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FILED/ENDORSED
 Clerk of the Superior Court

SEP - 1 2023
By O. CAMARENA
DEPUTY CLERK

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

**SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SOLANO**

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

Plaintiff,

vs.

MARIANI PACKING CO. INC.,

Defendant.

Case No.: FCS056622

Hon. Christine A. Carringer
 Dept. 12

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

Date: September 14, 2023

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 September 14, 2023, or as soon thereafter as the matter
3 may be heard in Department 12 of the above-captioned Court located at the Courtroom 1, 580 Texas
4 Street, Fairfield, California 94533, the Honorable Christine A. Carringer presiding, and pursuant to
5 Cal. Code Civ. Proc. § 382, Cal. Rules of Court, Rule 3.769, and Cal. Lab. Code § 2699(1)(2),
6 Plaintiff Maria Martinez will and hereby does move the Court for an Order granting preliminary
7 approval of the proposed class action and Private Attorneys General Act of 2004, Cal. Lab. Code
8 §§ 2698 *et seq.* (“PAGA”), settlement between Plaintiff and Defendant Mariani Packing Co. Inc.
9 Defendant does not oppose this motion.

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

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

15 2. Conditionally certifying the Class¹ for settlement purposes;

16 3. Preliminarily appointing Plaintiff Maria Martinez as Class representative for
17 settlement purposes;

18 4. Preliminarily appointing Schneider Wallace Cottrell Konecky LLP (“SWCK”) as
19 Class Counsel for settlement purposes;

20 5. Preliminarily appointing and approving Phoenix Class Action Administration
21 Solutions (“Phoenix”) as the Settlement Administrator for the Class;

22 6. Preliminarily approving the proposed form of the Notice of Class Action Settlement
23 (“Settlement Notice,” attached as **Exhibit A** to the Settlement) and finding that the proposed method
24 of disseminating the Settlement Notice meets the requirements of due process and constitutes the
25 best notice practicable under the circumstances;

26 7. Directing Defendant to provide the Class List to the Settlement Administrator and
27 Class Counsel within 20 business days after the Court’s Preliminary Approval of the Settlement;

28 8. Authorizing the Settlement Administrator to mail and email the Settlement Notice to
29 the Class;

30 9. Preliminarily approving the proposed implementation schedule for the Settlement
31

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

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.
Deadline for Defendant and Class Counsel to provide Phoenix with the Class List pursuant to Settlement, ¶ 18(b)	Within 20 business days after Preliminary Approval
Deadline for Phoenix to mail the Settlement Notice to Class Members	Within 10 business days after receipt of the Class List
Deadline for Class Members to postmark requests to opt-out or file objections to the Settlement (“Notice Deadline”)	Within 60 days after Settlement Notices are initially mailed
Deadline for Phoenix to provide all counsel with a report showing: (i) the names of Class Members and Aggrieved Employees; (ii) the Settlement Awards owed to each Class Member and Aggrieved Employee; (iii) the final number of Class Members who have submitted objections or valid letters requesting exclusion from the Settlement; and (iv) the number of undeliverable Notices of Settlement	Within 10 business days after Notice Deadline
Deadline for filing of Final Approval Motion	As soon as practicable
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

Event	Deadline
	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 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

1 10. Setting a date for Plaintiff's motion for Final Approval of the Settlement, the
2 requested Service Award and Fee Award, Class Counsel's Costs, and the Settlement Administrator
3 Costs; and

4 11. Setting a date for the Final Approval Hearing.

5 Plaintiff brings this motion pursuant to Cal. Code Civ. Proc. Section 382. This motion is
6 based upon this notice; the accompanying memorandum of points and authorities; the Declaration
7 of Carolyn H. Cottrell in Support of Unopposed Motion for Preliminary Approval of Class Action
8 and PAGA Settlement, filed concurrently herewith; the pleadings and other records on file with the
9 Court in this matter; and any other evidence or argument the Court may properly receive at or before
10 the hearing.

11
12 Date: September 1, 2023

Respectfully Submitted,

13 **SCHNEIDER WALLACE**
14 **COTTRELL KONECKY LLP**

15 
16 _____
17 Carolyn H. Cottrell
18 Ori Edelstein
19 Michelle S. Lim

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

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

II. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff worked for Defendant as a utility worker in Vacaville, California, from approximately March 2020 to December 2020. *Id.*, ¶ 22. Plaintiff's duties included sorting products, moving raw materials and finished goods, and performing cycle counts. *Id.*

On May 13, 2021, Plaintiff provided written notice to the California Labor and Workforce Development Agency ("LWDA") of her intent to pursue PAGA claims against Defendant, based on alleged violations of several California Labor Code provisions. Cottrell Decl., ¶ 9. On June 2, 2021, Plaintiff filed this lawsuit as a California class action in Solano County Superior Court, alleging that Defendant: (1) failed to pay for all hours worked; (2) failed to pay minimum wages; (3) failed to

² The Class Action Settlement Agreement and Release ("Settlement") is attached as **Exhibit 1** to the Declaration of Carolyn H. Cottrell ("Cottrell Decl."), filed concurrently herewith.

