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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

PEDRO IBARRA, individually, and on behalf of
all others similarly situated,

Plaintiff,

vs.

VINO FARMS, INC., a California corporation;
VINO FARMS, LLC, a limited liability
company; and DOES 1 through 10, inclusive,

Defendants.

Case No.: STK-CV-UOE-2021-6512

[Assigned for all purposes to: Hon. George J.
Abdallah]

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS AND REPRESENTATIVE
ACTION SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

Date:
Time: 9:00 a.m.
Courtroom: 10A
Judge: Hon. George J. Abdallah

Action Filed: July 21, 2021
Trial Date: Not Set

1 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on a date to be set by the Court, at 9:00 a.m., or as soon thereafter
3 as the matter may be heard, in Department 10A of the above-captioned Court, located at 180 E Weber
4 Ave., Stockton, CA 95202, Plaintiff Pedro Ibarra (“Plaintiff”) will and hereby does move this Court for
5 an order:

6 1. Granting provisional class certification of the Class, solely for settlement purposes
7 pursuant to Code of Civil Procedure § 382;

8 2. Preliminarily approving the JOINT STIPULATION OF CLASS AND PAGA
9 ACTION SETTLEMENT AND RELEASE (“Settlement” or “Agreement”);

10 3. Appointing counsel for Plaintiff, Moon & Yang, APC, as Class Counsel;

11 4. Appointing Pedro Ibarra as the Class Representative;

12 5. Approving the use of the proposed notice procedure and related notice form;

13 6. Approving ILYM Group, Inc. as the third-party administrator;

14 7. Directing that notice be mailed to the Class; and,

15 8. Scheduling a hearing date for motions for final approval of class action settlement
16 and awards of attorneys’ fees and costs.

17 Good cause exists to grant this Motion because:

18 1. The Class meets all of the requirements for class certification for settlement
19 purposes under Code of Civil Procedure § 382;

20 2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the
21 disputed wage and hour claims asserted by Plaintiff;

22 3. Plaintiff and Class Counsel are adequate to represent the Class;

23 4. The proposed notice procedures and related forms comply with California Rules of
24 Court 3.766(d) and (e), adequately apprise Class Members of their rights, and fully comport
25 with due process; and

26 5. Based on the foregoing, notice should be directed to the Class Members and a final
27 fairness hearing should be scheduled (Plaintiff proposes 120 days after preliminary approval is
28 granted).

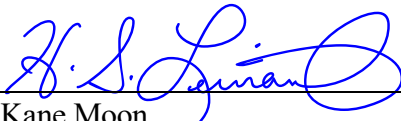
1 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court,
2 which require approval by the Court of a class action settlement and permit the Court to extend the page
3 limit for memoranda.

4 **NOTE:** Pursuant to **Rule 3.764(c)(2)** of the California Rules of Court, this Motion, which
5 includes a request for class certification as just one of the issues that must be discussed in connection
6 with the relief requested, may be up to 20 pages in length, not 15 pages for most motions.

7 This Motion is based on this Notice of Motion and Motion, the attached Memorandum of
8 Points and Authorities, the Declarations of Counsel for the Class, Plaintiff, and the Settlement
9 Administrator in support thereof, all papers and pleadings on file with the Court in this action, all
10 matters judicially noticeable, and on such oral and documentary evidence as may be presented in
11 connection with the hearing on the Motion.

12 Dated: January 25, 2023

MOON & YANG, APC

13
14 By: 
Kane Moon
H. Scott Leviant
Mariam Ghazaryan

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16 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to California Rules of Court, Rules 3.769(d) and (e), Plaintiff respectfully requests that this Court preliminarily approve the proposed class action settlement set forth in the JOINT STIPULATION OF CLASS AND PAGA ACTION SETTLEMENT AND RELEASE (“Settlement” or “Agreement”) with Defendants VINO FARMS, INC. and VINO FARMS, LLC (hereinafter collectively referred to as “VINO FARMS” or “Defendant”).

Plaintiffs and Defendant (collectively referred to herein as the “Parties”) reached a proposed class action settlement with a gross settlement amount (“MSA”) of **\$1,400,000.00** in compromise of disputed claims asserted on behalf of the below-defined Class consisting of approximately **532** members. Plaintiff respectfully requests that the Court: (1) grant preliminary approval of the Settlement; (2) provisionally certify a Class for settlement; (3) appoint Moon & Yang APC as Class Counsel; and (4) approve the proposed Class Notice and direct its distribution. Plaintiff now submits this Motion for Preliminary Approval, along with the Settlement (attached to the Declaration of H. Scott Leviant [“Leviant Decl.”], at Exhibit 1 thereto). For the Court’s convenience, below is a summary of the key Settlement provisions.

II. THE MAJOR TERMS OF SETTLEMENT

The provisions of the proposed Settlement include the following:

- Defendant agrees not to oppose certification for purposes of Settlement (Settlement, ¶ 25);
- Class: all current and former hourly non-exempt persons employed by Defendant, in the State of California between July 21, 2017 through September 9, 2022. “Participating Class Members” means all Class Members who do not submit a Request for Exclusion. (Settlement, ¶¶ 12, 13, 13(2));
- Settlement Amount: Defendant will pay a maximum of **\$1,400,000.00**, referred to as the Maximum Settlement Amount (or MSA herein), resulting in an estimated average **gross** payment per Class Member of approximately **\$2,631.00** (Settlement, ¶ 7(2));
- Class Size: approximately **532** individuals as of the date of mediation worked an estimated **71,853** workweeks. (Settlement, ¶ 26(d));
- PAGA Group Size: approximately **361** individuals as of the date of mediation, who

worked roughly **26,692** pay periods (Leviant Decl., ¶ 18);

