

Kane Moon (SBN 249834)
kane.moon@moonyanglaw.com
H. Scott Leviant (SBN 200834)
scott.leviant@moonyanglaw.com
Mariam Ghazaryan (SBN 341119)
mariam.ghazaryan@moonyanglaw.com

MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff PEDRO IBARRA

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 FINAL APPROVAL OF
CLASS AND REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: June 27, 2023
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 June 27, 2023, at 9:00 a.m., or as soon thereafter as the matter
3 may be heard, in Department 10A of the above-captioned Court, located at 180 E Weber Ave., Stockton,
4 CA 95202, Plaintiff Pedro Ibarra ("Plaintiff") will and hereby does move this Court for an order:

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

7 2. Finally approving the JOINT STIPULATION OF CLASS AND PAGA ACTION
8 SETTLEMENT AND RELEASE ("Settlement" or "Agreement");

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

10 4. Appointing Pedro Ibarra as the Class Representative;

11 5. Approving ILYM Group, Inc. as the third-party administrator;

12 6. Ruling that Settlement Class Members who did not timely submit requests for
13 exclusion from the settlement as set forth in the Agreement have released their claims against
14 Defendant and the other releasees as set forth in the Agreement;

15 7. Ruling that Settlement Class Members who did not timely object to the settlement
16 pursuant to the terms set forth in the Agreement are barred from prosecuting or pursuing any
17 appeal of the Court's Order;

18 8. Awarding the sums requested in the Motion;

19 9. Entering a Final Judgment; and,

20 10. Without affecting the finality of the final judgment, reserving continuing
21 jurisdiction over the parties for the purposes of implementing, enforcing and/or administering
22 the settlement as set forth in the Agreement or enforcing the terms of the Final Judgment.

23 Good cause exists to grant this Motion because:

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

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

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

4. The notice procedures and related forms complied with California Rules of Court 3.766(d) and (e) and this Court's Order granting preliminary approval of the Settlement, and adequately apprised Class Members of their rights and fully comport with due process.

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

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

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

Dated: May 19, 2023

MOON & YANG, APC

By:

Kane Moon
H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	iii
I. INTRODUCTION.....	1
II. THE NOTICE PROCESS WAS SUCCESSFULLY COMPLETED.....	1
III. THE MAJOR TERMS OF SETTLEMENT	2
IV. FACTUAL AND PROCEDURAL BACKGROUND	5
A. Plaintiff’s Claims	5
B. Pre-Mediation Data Production and Analysis.....	5
C. Settlement.....	6
V. CLASS DEFINITION.....	6
VI. DISCUSSION.....	7
A. Consistent with the Court’s Findings at the Time of Preliminary Approval, the Court Should Certify the Class for Settlement Purposes.....	7
B. The Court Should Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Wage Claims in View of Defendants’ Potential Liability Exposure and the Risks of Continued Litigation	7
1. Class Action Settlements Are Subject to Review and Approval.	8
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.	8
3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise of Class Members’ Claims Based on Defendant’s Estimated Liability Exposure Given the Risks Continued Litigation Would Entail.	9
4. The Proposed Method for Allocating Settlement Funds Is Fair, Adequate, and Reasonable.	12

1	5.	The Proposed Enhancement Payment to Plaintiff Is Fair, Adequate, and	
2		Reasonable and Warrants Approval.....	13
3	6.	The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate,	
4		and Reasonable and Merits Approval.	13
5	a)	Plaintiff’s Counsel Should be Awarded Fees Based on a Percentage of the	
6		Fund Recovered, Consistent with the Common Fund Method.....	13
7	b)	A Lodestar Cross Check Confirms that Class Counsel’s Requested	
8		Attorneys’ Fees Are Reasonable.....	14
9	c)	Class Counsel’s Costs Are Reasonable.....	16
10	7.	The Proposed Payment to the Administrator Is Fair and Reasonable.....	16
11	8.	The PAGA Allocation is Reasonable.....	16
12	VII.	CONCLUSION.....	18