1 pay overtime wages; (4) failed to provide legally compliant meal breaks or premium payment in
2 lieu thereof; (5) failed to provide accurate, itemized wage statements; and (6) failed to timely pay
3 all wages due upon separation from employment. *Id.* Plaintiff filed a first amended complaint on
4 July 22, 2021, adding the PAGA claims. *Id.*, ¶ 10. Defendant filed its answer on September 2, 2021,
5 denying Plaintiff’s allegations. *Id.* Pursuant to stipulated order, Defendant filed its amended answer
6 to Plaintiff’s first amended complaint on September 6, 2022, and Plaintiff filed a Second Amended
7 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.*, ¶¶ 11-13. 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.*, ¶ 14. 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.*, ¶¶ 15-16. The parties then
22 memorialized those terms in the Settlement Agreement, executed on August 24, 2023. *Id.*

23 **III. SETTLEMENT TERMS**

24 **A. Basic Terms of Settlement**

25 Defendant has agreed to pay a non-reversionary Gross Settlement Payment of \$1,950,000.00
26 to fully resolve the Settlement Class Members’ Released Class Claims and the Aggrieved
27 Employees’ Released Claims with respect to Defendant and any of its affiliated entities and
28 individuals (“Releasees”). *See id.*, ¶ 2(q). Defendant has agreed to pay the Gross Settlement
29 Payment into the Settlement Administrator’s interest-bearing Qualified Settlement Fund (“QSF”) in
30 four equal installments of \$487,500.00, and the total of the Gross Settlement Payment, and any
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1 interest gained on it is the “Gross Settlement Amount.” *Id.*, ¶¶ 2(z), 25.³ Only the Settlement
2 Administrator will have access to the Qualified Settlement Fund. *Id.*, ¶ 25(a)(v). Defendant will
3 further separately pay Defendant’s Payroll Taxes on Settlement Awards to Class Members into the
4 QSF. *Id.*, ¶¶ 2(q), 25 (a)(ii)-(iv).

5 For purposes of settlement, the Class is defined as all current and former non-exempt
6 employees who worked for Defendant in California at any time between June 2, 2017 and July 4,
7 2023. *See* Settlement, ¶¶ 2(c), (g). Such employees who worked between June 2, 2020 and July 4,
8 2023 are also “Aggrieved Employees.” *See id.*, ¶¶ 2(b), (v). Defendant estimated that 376 Class
9 Members worked approximately 233,101 shifts during the period of June 2, 2017 through April 23,
10 2023. *Id.*, ¶ 25(b). In the event it is determined that the actual number of Class Members or shifts
11 exceed this estimation by more than 10% during the Class Period (any time between June 2, 2017
12 and July 4, 2023), the Settlement includes an Escalator Clause, such that Defendant may either (a)
13 increase the Gross Settlement Payment proportionally or (b) shorten the release period so that there
14 is no increase in the amount. *Id.*

15 The “Net Settlement Amount,” which is currently estimated to be \$1,155,000, is the Gross
16 Settlement Amount less: Plaintiff Martinez’s Service Award (up to \$10,000 to Plaintiff Martinez);
17 Class Counsel’s Fee Award (up to \$682,500, or 35% of the Gross Settlement Payment) and Class
18 Counsel’s Costs (up to \$40,000); the Settlement Administrator Costs (estimated to be \$22,500); the
19 PAGA Payment (\$40,000, pursuant to PAGA, 75%, or \$30,000.00, of this sum will be paid to the
20 LWDA, and 25%, or \$10,000.00, will be allocated to the Net PAGA Amount. Settlement, ¶¶ 2(e),
21 2(l), 2(r)-(s), 2(u), 2(bb), 2(dd), 26(a)-(e), 28-30; Cottrell Decl., ¶¶ 17-18.

22 **B. Scope of Releases**

23 The releases contemplated by the proposed settlement are dependent on whether the
24 individual is an Aggrieved Employee and/or Class Member, and are tethered to the factual
25 allegations of the pleadings. Class Members will release all rights and claims arising out of the
26 claims pleaded or could have been pleaded in the operative complaint based on the facts asserted in
27 this Action. Settlement, ¶ 14. Aggrieved Employees will release all rights and claims to recover civil
28 penalties on behalf of the Aggrieved Employees and the LWDA for violations alleged or could have
29

30 ³ The First Installment will be paid by December 31, 2023, the Second Installment on January 31,
31 2024, the Third Installment on January 31, 2025, and the Fourth Installment on January 31, 2026.
32 *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., ¶ 17.b.

1 been alleged in the complaints filed in this Action or PAGA letters arising from the claims pleaded
2 in the operative complaint. *Id.*, ¶¶ 14-15. Additionally, in the event a Service Award is awarded to
3 the Class Representative, Plaintiff Martinez, also will release and discharge unknown claims
4 covered by Cal. Code Civ. Proc. § 1542. *Id.*, ¶ 17.