- PAGA Period: July 21, 2017 through September 9, 2022;
- Escalator Clause: The number of Covered Workweeks is estimated to be 71,853. If it is later determined that the number of workweeks is more than 10% greater than 71,853, then Defendant shall, in its sole discretion, have the option to either: (1) de-escalate the Settlement so that the Class Period ends on the date that the workweek count totals an amount 10% higher than 71,853; or (2) permit the Class Period to be increased proportionally by the workweeks worked in excess of an amount 10% greater than 71,853, multiplied by the workweek value. (the “Escalator Clause”). (Settlement, ¶ 48);
- Kullar/Munoz Analysis: Plaintiff addresses the claims analysis herein, at Part V.B.3, and in more detail the Declaration of Leviant, at Paragraph 18;
- No Reversion: The Settlement is a ***non-reversionary*** settlement (Settlement, ¶ 49);
- Certification: Plaintiff addresses certification requisites herein, at Part V.A., and in the Declaration of Leviant, at Paragraphs 34-40;
- No Claim Form: No claim form is required (Settlement., ¶ 55);
- Class Release: The Settlement will release specified wage-and-hour claims for Class Members (those Class Members who do not opt out of the Settlement) as defined by the Third Amended Complaint (Settlement, ¶ 16(2));
- PAGA Release: The Class Members will release the PAGA Claims set forth in this Action, that were identified in the Operative Complaint, regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶ 16(2));
- Net Settlement Amount Available to the Class: After deducting Class Counsel’s attorneys’ fees and costs, service payment to Plaintiff, administration costs, and the payment to the LWDA, the remainder will be available for distribution to Class Members who do not opt out, with each Class Member receiving a share based on the number of workweeks each Class Member worked for a Defendant within the Class Period. The Net Settlement Amount is estimated to be at least **\$793,333.34**, resulting in an average **net** payment per Class Member of at least **\$1,491.00**, before any tax withholdings. (Settlement, ¶ 9(2));

- 1 • Tax Allocation: The amounts distributed to Class Members will be characterized as 33.33%
2 alleged unpaid wages, 66.67% to penalties and interest. (Settlement, ¶ 68);
- 3 • Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes
4 (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that
5 constitute wages will be paid separate and apart from the MSA (Settlement, ¶ 7(2));
- 6 • Settlement Administrator: The notice portion of the Settlement will be administered by a
7 third-party Administrator, ILYM Group, Inc., and the Parties estimated that the costs of
8 administration should not reasonably exceed \$20,000.00. ILYM Group, Inc.'s low bid for
9 settlement administration services in the amount of **\$12,900.00** was selected as the lowest
10 bid from a competitive bidding process. (Settlement, ¶ 21);
- 11 • Class Data for Administration: The Settlement Administrator will receive the Class List
12 within 14 calendar days of Preliminary Approval, use the NCOA database to update the
13 Class List, and then use skip tracing on returned Notices (Settlement, ¶ 54);
- 14 • Notice: The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶ 55).
15 The Notice describes how to dispute workweeks, submit an objection in writing, in person,
16 or through an attorney, or request exclusion;
- 17 • Notice Language: Notice will issue in English and Spanish (Settlement, ¶ 55);
- 18 • Objections: Objections can be submitted in person, through an attorney, or in writing to the
19 Settlement Administrator, with no pre-requisite to being heard (Settlement, ¶ 64);
- 20 • Exclusion Requests: The procedure for exclusion requests is the same as the procedure for
21 submitting a written objection (Settlement, ¶¶ 61 and 64);
- 22 • PAGA Allocation: From the MSA, **\$100,000.00** will be allocated to settle claims brought
23 pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.*
24 ("PAGA"), and seventy-five percent (75%), or **\$75,000.00**, will be paid to the California
25 Labor & Workforce Development Agency. (Settlement, ¶ 46.);
- 26 • Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is
27 attached to the Leviant Declaration;
- 28 • Enhancement/Service Awards to Plaintiff: Defendant will not oppose the application for a

Service Payment of up to **\$7,500.00** for Plaintiff (Settlement, ¶ 30);

- Fees and Costs: Defendant will not oppose Class Counsel’s application for fees not to exceed 33 1/3% of the MSA (**\$466,666.66**), and actual costs, in an amount not to exceed **\$20,000**, to be paid out of the MSA (Settlement, ¶ 29);
- Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 34);
- Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the California State Bar’s Justice Gap Fund (Settlement, ¶¶ 60);
- Judgment Notice: Judgment will be posted on the Settlement Administrator’s website after entry (Settlement, ¶ 76);
- Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with Class Members (Settlement ¶ 80).

(Leviant Decl., ¶¶ 11-12 and Exhibit 1 thereto.)

III. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff’s Claims

On March 5, 2020, Plaintiff filed a putative Class Action complaint alleging the following labelled causes of action: (1) failure to pay minimum wages in violation of Labor Code §§ 204, 1194, 1194.2 and 1197; (2) failure to pay overtime compensation in violation of Labor Code §§ 1194 and 1198; (3) failure to provide meal periods in violation of Labor Code §§ 226.7 and 512; (4) failure to authorize and permit rest breaks in violation of Labor Code § 226.7; (5) failure to indemnify necessary business expenses in violation of Labor Code § 2802; (6) failure to timely pay final wages at termination in violation of Labor Code § 201-203; (7) failure to provide accurate itemized wage statements in violation of Labor Code § 226; and (8) unfair business practices in violation of California Business and Professions Code § 17200, et seq. (The “Action.”) In the complaint, Plaintiff sought to represent all persons that worked for Defendant in California as an hourly-paid, non-exempt employee at any time during the period beginning four years before the filing of the initial complaint. (Leviant Decl., ¶ 4.)

Plaintiff satisfied the administrative exhaustion prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”).