TABLE OF AUTHORITIES

CALIFORNIA DECISIONAL AUTHORITY

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000)	8
<i>Amaral v. Cintas Corp.</i> , 163 Cal. App. 4th 1157 (2008)	17
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008).....	14
<i>City and County of San Francisco v. Sweet</i> , 12 Cal. 4th 105 (1995).....	14
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009)	13
<i>Dunk v. Ford Motor Co.</i> 48 Cal. App. 4th 1794 (1996).....	7, 8, 14, 15
<i>Duran v. US Bank Nat’l Ass’n</i> , 59 Cal. 4th 1 (2014)	9
<i>In re Consumer Privacy Cases</i> , 175 Cal. App. 4th 545 (2009)	14
<i>Jaimez v. Daiohs USA, Inc.</i> 181 Cal. App. 4th 1286 (2010).....	7
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008)	8
<i>Laffitte v. Robert Half Intern. Inc.</i> , 1 Cal. 5th 480 (2016).....	14
<i>Linderv. Thrifty Oil Co.</i> , 23 Cal. 4th 429 (2000)	7
<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> , 103 Cal. App. 3d 573 (1980).....	7
<i>Mallick v. Superior Court</i> , 89 Cal. App. 3d 434 (1979).....	8
<i>MBNA American Bank, N.A. v. Gorman</i> , 147 Cal. App. 4th 1 (2006)	15
<i>Moniz v. Adecco USA, Inc.</i> , 72 Cal. App. 5th 56 (2021).....	16, 17
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> , 186 Cal. App. 4th 399 (2010).....	8
<i>Nightengale v. Hyundai Motors America</i> , 31 Cal. App. 4th 99 (1994).....	15
<i>PLCM Group, Inc. v. Drexler</i> , 22 Cal. 4th 1084 (2000)	15
<i>Ramos v. Countrywide Home Loans, Inc.</i> , 82 Cal. App. 4th 615 (2000)	14, 15
<i>Sav-on Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319 (2004).....	7
<i>Serrano v. Priest</i> , 20 Cal. 3d 25 (1977)	14, 15
<i>Stambaugh v. Superior Court</i> , 62 Cal. App. 3d 231 (1976).....	7
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	9, 15

FEDERAL DECISIONAL AUTHORITY

<i>Dilts v. Penske Logistics, LLC</i> 2014 WL 205039 (S.D. Cal. 2014).....	9
<i>Ferrell v. Buckingham Property Mgmt.</i> (E.D. Cal. Jan. 21, 2020)	
Case No. 1:19-cv-00332-LJO-SAB, 2020 WL 291042	12
<i>Jordan v. Multnomah County</i> , 815 F.2d 1258 (9th Cir. 1987).....	15
<i>Miller v. CEVA Logistics U.S.A., Inc.</i> , 2015 WL 729638 (E.D. Cal. Feb. 19, 2015).....	12
<i>Moreno v. City of Sacramento</i> , 534 F.3d 1106 (9th Cir. 2008)	15
<i>O'Connor v. Uber Technologies, Inc.</i> , 201 F.Supp.3d 1110 (N.D. Cal. 2016).....	16
<i>Officers for Justice v. Civil Serv. Comm'n of San Francisco</i> , 688 F.2d 615 (9th Cir. 1982)	8
<i>Parkinson v. Hyundai Motor America</i> , 796 F.Supp.2d 1160 (C.D. Cal. 2010)	15
<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948 (9th Cir. 2000).....	12
<i>Thomas v. Cognizant Tech. Sols. U.S. Corp.</i> (C.D. Cal. June 24, 2013)	
No. SACV111123JSTANX, 2013 WL 12371622.....	12
<i>Willis v. Xerox Bus. Servs., LLC</i> , 2013 WL 6053831 (E.D. Cal. 2013)	17

STATUTES

Code of Civil Procedure § 382.....	7, 18
Labor Code § 2699	10

RULES

Rules of Court, Rule 3.769	7, 8
----------------------------------	------

OTHER AUTHORITIES

<i>Findings of the Study of California Class Action Litigation</i> , 2000-2006	12
--	----

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 finally 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”).