5 **C. Disbursements and Payments by the Settlement Administrator**

6 After the Court issues an Order granting Final Approval of the Settlement, the Settlement
7 Administrator will make three disbursements from the Qualified Settlement Fund, as follows: (1)
8 the First Disbursement of \$975,000 will be made within 5 business days after the scheduled Second
9 Installment or the Effective Date,⁴ whichever is later; (2) the Second Disbursement of \$487,500 will
10 be made within 5 business days after the scheduled Third Installment or the Effective Date,
11 whichever is later; (3) the Third Disbursement of \$487,500 will be made within 5 business days
12 after the scheduled Fourth Installment or the Effective Date, whichever is later. *Id.*, ¶ 25(c).
13 Payments for Plaintiff's Service Award, Class Counsel's Costs, and portions of Class Counsel's Fee
14 Award, the Settlement Administrator's Costs, and Individual Settlement Awards to the Class will be
15 paid with the First Disbursement. *Id.*, ¶ 26. Payments for portions of Class Counsel's Fee Award,
16 the Settlement Administrator's Costs, and Individual Settlement Awards to the Class will be paid
17 with the Second Disbursement. *Id.* Payments from the PAGA Payment to the LWDA and Aggrieved
18 Employees, and for portions of Class Counsel's Fee Award, the Settlement Administrator's Costs,
19 and Individual Settlement Awards to the Class will be paid with the Third Disbursement. *Id.* Any
20 additional amount paid pursuant to the Escalator Clause into the QSF and any additional
21 Defendant's Payroll Taxes will be paid during the Fourth Installment. *Id.*, ¶ 25(a)(iv).

22 **D. Allocation of Individual Settlement Awards**

23 Class Members who do not timely request to exclude themselves from the Settlement – the
24 Settlement Class Members – will receive a *pro rata* portion of the Net Settlement Amount based on
25 the number of workweeks he or she worked for Defendant during the Class Period. Settlement, ¶¶
26 29, 30(a)(ii)-(iii). Settlement Class Members who are also Aggrieved Employees will also receive
27 a *pro rata* portion of the Net PAGA Amount, based on the number of pay periods the respective
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29 ⁴ "Effective Date" means the later of (a) if there are no objections submitted, entry by the Court of
30 a Final Approval Order and judgment finally certifying the Settlement Class and approving the
31 Settlement, or (b) if there are objections to the settlement, 35 days after the Court enters a Final
32 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, 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.
Settlement, ¶ 2(k).

1 Aggrieved Employee worked for Defendant during the PAGA Period. *Id.*, ¶ 30(b). As Aggrieved
2 Employees may not opt-out of the Settlement, Class Members who validly request exclusion from
3 the Settlement but who are also Aggrieved Employees will not receive a portion of the Net
4 Settlement Amount but will receive a portion of the Net PAGA Amount. *Id.*

5 Individual Settlement Award checks will remain valid for 180 days from the date of their
6 issuance. *Id.*, ¶ 37. Such checks distributed during the First Distribution that are returned as
7 undeliverable or remain uncashed for more than 180 days after issuance will be redistributed to the
8 appropriate Settlement Class Member at the time of the subsequent Second Distribution, such that
9 their uncashed amount will be added to their Settlement Award check as part of the Second
10 Distribution. *Id.*, ¶ 38(a). Likewise, any undeliverable or uncashed Settlement Award checks from
11 the Second Distribution will be added to the Settlement Award checks as part of the Third
12 Distribution. *Id.*, ¶ 38(b). However, any undeliverable or uncashed Settlement Award checks from
13 the Third Distribution will be tendered to the State of California Controller’s Office, Unclaimed
14 Property Fund, in the name of the Settlement Class Member(s) for whom the funds were intended
15 until such time as he or she may claim the funds, as allowed by law. *Id.*, ¶ 38(c).

16 **E. Settlement Administration, Notice, and Requests for Exclusion and Objections**

17 The Parties have agreed to use Phoenix Class Action Administration Solutions (“Phoenix”)
18 to administer the Settlement, for total fees and costs currently estimated at \$22,500. *Id.*, ¶¶ 2(cc)-
19 (dd). Phoenix is responsible for distributing the Notice of Class Action Settlement (“Settlement
20 Notice,” Exhibit A to the Settlement) via mail and email; skip tracing current addresses prior to
21 mailing and following mailing of the Settlement Notice; calculating individual Settlement Awards;
22 calculating all applicable payroll taxes, withholdings and deductions; preparing and issuing all
23 disbursements to Settlement Class Members, the Aggrieved Employees, the LWDA, the Class
24 Representative, Plaintiff’s Counsel, and applicable state and federal tax authorities; and preparing
25 reports and certifications regarding mailing of the Settlement Notice and distributions of Settlement
26 Awards. *Id.*, ¶¶ 18(c)-(g), 35-36. The Settlement Notice will provide information to Class Members
27 who wish to object to or exclude themselves from the Settlement or dispute their estimated
28 workweeks, as well as instructions on how to do so. *Id.*, ¶¶ 19-21. Phoenix will establish a settlement
29 website that will allow Class Members to view the Settlement Notice in generic form, the
30 Settlement, and all papers filed by Class Counsel to obtain preliminary and final approval of the
31 Settlement. *Id.*, ¶ 18(b). Phoenix will also establish a toll-free call center for telephonic inquiries
32 from Class Members. *Id.*