1 Plaintiff filed a First Amended Complaint adding a cause of action under PAGA. (Leviant Decl., ¶ 5.)

2 **B. Pre-Mediation Data Production and Analysis**

3 The Parties have conducted informal discovery and investigation of the facts and law. Such
4 discovery and investigation have included, inter alia, the exchange of informal data and discoverable
5 information in preparation for the mediation session. (Leviant Decl., ¶ 6.) The Parties have analyzed
6 payroll and other data pertaining to Plaintiff and the Class during the relevant Settlement Period,
7 including but not limited to the numbers of former and current members of each purported subclass
8 within the Class, average workweeks, and average rate of hourly pay. (*Id.*) In addition, Defendant also
9 provided documents reflecting its wage and hour policies and practices during the Settlement Period and
10 information regarding the total number of current and former employees in the Class. (*Id.*)

11 After reviewing documents regarding Defendant's wage and hour policies and practices and
12 other information obtained during the informal exchange of discovery, Class Counsel were able to
13 evaluate the probability of class certification, success on the merits, and the reasonably obtainable
14 maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a
15 damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the
16 claims and defenses asserted in the litigation. (Leviant Decl., at ¶ 7.)

17 **C. Settlement**

18 On July 11, 2022, the Parties mediated before Steven Rottman, who is a highly experienced and
19 mediator for wage and hour litigation. (Leviant Decl., ¶ 8.) At the mediation, the Parties discussed at
20 length the burdens and risks of continuing with the litigation as well as the merits of the claims and
21 defenses. (*Id.*) The Parties agreed to the basic terms of a proposed settlement. (*Id.*) The Parties then
22 signed a long form settlement agreement (the Agreement). (*Id.*)

23 Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for
24 the claims asserted in the Action, both generally and in response to Defendant's defenses thereto.
25 (Leviant Decl., ¶ 9.) Plaintiff and Class Counsel have also taken into account Defendant's agreement to
26 enter into a Settlement that confers substantial relief upon the Class.

27 Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth
28 in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class.

(Leviant Decl., ¶ 10.) Solely for the purpose of settling this case, the parties agree that the requirements for establishing class action certification with respect to this class are satisfied. (*Id.*) If this Settlement is not approved by the Court for any reason, Defendant reserves its rights to contest class certification. (*Id.*) This Settlement, if approved by the Court, will result in the termination with prejudice of the litigation through the entry of the Judgment and the release of all Released Claims for all Class Members, including all within the class definition who have not elected to exclude themselves from the Class. (*Id.*)

IV. **CLASS DEFINITION**

The Class is defined as follows:

All current and former hourly non-exempt persons employed by Defendant, in the State of California between July 21, 2017 through September 9, 2022. “Participating Class Members” means all Class Members who do not submit a Request for Exclusion. (Settlement, ¶¶ 12, 13, 13(2));

(Leviant Decl., ¶ 34 and Exhibit 1.)

V. **DISCUSSION**

A. **The Court Should Conditionally Certify the Class Because It Meets All the Requirements for Certification for Settlement Purposes Under CCP § 382**

The Class should be provisionally certified for settlement because: (1) the Class is ascertainable and sufficiently numerous; (2) there exists a well-defined community of interest; and (3) a class action is the superior method of adjudication for this settlement. Code of Civ. Proc. § 382; *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1021 (2012); *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435 (2000).

Under Code of Civil Procedure § 382, class certification is warranted so long as there is a numerous and ascertainable class with a well-defined community of interest among its members and that a “class action proceeding is superior to other means for a fair and efficient adjudication of the litigation.” *See, e.g., Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). For purposes of this Settlement *only*, Defendant stipulated to conditional certification. (Settlement ¶ 25.)

“The certification question is ‘essentially a procedural one that does not ask whether an action is legally or factually meritorious.’” *Id.*, at 326, quoting *Linder*. Indeed, the certification question simply asks whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286, 1298 (2010). “[I]t is also well

1 established that trial courts should use different standards to determine the propriety of a settlement class,
2 as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for
3 settlement cases.” *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal. App. 4th 836, 859
4 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996).

5 In view of these standards, and as shown below, the Class should be certified for purposes of
6 settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

7 **1. The Members of the Class Are Objectively Ascertainable and Numerous.**

8 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
9 the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal. App. 3d
10 862, 873 (1983). In this case, Plaintiff contends that all three considerations favor class certification.

11 A class is ascertainable when “it is defined ‘in terms of objective characteristics and common
12 transactional facts’ that make ‘the ultimate identification of class members possible when that
13 identification becomes necessary.’” *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980 (2019). The class
14 definition is sufficiently specific to enable the Parties, Class Members, and the Court to readily determine
15 the parameters of the class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605, 617 (1987). In
16 this case, there are approximately 532 Class Members, all of whom may be identified by reference to
17 Defendant’s records. Accordingly, the Class is not only ascertainable, but also sufficiently numerous.
18 (Leviant Decl., ¶ 35.)

19 **2. There Are Common Questions That Predominate Over Any Questions That**
20 **May Be Unique to Individual Class Members.**

21 The community of interest requirement embodies three factors: (1) predominant questions of law
22 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class
23 representatives who can adequately represent the class. *Dunk*, 48 Cal. App. 4th at 1806. A question of
24 law or fact is common to the members of a class if it may be resolved through common proof. *See*,
25 *Jaimez*, 181 Cal.App.4th at 1305. As for predominance, it “is a comparative concept, and ‘the necessity
26 for class members to individually establish eligibility and damages does not mean individual fact
27 questions predominate.’” *Sav-on*, 34 Cal. 4th at 334.

28 In this case, Plaintiff contends that common questions exist. (Leviant Decl., ¶¶ 37-38.) Plaintiff

1 further contends that his claims present sufficient common issues of law and fact that predominate over
2 individual issues and warrant class certification. From their review of the documentation provided, Class
3 Counsel allege that for purposes of these claims, Defendant's policies and practices are either identical,
4 or sufficiently similar, to raise the same questions of liability, and applied to all Class Members. Because
5 Class Members would have to prove the same issues of law and fact to prevail, and because their
6 potential legal remedies are identical, it would be preferable to resolve all Class Members' claims by
7 means of the Settlement than to require each Class Member to litigate his or her individual claims.
8 Therefore, common questions predominate over any questions that may be unique to individual Class
9 Members, and class-wide settlement is superior to any other method of resolution.