Plaintiff and Defendants (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 **537** members. Plaintiff believes that this settlement is a fair, adequate, and reasonable compromise of the disputed claims for alleged unpaid wage and hour violations and penalties asserted in this case. The notice process was completed in compliance with the Court’s Orders and due process requirements. Plaintiff now submits this Motion for Final Approval of Class Action Settlement, along with the Settlement (attached to the Declaration of H. Scott Leviant [“Leviant Decl.”], Exhibit 1 thereto). For the Court’s convenience, below is a summary of the key Settlement provisions.

II. THE NOTICE PROCESS WAS SUCCESSFULLY COMPLETED

Plaintiff and Defendant have fulfilled the class notice procedures set forth in the Settlement. The Settlement Administrator, ILYM Group, Inc. (“ILYM”), sent individual Notices to 537 Class Members on March 22, 2023 (Declaration of Makenna Snow[“Snow Decl.”], ¶¶ 3-7.) Of the Notices to Class Members that were mailed, 55 were returned after mailing. (Snow Decl., ¶ 8.) Using skip tracing, 33 updated addresses were located. (*Ibid.*) After re-mailing, 21 notice packets are considered undeliverable. (Snow Decl., ¶ 10.) No individual requested to be excluded from the Settlement. (Snow Decl., ¶ 11.) No Class Members objected in writing by the written objection deadline. (Snow Decl., ¶ 12.)

PAYMENTS: For 537 Class Members, the estimated average **net** payment per Class Member is **\$1,523.15**. (Snow Decl., ¶ 14.) The highest net payment is estimated to be at least **\$2,993.08**. (*Ibid.*) The Net Settlement Amount (excluding PAGA) will be at least **\$817,933.34**. (Snow Decl., ¶ 13.)

III. 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 average **gross** payment per Class Member of approximately **\$2,607.07** (Settlement, ¶ 7(2));
- Class Size: **537** individuals as of the date of mediation worked **73,511** workweeks. (Settlement, ¶ 26(d));
- PAGA Group Size: **537** individuals as of the date of mediation, who worked **73,511** pay periods (Makenna Decl., ¶¶ 13-14);
- 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”). The escalator is not triggered in this case (Settlement, ¶ 48.)
- Kullar/Munoz Analysis: Plaintiff addresses the claims analysis herein, at Part VI.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 VI.A. Certification was addressed in greater detail in the Motion for Preliminary Approval.

- 1 • No Claim Form: No claim form is required (Settlement, ¶ 55);
- 2 • Class Release: The Settlement will release specified wage-and-hour claims for Class
- 3 Members (those Class Members who do not opt out of the Settlement) as defined by the
- 4 Third Amended Complaint (Settlement, ¶ 16(2));
- 5 • PAGA Release: The Class Members will release the PAGA Claims set forth in this Action,
- 6 that were identified in the Operative Complaint, regardless of whether they opt out of the
- 7 class portion of the Settlement (Settlement, ¶ 16(2));
- 8 • Net Settlement Amount Available to the Class: After deducting Class Counsel's attorneys'
- 9 fees and costs, service payment to Plaintiff, administration costs, and the payment to the
- 10 LWDA, the remainder will be available for distribution to Class Members who do not opt
- 11 out, with each Class Member receiving a share based on the number of workweeks each
- 12 Class Member worked for a Defendant within the Class Period. The Net Settlement
- 13 Amount is estimated to be at least **\$797,709.96**, resulting in an average **net** payment per
- 14 Class Member of at least **\$1,485.49**, before any tax withholdings (excluding the PAGA
- 15 payments). (Settlement, ¶ 9(2));
- 16 • Tax Allocation: The amounts distributed to Class Members will be characterized as 33.33%
- 17 alleged unpaid wages, 66.67% to penalties and interest. (Settlement, ¶ 68);
- 18 • Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes
- 19 (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that
- 20 constitute wages will be paid separate and apart from the MSA (Settlement, ¶ 7(2));
- 21 • Settlement Administrator: The notice portion of the Settlement will be administered by a
- 22 third-party Administrator, ILYM Group, Inc., and the Parties estimated that the costs of
- 23 administration should not reasonably exceed \$20,000.00. ILYM Group, Inc.'s low bid for
- 24 settlement administration services in the amount of **\$12,900.00** was selected as the lowest
- 25 bid from a competitive bidding process. (Settlement, ¶ 21);
- 26 • Class Data for Administration: The Settlement Administrator will receive the Class List
- 27 within 14 calendar days of Preliminary Approval, use the NCOA database to update the
- 28 Class List, and then use skip tracing on returned Notices (Settlement, ¶ 54);