1 **IV. CLASS ACTION SETTLEMENT PROCEDURE AT PRELIMINARY APPROVAL**

2 California law strongly favors settlements, particularly in the class action context. *In re*
3 *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1118 (2009) (noting that public policy
4 favors “the compromise of complex class action litigation”); *see also Ferguson v. Lieff, Cabraser,*
5 *Heimann & Bernstein*, 30 Cal.4th 1037, 1054 (2003). Before a class action can settle, however, a
6 court must approve the terms of the proposed settlement. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th
7 1794, 1800 (1996) (“*Dunk*”); Cal. Code Civ. Proc. § 1781(f); Cal. Rules of Court, Rule 3.769(a).
8 The Court’s review and approval of a proposed class-action settlement involves a three-step process:
9 (1) preliminary approval of the proposed settlement after submission of a written motion for
10 preliminary approval, the proposed class action settlement, and the proposed Class Notice; (2)
11 mailing of notice of the settlement to all affected Members of the Settlement Class; and (3) a final
12 settlement approval hearing at which Members of the Settlement Class may be heard regarding the
13 settlement, and at which evidence and argument concerning the fairness, adequacy, and
14 reasonableness of the settlement is presented. *See* Cal. Rules of Court, Rule 3.769.

15 With this Motion, Plaintiff requests that the Court take the first step and grant preliminary
16 approval. The Settlement proposed herein is based on extensive arm’s-length negotiations that were
17 guided by an experienced and respected mediator, as well as Plaintiff’s Counsel’s investigation and
18 the evaluation of substantial discovery. The proposed Settlement provides substantial monetary
19 recovery for the Class, and it satisfies all the required due process protections. Thus, the proposed
20 Settlement is fair, reasonable, and adequate, and Plaintiff therefore request that the Court
21 preliminarily approve the Settlement.

22 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

23 **A. Preliminary Approval of the Settlement is Appropriate**

24 The decision to approve or reject a proposed settlement is committed to a court’s broad
25 discretion. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234–35 (2001) (“*Wershba*”) (“In
26 general, questions whether a settlement was fair and reasonable ... are matters addressed to the trial
27 court’s broad discretion.”). To grant preliminary approval of a class action settlement, courts need
28 find only that the settlement falls within the range of possible final approval, also described as “the
29 range of reasonableness.” *See, e.g., North County Contractor’s Assn., Inc. v. Touchstone Ins. Svcs.*,
30 27 Cal.App.4th 1085, 1089-90 (1994); *see also Newberg on Class Actions* at §11:25. The Court’s
31 initial evaluation of the settlement at preliminary approval step is to determine, at a threshold level,
32 “whether there is any reason to notify the class members of the proposed settlement and to proceed

1 with a fairness hearing.’” *Pederson v. Airport Terminal Servs.*, 2018 U.S. Dist. LEXIS 93862, at
2 *10 (C.D. Cal. Apr. 5, 2018) (quoting *Gautreaux v. Pierce*, 690 F.2d 616, 621 n. 3 (7th Cir. 1982));
3 see, e.g., *North County Contractor’s Assn.*, 27 Cal.App.4th at 1089-90; see also *Newberg on Class*
4 *Actions*, § 11:26.

5 Courts must consider several relevant factors, including: the strength of plaintiffs’ case; the
6 risk, expense, complexity and likely duration of further litigation; the risk of maintaining class-
7 action status through trial; the amount offered in settlement; the extent of discovery completed and
8 the stage of the proceedings; the experience and views of counsel; the presence of a governmental
9 participant; and the reaction of the class members to the proposed settlement. *Kullar v. Foot Locker*
10 *Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008) (“*Kullar*”) (citing *Dunk*, 48 Cal.App.4th at 1801).
11 “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of
12 the factors depending on the circumstances of each case.” *Wershba*, 91 Cal.App.4th at 245.

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

14 **1. The Settlement Was Reached After Extensive Litigation, Discovery,**
15 **and Analysis of the Class Claims.**

16 A presumption of fairness exists where, as it does here: (1) the settlement is reached through
17 arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court
18 to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
19 objectors is small. *Kullar*, 168 Cal.App.4th at 128; *In re Microsoft I-V Cases*, 135 Cal.App.4th 706,
20 723 (2006). Preliminary approval is warranted where the Court is provided sufficient information
21 regarding the discovery process and the facts developed (see *Kullar*, 168 Cal.App.4th at 129-31, so
22 that the Court may form “an understanding of the amount that is in controversy and the realistic
23 range of outcomes of the litigation.” *Clark v. Am. Residential Servs. LLC*, 175 Cal.App.4th 785, 801
24 (2009)).

25 The parties engaged in extensive arm’s-length settlement negotiations and participated in
26 two formal, full-day mediation sessions conducted by well-respected mediator, Jeffrey Krivis, who
27 is experienced in complex labor and employment disputes. Cottrell Decl., ¶¶ 14-16. To facilitate
28 settlement negotiations, Plaintiff’s Counsel investigated the applicable law and the facts in this case
29 and extensively analyzed the potential damages that might be recovered following the exchange of
30 documents and information with Defendant. *Id.*, ¶ 16. Defendant provided thousands of pages of
31 informal discovery including a 25% sampling of the timekeeping and payroll records of the Class,
32 as well as Defendant’s general policies, and other information necessary for a damages analysis. *Id.*,

¶ 12-13. Plaintiff's Counsel also interviewed Plaintiff and other Class Members to gather facts and identify potential witnesses. *Id.*, ¶ 13. Plaintiff's Counsel propounded formal written discovery requests and reviewed Defendant's responses. *Id.*, ¶ 12. Plaintiff used this information to perform a careful and extensive analysis of the effects of Defendant's compensation policies and practices on Class Members' pay. *Id.*, ¶ 13.