10 **3. Plaintiff's Claims Are Typical of Those of the Class.**

11 Typicality "requires a showing that the class representative has claims or defenses typical of the
12 class." *See, e.g., Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1534 (2008), citing
13 *Fireside Bank v. Superior Court*, 40 Cal. 4th 1069, 1089 (2007), and *Sav-On*, 34 Cal. 4th at 326,
14 approved by *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004 (2012). California law does not require
15 that plaintiffs have claims identical to the other class members. Rather, the test of typicality for a class
16 representative is whether other members have the same or similar injury, whether the action is based on
17 conduct which is not unique to the named plaintiffs, and whether other class members have been injured
18 by the same course of conduct. *Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (2007).

19 In light of these standards, Plaintiff is typical of class members. Like other Class Members,
20 Defendant employed Plaintiff in a non-exempt position during the Class Period, and Plaintiff claims that
21 he was subject to the same policies alleged to have impacted the entire class. (Levant Decl., ¶ 36.)
22 Plaintiff alleges that he and other Class Members share the same claims stemming from Defendant's
23 alleged violations of the Labor Code and relevant wage order. In addition, Defendant's main defenses,
24 including that the wage and hour policies and practices fully comply with California law, apply equally
25 to the claims of all Class Members. Thus, Plaintiff is typical of the Class.

26 **4. Plaintiff and Plaintiff's Counsel Will Adequately Represent the Class.**

27 The adequacy requirement is met where the plaintiff is represented by counsel qualified to
28 conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to class members'

1 interests, which is the case here. *McGhee v. Bank of America*, 60 Cal.App.3d 442, 451 (1976). In other
2 words, where the plaintiff has adequate counsel, the plaintiff may represent the entire class absent any
3 disabling conflicts of interest that might hinder the plaintiff's ability to represent the class. *Id.*

4 In the Action, Plaintiff has no conflicts of interest with other Class Members and has agreed to
5 place Class interests above Plaintiff's own. (Leviant Decl., ¶ 39; Ibarra Decl., ¶¶ 5-14.) Moreover,
6 Plaintiff's counsel are experienced in wage and hour class action litigation and have no conflicts of
7 interest with absent Class Members. (Leviant Decl., ¶¶ 21-26, 39.) As such, this Court should appoint
8 Plaintiff as the Class Representative for the Class and appoint Plaintiff's Counsel as Class Counsel.

9 **5. Proceeding as a Class Action is Superior to Individual Actions**

10 Plaintiff contends that proceeding as a class action is a superior means of resolving this dispute,
11 as the Class Members and the Court will derive substantial benefits. Class certification would serve as
12 the only means to deter and redress the alleged Labor Code violations. *See Linder v. Thrifty Oil Co.* 23
13 Cal. 4th at 434. Furthermore, individual actions arising out of the same operative facts would unduly
14 burden the courts and could result in inconsistent results, which may be avoided by class certification.

15 **6. The Proposed Class Notice Is Constitutionally Sound and Complies with** 16 **Rule 3.766(d) and (e)**

17 The proposed notice and settlement procedure are appropriate. Notice requirements are set forth
18 in Rules of Court, Rule 3.766. In determining the manner of the notice, the court must consider the
19 interests of the class, the type of relief requested, the stake of the individual class members, the cost of
20 notifying class members, the resources of the parties, the possible prejudice to class members who do not
21 receive notice, and the *res judicata* effect on class members. Rules of Court, Rule 3.766(e). Notice is
22 sufficient when it provides class members sufficient information to make informed decisions. *See*
23 *Mullane v. Cent. Hanover Bank & Trust, Co.*, 339 U.S. 306, 314 (1950).

24 *a) The Notice Procedure Satisfies Due Process*

25 The proposed procedure for distributing the Proposed Notice is robust and more than meets the
26 minimal requirement that it have "a reasonable chance of reaching a substantial percentage of the class
27 members." *Cartt v. Sup. Ct.*, 50 Cal.App.3d 960, 974 (1975). There is no statutory or due process
28 requirement that all class members receive actual notice, but in this matter, the Class Members will

1 receive direct mailed notice. Here, the proposed procedure includes safeguards, including mailing notice
2 to Class Members' last known addresses; skip tracing; searches for address changes; and the re-mailing
3 of returned notices to any forwarding addresses. This manner of notice complies with Rule 3.766(c)
4 because it provides a reasonable chance that Class Notice will reach most if not all Class Members.

5 *b) The Notice is Accurate and Informative*

6 The proposed Notice of Class Action Settlement should be approved for dissemination to the
7 Class Members because its content complies with Rule of Court 3.766(d) in that it contains a brief
8 explanation of the case, including the basic contentions or denials of the Parties, detailed information
9 about Class Members' rights to be excluded from the Settlement and object to the Settlement; a
10 statement that the Settlement will bind all members who do not timely opt-out. Thus, the Notice also
11 satisfies Rule of Court 3.769(f) regarding the contents of settlement notices.

12 The Notice also fulfills the requirement of neutrality in class notices. 3 NEWBERG § 8.39. It
13 summarizes the proceedings and the terms and conditions of the proposed Settlement, in an informative
14 and coherent manner, in compliance with the Manual for Complex Litigation ("MANUAL"), (2d Ed.
15 1993), which states that "the notice should be accurate, objective, and understandable to Class Members .
16 . ." MANUAL, § 30.211. It makes clear that the Settlement does not constitute an admission of liability
17 by Defendants and recognizes that this Court has not ruled on the merits. It also states that the final
18 settlement approval decision has yet to be made. Accordingly, the Notice complies with the standards of
19 fairness, completeness, and neutrality required of a combined settlement-certification class notice.

