorneys for Plaintiff, the Putative Class,*
13 *Aggrieved Employees, and the State of*
14 *California*

1 **PROOF OF SERVICE**

2
3 I, the undersigned, declare that I am, and was at the time of service of the papers herein
4 referred to, over the age of 18 years and not a party to the within action or proceeding. I am
employed at Schneider Wallace Cottrell Konecky LLP located at 300 S Grand Avenue, Suite
2700, Los Angeles, California 90017.

5 On May 7, 2024 I served the following document(s):

6 **NOTICE OF UNOPPOSED MOTION AND**
7 **UNOPPOSED MOTION FOR FINAL APPROVAL**
8 **OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS**
AND AUTHORITIES IN SUPPORT THEREOF

9 on the following person(s) listed below, as follows:

10 Mollie M. Burks (SBN 222112)
11 Linh T. Hua (SBN 247419)
12 Elizabeth C. Lobaugh (SBN 327252)
13 **GORDON REES SCULLY**
14 **MANSUKHANI, LLP**
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cc:espier@grsm.com

15
16 ☒ **BY ELECTRONIC SERVICE:** Eugene Huffman, Paralegal, has submitted an
17 electronic version of the above-referenced document to the person(s) whose email
18 address(es) are known to me as listed above.

19
20 I declare under penalty of perjury under the laws of the State of California and the
United States of America that the foregoing is true and correct.

21 Executed on May 7, 2024, in North Hollywood, California.

22
23 
24 Eugene Huffman