The Settlement is based on this large volume of investigation, evidence, and analysis, which is more than sufficient to allow counsel and the Court to act intelligently. *Kullar*, 168 Cal.App.4th at 128; *see id.*, ¶¶ 12-16. Plaintiff's Counsel has extensive experience in wage-and-hour class actions under California law. *Id.*, ¶¶ 6-8. Based on Plaintiff's Counsel's knowledge and expertise in this area of law, Plaintiff's Counsel believes this Settlement will provide an excellent benefit to the Class Members and Aggrieved Employees. *Id.*, ¶ 22. Plaintiff's Counsel also believes the percentage of Class Members who will request exclusion from the Settlement will be small. Accordingly, the *Kullar* factors are satisfied, and the Settlement is entitled to a presumption of fairness.

2. Strength of Plaintiffs' Case, Amount Offered in Settlement, and Litigation Risks.

"The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." *Kullar*, 168 Cal.App.4th at 130. A preliminary review of the Settlement reveals the fairness of its terms. Cottrell Decl., ¶ 20. The estimated \$1,155,000 Net Settlement Amount and \$10,000 Net PAGA Amount (for a total of \$1,165,000), derived from a Gross Settlement Payment of \$1,950,000, will result in fair and just relief to all Settlement Class Members and Aggrieved Employees. *Id.* This amount will be available to the estimated 376 Class Members and Aggrieved Employees, exclusive of attorneys' fees and costs, administrative costs, and the service awards, and provides an excellent, estimated average recovery of \$3,098, assuming full participating of all Class Members in the Settlement. *Id.*

The Gross Settlement Payment of \$1,950,000 represents approximately 24% of the \$8,284,533 total estimated potential exposure in this action, and 28% of the total estimated substantive exposure. *Id.*, ¶ 21. For purposes of estimating these damages, Plaintiff's Counsel prepared a damages analysis with the following assumptions based on its investigation: that Plaintiff will fully prevail on all causes of action, can prove 3 minutes of off-the-clock work per Class Member spent donning and doffing personal protective equipment, and approximately 70% meal and rest break violations (less the number of penalties allegedly paid during the Class period). *Id.*

The recovery of 24% 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.*, 38
2 Cal.3d 488, 499-500 (1985) (“the court must at least satisfy itself that the class settlement is within
3 the “ballpark” of reasonableness”). “It is well-settled law that a cash settlement amounting to only
4 a fraction of the potential recovery does not *per se* render the settlement inadequate or unfair.” *In*
5 *Re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (internal quotations and citations
6 omitted). Indeed, courts routinely approve settlements that provide a fraction of the maximum
7 potential recovery.⁵

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.*, 85 Cal.App.4th 1135, 1150 (2000). “[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*, 151 F.3d 1234, 1242 (9th Cir. 1998)). The excellent result here easily satisfies these
15 standards.

19 ⁵ *See, e.g., Officers for Justice v. Civil Serv. Com.*, 688 F.2d 615, 628 (9th Cir. 1982); *Viceral v.*
20 *Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS 140759, at *7 (N.D. Cal. Oct.
21 11, 2016) (approving wage-and-hour settlement representing 8.1% of the total verdict value); *see*
22 *also Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 U.S. Dist. LEXIS 78671,
23 at *12 (N.D. Cal. June 17, 2015) (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*, No. 12-cv-06327 NC, 2014 U.S. Dist. LEXIS 99966, at *16 (N.D. Cal. July 21,
26 2014) (same); *Ma v. Covidien Holding, Inc.*, No. SACV 12-02161-DOC (RNBx), 2014 U.S. Dist.
27 LEXIS 13296, at *12 (C.D. Cal. Jan. 31, 2014) (same); *Escalante v. Urth Payroll Servs.*, No.
28 20STCV25106, 2023 Cal. Super. LEXIS 30449, at *7 (Super. Ct. L.A. Cnty. May 5, 2023) (same).
29 Additionally, the Settlement’s amount to the PAGA component is fair to those affected. *Moniz v.*
30 *Adecco U.S., Inc.*, 72 Cal.App.5th 56 at 77 (2021). 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*, No. 21SMCV00156, 2022 Cal. Super. LEXIS 76537,
at *4, 20 (Super. Ct. L.A. Cnty. Nov. 1, 2022) (approving PAGA allocation of \$40,000, with
\$10,000 going to the Aggrieved Employees); *Schiller v. David’s Bridal, Inc.*, 2012 U.S. Dist. LEXIS
80776, at *35-36 (E.D. Cal. 2012) (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*, No. 16-CV-04708-LHK, 2017
U.S. Dist. LEXIS 137272, at *3 (N.D. Cal. Aug. 25, 2017)) (quoting from the LWDA response in
O’Connor v. Uber Techs. Inc., 201 F.Supp.3d 1110 (N.D. Cal. 2016)).