20 **B. The Court Should Preliminarily Approve the Settlement Because It Is a Fair,**
21 **Adequate, and Reasonable Compromise of Disputed Wage Claims in View of**
22 **Defendants' Potential Liability Exposure and the Risks of Continued Litigation**

23 California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231,
24 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists
25 to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v.*
26 *Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary
27 settlement approval, notice being given to class members, and a final fairness and approval hearing being
28 held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed

below, this Court should preliminarily approve the Settlement, allow the Parties to give notice to the Class as proposed, and schedule a final fairness and final approval hearing.

1. Class Action Settlements Are Subject to Review and Approval.

Any settlement of class litigation must be reviewed and approved by the presiding court. Rules of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial court and (2) a subsequent (final) review after notice has been distributed to the class members. The Preliminary Approval Hearing and Final Approval Hearing coincide with these two steps. The present motion seeks *preliminary approval* and the setting of a Final Approval Hearing.

To evaluate a settlement, a court must receive “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008). But the record need *not* contain an explicit statement of the maximum theoretical recovery. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010).

2. The Parties Reached the Settlement Through Arms’ Length Negotiations Between Experienced Counsel with the Assistance of a Highly-Qualified Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.

A settlement is presumptively fair where it is reached through arms’ length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors is small.¹ *Dunk*, 48 Cal.App.4th at 1802; *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In deciding whether to approve a settlement, a trial court has broad powers to determine whether it is fair under the circumstances of the case. *See, e.g., Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979). In exercising these powers, the overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, at 1801, quoting *Officers for Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

¹ Because the fourth prerequisite for the presumption to arise cannot be addressed until the final approval hearing, only the first three prerequisites are relevant at this preliminary approval stage.

1 Relevant factors in making this determination, include, but are not limited to:

2 [T]he complexity and likely duration of further litigation, the risk of maintaining class
3 action status through trial, the amount offered in settlement, the extent of discovery
4 completed and the state of the proceedings, the experience and views of counsel, the
presence of a governmental participant, and the reaction of the class members to the
proposed settlement.

5 *Id.* These factors require balancing, are non-exhaustive, and, trial courts should tailor the factors to each
6 case and give due regard to “what is otherwise a private consensual agreement between the parties.” *Id.*

7 Here, the Settlement resulted from thorough, arms’ length negotiations between experienced
8 counsel with the assistance of a highly-regarded mediator. (Leviant Decl., ¶¶ 8-10.) With respect to the
9 claims at issue in this case, Plaintiff obtained data from Defendant (through informal discovery) and then
10 carefully reviewed that information. Counsel for Plaintiff also examined relevant policies and
11 interviewed witnesses in detail about their work experiences and Defendant’s practices. Based on the
12 totality of that review, Plaintiff estimated the potential exposure and then estimated risk factors to adjust
13 the reasonable expected outcome. The investigation that Plaintiff’s counsel conducted was sufficient to
14 provide enough information to intelligently evaluate the estimated exposure in this action for purposes of
15 negotiating the Settlement in view of the risks discussed below and are also sufficient to allow this Court
16 to do the same. *See, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001).

17 **3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise**
18 **of Class Members’ Claims Based on Defendant’s Estimated Liability**
19 **Exposure Given the Risks Continued Litigation Would Entail.**

20 The proposed Settlement of \$1.40 million offers substantial, timely, and guaranteed to Class
21 Members. A settlement is not judged against what might have been recovered had a plaintiff prevailed at
22 trial and does not have to provide 100% of damages to be reasonable. “In the context of a settlement
23 agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint,
24 but rather whether the settlement is reasonable under all of the circumstances.” *Wershba*, 91 Cal.App.4th
25 at 250. Accordingly, because settlements involve compromise, even one that provides for substantially
26 narrower relief than would likely be obtained if the suit were successfully litigated can be reasonable
27 given that “the public interest may indeed be served by a voluntary settlement in which each side gives
28 ground in the interest of avoiding litigation.” *Id.*

1 With respect to the claims asserted on behalf of the Class in this case, there are serious risks that
2 support the reduced compromise amount. These risks include, but are not limited to: (i) the risk that
3 Plaintiff would be unable to establish liability for unpaid straight time or overtime wages, *see Duran v.*
4 *US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & n. 33 (2014) ("*Duran*"), *citing Dilts v. Penske Logistics, LLC*
5 2014 WL 205039 (S.D. Cal. 2014) (dismissing certified off-the-clock claims based on proof at trial); (ii)
6 the risk that Defendant's meal and rest period policies might not ultimately support class certification or
7 a class-wide liability finding, *see Duran*, 59 Cal. 4th at 14, n. 28 (citing Court of Appeal decisions
8 favorable on class certification issue without expressing opinion as to ultimate viability of proposition);
9 (iii) the risk that uncertainties pertaining to the ultimate legality of Defendant's policies and practices
10 could preclude class-wide awards of statutory penalties under Labor Code §§ 203 and 226(e); (iv) the
11 risk that individual differences between Class Members could be construed as pertaining to liability and
12 not solely to damages, *see Duran*, 59 Cal. 4th at 19; (v) the risk that any civil penalties award under the
13 PAGA could be reduced by the Court in its discretion, *see Labor Code § 2699(e)(1)*; (vi) the risk that
14 class treatment could be deemed improper as to one or more claims, except for settlement purposes; (vii)
15 the risk that a Court could have limited the Class in terms of scope (i.e., limiting the Class to a narrower
16 range of job categories or titles, which would have significantly decreased the number of Class
17 Members); (viii) the risk that lengthy appellate litigation could ensue; and, (ix) the risk that violation rate
18 estimates would prove much lower than expected. (Leviant Decl., ¶ 16.) These risks are non-exhaustive.