1 **3. Litigation of this Action Not Only Would Delay Recovery, But Would**
2 **be Expensive, Time-Consuming, and Would Involve Substantial Risk.**

3 The amount offered in the Settlement is particularly reasonable in light of the risks, costs,
4 and likely duration of further litigation, including the risk of not obtaining class certification and
5 not surviving decertification. Absent this Settlement, it is estimated Plaintiff's Counsel's fees and
6 costs would far exceed \$2,000,000 to pursue these claims on behalf of Class Members. Cottrell
7 Decl., ¶ 23. Litigating the Class claims in this action would require substantial additional preparation
8 and discovery, involving the depositions of Class Members and experts, presentation of witnesses
9 at trial, and the analysis, preparation, and presentation of voluminous documentary evidence. *Id.*
10 Such efforts would likely take many more months, if not years, and would necessitate expert witness
11 testimony and significant additional litigation, including potential appellate litigation. *Id.*

12 Additionally, Plaintiff's derivative claims regarding waiting time penalties, accurate wage
13 statements, and PAGA penalties rise and fall with Plaintiff's other wage payment claims. *Id.*, ¶ 24.
14 For example, Plaintiff would recover nothing under Cal. Lab. Code § 203 if they were unable to
15 prove the underlying claims or defeat a "good faith" dispute defense. *See* Cal. Code Regs. Tit. 8, §
16 13520. While Plaintiff believes that she would prevail on these issues and others, Plaintiff
17 recognizes the risk that a fact finder may find for Defendants on one or more of these issues and
18 may find damages to be significantly less than what Plaintiffs claim.

19 Furthermore, as it has maintained throughout settlement negotiations and mediation,
20 Defendant, represented by experienced employment lawyers, believes that this case is not suitable
21 for class treatment and that it fully complied with its wage obligations with respect to Plaintiff, the
22 Class Members, and the Aggrieved Employees. Settlement, ¶ 9. Specifically, Defendant maintains
23 (among other things) that: individual inquiries regarding the Class Members' alleged off-the-clock
24 work, why the Class Members did not record their time, and whether Defendant had knowledge of
25 the Class Members' off-the-clock work will preclude class certification; Plaintiff and many of the
26 Class Members executed meal-period waivers that preclude Plaintiff's meal-break claims; the
27 record contains no evidence of unrecorded off-the-clock work; and Defendant pays meal and rest
28 premiums and otherwise complies with its obligation to provide duty-free meal and rest breaks. *Id.*,
29 ¶ 25. Although Plaintiff believes that she would ultimately prevail on the merits and at class
30 certification, proceeding in this litigation nonetheless carries risks and would require significant
31 additional time and resources. *Id.* By contrast, the Settlement will yield a prompt, certain, and
32 substantial recovery for Plaintiff, the Class Members, and the Aggrieved Employees, benefiting the

1 parties, the Court, and the State of California. *Id.*

2 For these reasons, the Settlement is entitled to a presumption of fairness, falls within the
3 required range of reasonableness, and should be preliminarily approved.

4 **B. The Proposed Fee Award and Class Counsel's Costs are Reasonable**

5 Plaintiff will seek reasonable attorneys' fees and costs at the time of final approval. Under
6 the terms of the Settlement, Class Counsel may seek an award of up to 35 percent of the Gross
7 Settlement Payment, or \$682,500. Settlement, ¶ 26(b). Plaintiff's Counsel's lodestar amount, which
8 will be provided with the fee motion, supports this request and will only increase with preparation
9 and attendance at the preliminary and final approval hearings, further communications with Class
10 Members, and Settlement administration and oversight. *Id.* Cottrell Decl., ¶¶ 35-36.

11 In this case, there was no guarantee of compensation or reimbursement. Plaintiff's Counsel
12 has undertaken all the risks and costs of this litigation on a completely contingent-fee basis. *Id.*, ¶
13 36. Nevertheless, Plaintiff and Plaintiff's Counsel committed themselves to developing and
14 prosecuting Plaintiff's claims to enforce the injured employees' rights and maximize recovery.
15 Because Settlement Class Members will receive a significant payment if the Settlement is approved,
16 Plaintiff's Counsel seek a reasonable fee award for their efforts and the risk they have assumed.

17 Fee awards in class actions average around one-third of the recovery. *Chavez v. Netflix, Inc.*,
18 162 Cal.App.4th 43, 66, n.11 (2008). Thus, Plaintiff's Counsel's requested fee is within the range
19 customarily approved by California and federal courts in comparable class actions. *See, e.g.,*
20 *Newberg on Class Actions*, § 11:24; *Manual for Complex Litigation*, § 14:6; *Van Vranken v. Atlantic*
21 *Richfield Co.*, 901 F.Supp. 294, 297–98 (N.D. Cal. 1995) ("Class Counsel have also cited 73 district
22 court opinions in which fees in the range of 30–50 percent of the common fund were awarded.");
23 *cf. Laffitte v. Robert Half Int'l Inc.*, 231 Cal.App.4th 860, 878 (2014) ("[T]he trial court's use of a
24 percentage of 33 1/3 percent of the common fund is consistent with, and in the range of, awards in
25 other class action lawsuits.").