19 In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and
20 reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of
21 course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to
22 liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be
23 given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are
24 greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the
25 approximately 532 members of the Class, the average **gross** recovery is approximately **\$2,631.00** per
26 class member, and the estimated average **net** recovery for each Class Member is approximately
27 **\$1,491.00**. (*Id.*) Given that Defendant could challenge certification and liability, this is a significant sum
28 to have achieved in settlement. Moreover, a Class Member who worked a greater number of weeks for

1 Defendant will receive a larger share of the Settlement than a Class Member who worked for a shorter
2 amount of time during the class period. (*Id.*)

3 After analyzing the claims in this matter, Plaintiff has concluded that the value of this Settlement
4 is fair, adequate, and reasonable. (Leviant Decl., ¶ 18.) The Class Settlement Amount of **\$1,400,000** is
5 84% of the **\$1,673,406.98** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the
6 litigation. On that basis, it would be unwise to pass up this settlement opportunity. This assessment is
7 based on a carefully constructed model of the current fair value of the case, using estimated risks
8 (*including the fact of a recent settlement that effectively vitiates a portion of the claims*), average wage
9 rates, numbers of employees, the amount of time covered by the class period. (*Id.*)

10 Plaintiff's counsel estimates that the calculated plausible exposure is **\$8,851,466.20**, *including*
11 *PAGA penalties and **no discount applied to any class claim***. (*Id.*)

- 12 • The reasonably estimated exposure for alleged unpaid off-the-clock work (arriving early to
13 complete additional work) over the class period was estimated to be **\$736,493.50**, but with
14 chances of certification and proof of liability (60% and 30% respectively) for a risk-adjusted
15 exposure of **\$132,552.63**.
- 16 • The reasonably estimated exposure for alleged rest break violations over the class period was
17 calculated at **\$310,702.60** (*generously* assuming 100% of the class experienced a rest break
18 issue 20% of the time) but with low chances of certification and proof of liability (30% and
19 20% respectively) for a risk-adjusted exposure of **\$18,642.16**.
- 20 • The reasonably estimated exposure for alleged meal break violations over the class period
21 was calculated at **\$275,615.60** (facial violations, excluding violations that could be eliminate
22 with meal break waivers or employee choice issues), with chances of certification and
23 liability risks (40% and 35% respectively) resulting in a risk-adjusted exposure of
24 **\$38,586.18**.
- 25 • Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were
26 estimated to be approximately **\$115,465.50** and **\$82,083.51**, respectively, on maximum
27 exposures of **\$641,475.00** and **\$456,019.50**, respectively. The certification and liability risk
28 factors are contingent upon the underlying unpaid wage claims and are assumed to be the
same as those (60% and 30%) for that reason.
- Performing risk-adjusted valuations for all claims yields a total value in the range of
\$406,146.98, excluding PAGA. (*Id.*)
- PAGA penalties were calculated as having a maximum realistic exposure of **\$6,336,300.00**,
but a risk adjusted value of **\$1,267,260.00**, after factoring in risks of reduction in penalties
pursuant to Court discretion and the high risk of the inability to prove violations for all
aggrieved employees.

(*See*, Leviant Decl., ¶ 18.)

The \$1,400,000 settlement here is fully supportable. First, it is important to recognize the

1 wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Leviant Decl., ¶
2 19.) Second, rest break and meal period claims have been challenging to certify, even after *Brinker*.
3 (Leviant Decl., ¶ 19.) Third, the certification rates in California are lower than conventional wisdom
4 holds. *See*, H. Scott Leviant, *Second Interim Report on class actions in California sheds new light on*
5 *certification* (February 19, 2010), www.thecomplexlitigator.com, available at
6 [http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html)
7 [california-sheds-n.html](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html); *see also*, *Findings of the Study of California Class Action Litigation, 2000-2006*,
8 available at <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page
9 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a
10 settlement *or* as part of a contested certification motion).

11 Here, the estimated certification probabilities are *above* the average rate at which cases were
12 certified in California over the study years, based upon data available through the California Courts
13 websites. (Leviant Decl., ¶ 19.) In sum, well *under* 20% of all cases filed as proposed class actions are
14 ultimately certified by way of a *contested* motion. (*Id.*) The recovery is **16%** of the maximum plausible
15 recovery (estimated to be approximately **\$8,852,466.20**, including over \$6,300,000 in PAGA penalties),
16 which falls within the expected outcome under the likelihood of success metric and which compares
17 favorably to other cases in which courts have granted approval of class wage and hour settlements
18 representing a smaller fraction of the maximum theoretical damages.² (*Id.*) It would also be appropriate
19 to evaluate the result by examining only the premium wages at issue (approximately \$1,395,221.70, with
20 no risk reduction), excluding penalties and interest; the settlement is about 100% of the premium wages
21 (unpaid wages, meal period premiums, and rest break premiums) at maximum realistic exposure values.³

22
23 ² *See, e.g., Ferrell v. Buckingham Property Mgmt.* (E.D. Cal. Jan. 21, 2020) Case No. 1:19-cv-
24 00332-LJO-SAB, 2020 WL 291042, *17-20 (granting preliminary approval of settlement that
25 represented 5.2% of the original valuation of the claims); *Thomas v. Cognizant Tech. Sols. U.S. Corp.*
(C.D. Cal. June 24, 2013) No. SACV111123JSTANX, 2013 WL 12371622, at *6 (granting final
approval of settlement that encompassed between 4.4% and 5% of the maximum estimated liability).

26 ³ The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA
27 penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion “may award a lesser
28 amount than the maximum civil penalty amount specified by this part...”), and, second, courts evaluate
the strength of a proposed settlement without taking potential penalties or interest into consideration. *See*
Rodriguez v. West Publishing Corp., 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA*
Logistics U.S.A., Inc., 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015).

1 Because the total Settlement amount and the proportion of the Settlement allocated to PAGA penalties
2 fall within the range of what is reasonable, the Settlement should be approved.

3 **4. The Proposed Method for Allocating Settlement Funds Is Fair, Adequate,**
4 **and Reasonable.**

5 The proposed method of allocating the Settlement to Class Members also is fair. As noted, the
6 Parties agreed to allocate the Settlement based on time worked by the Class Member during the Class
7 Period, in relation to the total amount of time worked by all participating Class Members collectively.
8 This proposed method is fair and reasonable because each Class Member's actual potential damages vary
9 based on the number of workweeks he or she actually worked. A Class Member who worked a greater
10 number of weeks for Defendant will receive a larger payment under the Settlement than a Class Member
11 who worked for a shorter amount of time during the relevant period. (Leviant Decl., ¶¶ 11, 17.)

12 **5. The Proposed Enhancement Payment to Plaintiff Is Fair, Adequate, and**
13 **Reasonable and Warrants Preliminary Approval.**

14 The proposed general release and enhancement payment of \$7,500 to Plaintiff is intended to
15 recognize the value of a general release of all claims and the substantial initiative and significant efforts
16 by Plaintiff on behalf of the Class. Courts routinely approve incentive awards to compensate named
17 plaintiffs for the services they provide and the risks they incur during class action litigation, often in
18 much higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange*, 115 Cal. App. 4th
19 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in bringing the case);
20 *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving a \$50,000
21 enhancement award). Plaintiff contributed to the prosecution of this matter, including assistance prior to
22 the mediations and substantial time conferring with counsel over the course of this litigation and before
23 filing. (Leviant Decl., ¶ 32; Ibarra Decl., ¶¶ 5-17.) The enhancement also recognizes the considerable
24 risks Plaintiff undertook on behalf of the Class to be personally liable for all costs incurred regardless of
25 the success of the litigation or class certification, as well as the personal risk of facing intrusive discovery
26 and potential disclosure to future employers that Plaintiff sued a former employer, making future
27 employment prospects uncertain. The accompanying Declaration of Plaintiff confirms his involvement
28 and supports his appointment as the Settlement Class Representatives.

1 **6. The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate,**
2 **and Reasonable and Merits Preliminary Approval.**

3 The California Supreme Court removed any lingering doubt about the use of the percentage of
4 the fund method to award attorney’s fees in California Courts. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal.
5 5th 480, 503 (2016).⁴ Thus, this Court may and, pursuant to *Laffitte*, *should* award fees to Plaintiff’s
6 counsel based upon the percentage of the fund methodology.

7 Setting *Laffitte* aside, whether the once-again-confirmed percentage of the fund method or the
8 lodestar method is used, the outcome is roughly the same: “[F]ee awards in class actions average around
9 one-third of the recovery’ regardless of ‘whether the percentage method or the lodestar method is used.’”
10 *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521 (2021). This is also consistent with
11 counsels’ experience in class cases. Here, Plaintiff’s attorneys intend to request attorneys’ fees of up to
12 \$466,666.67 (one-third of the MSA), and costs capped at \$20,000 (which includes payment for
13 mediation, filing fees, legal research fees, and other expenses). (Leviant Decl., ¶ 31.) Given the efforts
14 and risks involved, as well as the results achieved, these amounts are within the range of reasonableness.

15 **7. The Proposed Payment to the Administrator Is Fair and Reasonable**

16 ILYM Group, Inc., which was selected due to its competitive bid, estimates that administration
17 can be performed for **\$12,900.00**. (ILYM Decl., ¶ 10.) In Class Counsel’s experience, an estimated cost
18 of **\$12,900.00** is a fair and reasonable amount for administration fees and should be preliminarily
19 approved. (Leviant Decl., ¶ 33.)

20 **8. The PAGA Allocation is Reasonable**

21 The ultimate decision as to the amount of penalties is always up to the discretion of the Court.
22 Labor Code § 2699(e)(2) states: “In any action by an aggrieved employee seeking recovery of a civil
23 penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil
24 penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do
25

26 ⁴ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing
27 doubt about the use of the percentage method: “The *Dunk* court, while finding the percentage method
28 inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport
to bar its usage generally in common fund cases.” *Laffitte*, 1 Cal. 5th at 501.

1 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”

2 Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources
3 of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in
4 federal court decisions addressing that question. In their view, a PAGA allocation, even if a small
5 portion of the total settlement, could be reasonable if the settlement of the underlying wage and hour
6 claims is robust and serves the deterrent purpose of the PAGA statute. *O’Connor v. Uber Technologies,*
7 *Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) (“By providing fair compensation to the class members
8 as employees and substantial monetary relief, a settlement not only vindicates the rights of class
9 members as employees, but may have a deterrent effect upon the defendant employer and other
10 employers, an objective of PAGA.”); *see also Visceral v. Mistras Group*, 2016 WL 5907869 *9 (N.D.
11 Cal. 2016) (“Applying O’Connor’s sliding scale approach, settlement of the PAGA claim may be
12 substantially reduced below its standalone settlement value without sacrificing its statutory purposes
13 because the non PAGA settlement is relatively substantial.”) *Moniz* then provided explicit confirmation
14 that this was an appropriate yardstick by which to measure reasonableness of a PAGA settlement.
15 *Moniz*, 72 Cal. App. 5th at 77. *Moniz* also held it appropriate to consider of the settlement furthers
16 “PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize
17 enforcement of state labor laws.”