26 In addition, reasonable litigation costs are ordinarily included with an award of attorneys'
27 fees under California wage-and-hour law. Plaintiff's Counsel requests a maximum of \$40,000.00 in
28 costs. Settlement, ¶ 26(b)(ii); *see also*, Cottrell Decl., ¶ 37. All of Plaintiff's Counsel incurred were
29 reasonable and necessary to the prosecution of this case and are of the type customarily billed to
30 fee-paying clients. Cottrell Decl., ¶ 37. Plaintiff's Counsel requests reimbursement for these costs,
31 which, together with the requested attorneys' fees, are reasonable compensation for the excellent
32 recovery achieved. The requested fees and costs should therefore be preliminarily approved.

1 **C. The Proposed Service Award is Reasonable.**

2 It is well-established that representative plaintiffs are eligible for reasonable incentive
3 payments to compensate them for the time, expense, and risk they incur in conferring a benefit on
4 other members of the class. *See, e.g., Munoz v. BCI Coca-Cola Bottling Co. of L.A.*, 186 Cal.App.4th
5 399, 412 (2010). Courts award enhancement awards to further public policy by encouraging
6 individuals to perform their civic duty in protecting the rights of class members, as well as to
7 compensate class representatives for their time, effort, and inconvenience. *Diaz v. Tak Commc'ns*
8 *CA, Inc.*, No. RG20064706, 2020 Cal. Super. LEXIS 8916, at * 207 (Super. Ct. Alameda Cnty. Nov.
9 17, 2020) (internal citation omitted).

10 Here, Plaintiff Martinez has contributed many hours to this case. Cottrell Decl., ¶ 31. She
11 has provided extensive information and produced documents which have been of major importance
12 in this litigation. *Id.* Plaintiff Martinez 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.* As a result
14 of Plaintiff's efforts, the Class Members will receive a significant recovery if the Settlement is
15 approved. Plaintiff has committed her time to this case and assumed risk to obtain the favorable
16 result. Accordingly, payment to Plaintiff in the amount of \$10,000 is reasonable in light of the
17 broader release she has agreed to, and the efforts she made and the risk she took in prosecuting this
18 action to obtain the \$1,950,000.00 Settlement. *See id.*, ¶¶ 28-32.

19 **VI. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES.**

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

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

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

1 *Glendale Fed. Bank*, 81 Cal.App.4th 816, 828 (2000). Here, the parties have agreed to define the
2 Class according to clear, objective criteria. As noted above, the Class is defined as all current and
3 former non-exempt employees who worked for Defendant in California at any time between June
4 2, 2017 and 60 days from May 5, 2023 or the Preliminary Approval Date, whichever is earlier. *See*
5 Settlement, ¶¶ 2(c), (g). The Class Members are thus easily identifiable and can be easily located
6 from Defendant’s records. Cottrell Decl., ¶ 19. As a result, Defendant will be able to easily identify
7 the Class Members to the Settlement Administrator. Likewise, potential Class Members will easily
8 be able to identify themselves as members of the Class based upon the parties’ agreed-upon Class
9 definition. The Class satisfies the numerosity element as well with approximately 376 Class
10 Members. *See Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Collins v. Rocha*, 7 Cal.3d
11 232, 238 (1972).

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

13 The “community of interest” requirement embodies three factors: (1) predominant common
14 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
15 (3) class representatives who can adequately represent the class.” *Sav-on*, 34 Cal.4th 319 at 326.
16 The requirement “does not mandate that class members have uniform or identical claims.” *Capitol*
17 *People First v. Dep’t of Developmental Servs.*, 155 Cal.App.4th 676, 692 (2007) (italics removed).

18 **1. Common Questions Predominate in This Action.**

19 “[T]he focus in a certification dispute is on what type of questions—common or individual—
20 are likely to arise in the action[.]” *Sav-on*, 34 Cal.4th 319 at 427. The California Supreme Court has
21 expressly held that predominance does not require that all questions of law and fact be uniform for
22 all members of the class. *Id.*, at 338. Where, as in this case, uniform policies and procedures apply
23 on a class-wide basis, “the legal question to be resolved is not an individual one. To the contrary,
24 the common legal question remains the overall impact of [Defendant’s] policies on its [alleged
25 employees]” *Jaimez v. Daihatsu USA, Inc.*, 181 Cal.App.4th 1286, 1299 (2010).

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

1 to pay Plaintiff and the Class Members for all hours worked, whether Defendant failed to pay
2 Plaintiff and the Class Members at the appropriate rate, whether Defendant maintained and provided
3 accurate payroll records, Plaintiff's and the Class Members' hours of work, and Plaintiff's and the
4 Class Members' general job duties—would provide key evidence in support of Plaintiff's claims.
5 *Id.*, ¶ 27. Plaintiff can rely on common proof (*e.g.*, Defendant's time and payroll records) to show
6 these common violations. *Id.* The Court should therefore find that common questions predominate
7 over any individualized differences among the Class Members in this case.

8 **2. Typicality is Satisfied.**

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

21 **3. Adequacy is Satisfied.**

22 A plaintiff is an adequate class representative if his or her claims are not inconsistent with
23 or antagonistic to the claims of the class members. *See Johnson v. GlaxoSmithKline, Inc.*, 166
24 Cal.App.4th 1497, 1509 (2008). Here, there is no conflict between Plaintiff and the Class Members.
25 Cottrell Decl., ¶ 31. Plaintiff's interests align with those of the Class, and Plaintiff seeks to recover
26 damages from Defendant's alleged unlawful conduct on her own behalf and on behalf of all Class
27 Members. *See id.* Plaintiff is thus an adequate representative of the Class. Likewise, as discussed in
28 further detail in the Cottrell Decl., Plaintiff's Counsel has extensive experience prosecuting class
29 actions and employment litigation, including wage-and-hour class actions, and is well-qualified to
30 represent the Class in this lawsuit. *Id.*, ¶¶ 6-8. For these reasons, Plaintiff requests that the Court
31 confirm Plaintiff Martinez as Class representative and Plaintiff's Counsel, Schneider Wallace
32 Cottrell Konecky LLP ("SWCK"), as Class Counsel.

1 **VII. THE COURT SHOULD APPROVE THE SETTLEMENT NOTICE**

2 “Adequate notice is critical to court approval of a class settlement.” *Hanlon v. Chrysler*
3 *Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998), overruled on other grounds by *Wal-Mart Stores, Inc. v.*
4 *Dukes*, 564 U.S. 338 (2011). A class action settlement notice “is satisfactory if it generally describes
5 the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate
6 and to come forward and be heard.” *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir.
7 2004) (internal quotation marks omitted). All that is required is that the proposed notice be
8 reasonably calculated to notify interested parties of the pendency of the action and their right to
9 present their objections. *Ryan v. Cal. Interscholastic Fed’n*, 94 Cal.App.4th 1048, 1072 (2001).
10 Indeed, courts have approved class notices even when they provide only general information about
11 a settlement. *See, e.g., Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir. 1980) (holding that
12 a “very general description of the proposed settlement” satisfied standards), disapproved on other
13 grounds by *Evans v. Jeff D.*, 475 U.S. 717, 725, n. 10 (1986).

14 Here, the manner of providing the Settlement Notice easily satisfies these standards. The
15 Settlement Notice will be mailed and emailed to each Class Member at his or her last-known address
16 and email address. Settlement, ¶ 18(f). Before the initial mailing, the Settlement Administrator will
17 take reasonable efforts to verify the Class Members’ current addresses via public and proprietary
18 systems *Id.*, ¶ 18(e). If any Class Notice is returned as undeliverable, the Settlement Administrator
19 will re-mail the Class Notice to the forwarding address provided by the United States Postal Service
20 or to an address obtained through a skip-trace. *Id.*, ¶ 18(g). In addition, the Settlement Administrator
21 will create a website for the Settlement, which will allow Class Members to view papers regarding
22 the Settlement, and will also create a toll-free call center to field telephone inquiries from Class
23 Members during the notice and settlement administration periods. *Id.*, ¶ 18(b).

24 Regarding content, the proposed Settlement Notice is clear and straightforward and provides
25 information about the case, the meaning and nature of the proposed Settlement, its terms and
26 provisions, and the rights of the Class Members to participate, opt out, and object. *See* Settlement
27 Notice. It describes the monetary award the Settlement will provide to Settlement Class Members
28 and the release Settlement Class Members will provide in exchange. It also provides the date, time,
29 and location of the Final Approval Hearing, the identity and contact information of Class Counsel,
30 and all other information required by Cal. Rules of Court, Rule 3.766(d). The proposed Settlement
31 Notice also fulfills the requirement of neutrality in class notices. *See Newberg on Class Actions*, §§
32 8:21 and 8:39; *Manual for Complex Litig.*, §§ 21:311 and 21:312. Accordingly, the Class Notice

1 complies with the standards of fairness, completeness, and neutrality required of a settlement notice
2 authorized for dissemination by the Court.

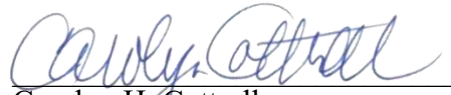
3 **VIII. CONCLUSION**

4 For the foregoing reasons, Plaintiff respectfully requests that the Court grant this unopposed
5 motion for preliminary approval and enter the proposed order filed herewith.

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7 Date: September 1, 2023

Respectfully Submitted,

8 **SCHNEIDER WALLACE**
9 **COTTRELL KONECKY LLP**

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12 Carolyn H. Cottrell
13 Ori Edelstein
14 Michelle S. Lim

15 *Attorneys for Plaintiff, the Putative Class,*
16 *Aggrieved Employees, and the State of*
17 *California*

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On September 1, 2023 I served the following document(s):

**NOTICE OF UNOPPOSED MOTION
AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS
AND AUTHORITIES INSUPPORT THEREOF**

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

Attorneys for Defendant
MARIANI PACKING CO. INC.
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Executed on September 1, 2023, in North Hollywood, California.

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