18 As to the first set of elements (the class-type analysis), it is embodied in Plaintiffs’ discussion of
19 the adequacy of the settlement generally. To assess the fairness, adequacy, and reasonableness of a class
20 action settlement, the court should also consider the expense, complexity and likely duration of further
21 litigation. *Dunk*, 48 Cal. App. 4th at 1801. Here, the expense, complexity and likely duration of future
22 litigation was to some extent an unknown. However, what is certain is that to adequately establish the
23 foundational violations that would support a substantial penalty award, tremendous time and expense
24 would be invested. To adequately establish that aggrieved employees experience the alleged violations,
25 and at what frequency, most of the aggrieved employees would need to be interviewed in a systematic
26 fashion and their testimony cataloged in way sufficiently meaningful to permit the submission of
27 summary evidence at trial, such as via survey. *First*, the burdensome nature of such a process would be
28 expensive and time-consuming. *Second*, the individuals already interviewed confirmed substantial risk

1 that the Court would either substantially reduce any penalty ultimately awarded *or* conclude that the
2 conduct was insufficient to support a penalty award. *Third*, it would be essentially impossible to
3 formulate an objectively reliable means of summarizing testimonial experiences, other than by an
4 extraordinarily detailed survey. And formulating such a survey would have been important, since
5 frequency of violations would need to be established before any penalties could be recovered. At least as
6 to claims such as meal period and rest break violations, the decisions of aggrieved employees are a major
7 factor in assessing liability. In sum, the evidence collected to date leads Plaintiff to conclude that, to the
8 extent violations occurred, a fact which Defendant disputes, the violations were **not** systematic and **not**
9 uniform across all of Defendant's 532 employees. Alternatively, direct testimony would have been
10 required from as many of the 532 aggrieved employees as could be obtained, which would be, at best,
11 very difficult. Proof of this sort gives rise to a manageability argument.

12 The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*,
13 PAGA's purposes include (1) remediation of present labor law violations, (2) deterrence of future
14 violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major
15 portion of settlement funds to class members still advances the goal of labor law violation remediation.
16 Class members benefit from payments intended to offset the harm of alleged violations of wage and hour
17 requirements. The allocation of a major portion of settlement funds to class members also deters future
18 violations, since, from the perspective of an employer, where settlement funds go is less significant than
19 the fact that settlement funds are issuing at all. This is a \$1,400,000 settlement, not a trivial sum.
20 Deterrence is fulfilled by the proposed allocation.

21 In addition, there is no evidence that a court or a commissioner had informed Defendant that its
22 conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v.*
23 *Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013) ("Under California law, courts have
24 held that employers are not subject to heightened penalties for subsequent violations until and unless a
25 court or commissioner notified the employer that it is in violation of the Labor Code.") And in *Cotter*,
26 the court found a significant reduction of the PAGA claim would be appropriate because "[t]his does not
27 appear to be a case where a company has deliberately sought to evade the law." *Cotter*, 176 F. Supp. 3d
28 at 941. Here, Defendant can state a strong case that its efforts to devise compliant operational policies do

not indicate a deliberate effort to evade the law. This is a very significant risk factor.

Finally, the PAGA allocation is fair. The LWDA is receiving \$75,000.00. The Class is receiving, net, an estimated \$793,333.34 for the releases of seven other theories of recovery (inclusive of the \$25,000.00 as the aggrieved employees' share of the PAGA Allocation). While the proportion is tipped in favor of the Class Members, an allocation to the LWDA equal to about 10% of the Net Settlement Amount is not unfair and satisfies the policies underlying California's wage and hour laws.

VI. THE COURT SHOULD SCHEDULE A FINAL FAIRNESS HEARING

The last step in the settlement approval process is the fairness hearing, where the Court makes a final determination about the propriety of settlement. Plaintiff requests that the fairness hearing in this case be scheduled for about 120 days after issuance of the Order granting preliminary approval. Under the Settlement, Defendant will have 14 days to provide the mailing data to the Settlement Administrator, which will then have 14 days to mail out class notice. Class Members have 45 days after mailing of the notice to submit exclusions or objections. Plaintiff proposes that the final approval hearing be scheduled for the first available date that is 120 days or later after preliminary approval is granted.

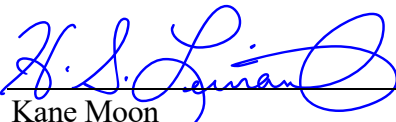
VII. CONCLUSION

For all the foregoing reasons, because the Class meets the requirements for certification, because the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the proposed notice procedure and forms comport with Rule 3.766 and due process, this Court should grant this Motion for Preliminary Approval, adopt the [Proposed] Order Granting Preliminary Approval of Class Action Settlement submitted herewith, and schedule a Final Fairness Hearing.

Respectfully submitted,

Dated: January 25, 2023

MOON & YANG, APC

By: 
Kane Moon
H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party
4 to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

5 On the date indicated below, I served the document described as: **PLAINTIFF'S NOTICE OF**
6 **MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE**
7 **ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties
8 in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as
9 stated on the attached service list:

10 Katherine C. Den Bleyker
11 Katherine.DenBleyker@lewisbrisbois.com
12 Tim Keegan
13 Tim.Keegan@lewisbrisbois.com
14 LEWIS BRISBOIS BISGAARD & SMITH LLP
15 633 West 5th Street, Suite 4000
16 Los Angeles, California 90071
17 Facsimile: 213.250.7900

18 *Counsel for Defendants* Vino Farms, Inc. and Vino Farms, LLC

19 ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in
20 the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's
21 practice of collection and processing correspondence for mailing. Under that practice, sealed
22 envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business
23 with postage thereon fully prepaid at Los Angeles, California.

24 ☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail
25 delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in
26 this action.

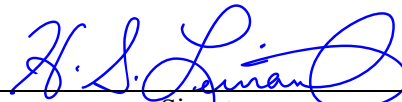
27 ☐ **BY ELECTRONIC SERVICE:** Pursuant to the Court's Order directing Electronic Service, the
28 above-named document(s) has (have) been electronically served on counsel of record by an approved
electronic service provider. The transmission of these documents was reported complete and a copy of
the service confirmation will be maintained, along with the original document(s) and proof of service
in our office.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the
offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and
processing correspondence for overnight delivery. Under that practice, overnight packages are
enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are
picked up by the carrier at our offices or delivered by our office to a designated collection site.

25 I declare under penalty of perjury under the laws of the State of California and the United States that the
26 foregoing is true and correct. Executed this **January 25, 2023** at Los Angeles, California.

27 H. Scott Leviant
28 Type or Print Name


Signature