- 1 • Notice: The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶ 55).
2 The Notice describes how to dispute workweeks, submit an objection in writing, in person,
3 or through an attorney, or request exclusion;
- 4 • Notice Language: Notice will issue in English and Spanish (Settlement, ¶ 55);
- 5 • Objections: Objections can be submitted in person, through an attorney, or in writing to the
6 Settlement Administrator, with no pre-requisite to being heard (Settlement, ¶ 64);
- 7 • Exclusion Requests: The procedure for exclusion requests is the same as the procedure for
8 submitting a written objection (Settlement, ¶¶ 61 and 64);
- 9 • PAGA Allocation: From the MSA, **\$100,000.00** will be allocated to settle claims brought
10 pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.*
11 (“PAGA”), and seventy-five percent (75%), or **\$75,000.00**, will be paid to the California
12 Labor & Workforce Development Agency. (Settlement, ¶ 46.);
- 13 • Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is
14 attached to the Leviant Declaration;
- 15 • Enhancement/Service Awards to Plaintiff: Defendant will not oppose the application for a
16 Service Payment of up to **\$7,500.00** for Plaintiff (Settlement, ¶ 30);
- 17 • Fees and Costs: Defendant will not oppose Class Counsel’s application for fees not to
18 exceed 33 1/3% of the MSA (**\$466,666.66**), and actual costs of **\$15,223.37**, which is below
19 the capped amount of **\$20,000**, to be paid out of the MSA (Settlement, ¶ 29);
- 20 • Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 34);
- 21 • Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain
22 uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be
23 directed to the California State Bar’s Justice Gap Fund (Settlement, ¶¶ 60);
- 24 • Judgment Notice: Judgment will be posted on the Settlement Administrator’s website after
25 entry (Settlement, ¶ 76);
- 26 • Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement
27 with Class Members (Settlement ¶ 80).

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

1 IV. **FACTUAL AND PROCEDURAL BACKGROUND**

2 A. **Plaintiff's Claims**

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

14 Plaintiff satisfied the administrative exhaustion prerequisite to filing a claim for Civil Penalties
15 under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”).
16 Plaintiff filed a First Amended Complaint adding a cause of action under PAGA. (Leviant Decl., ¶ 5.)

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

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

26 After reviewing documents regarding Defendant’s wage and hour policies and practices and
27 other information obtained during the informal exchange of discovery, Class Counsel were able to
28 evaluate the probability of class certification, success on the merits, and the reasonably obtainable

1 maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a
2 damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the
3 claims and defenses asserted in the litigation. (Leviant Decl., at ¶ 7.)

4 **C. Settlement**

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

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

14 Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth
15 in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class.
16 (Leviant Decl., ¶ 10.) Solely for the purpose of settling this case, the parties agree that the requirements
17 for establishing class action certification with respect to this class are satisfied. (*Id.*) If this Settlement is
18 not approved by the Court for any reason, Defendant reserves its rights to contest class certification. (*Id.*)
19 This Settlement, if approved by the Court, will result in the termination with prejudice of the litigation
20 through the entry of the Judgment and the release of all Released Claims for all Class Members,
21 including all within the class definition who have not elected to exclude themselves from the Class. (*Id.*)

22 **V. CLASS DEFINITION**

23 The Class is defined as follows:

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

27 (Leviant Decl., ¶ 34 and Exhibit 1.)
28

1 **VI. DISCUSSION**

2 **A. Consistent with the Court's Findings at the Time of Preliminary Approval, the**
3 **Court Should Certify the Class for Settlement Purposes**

4 Under Code of Civil Procedure § 382, class certification is warranted so long as there is a
5 numerous and ascertainable class with a well-defined community of interest and that a “class action
6 proceeding is superior to other means for a fair and efficient adjudication of the litigation.” *See, e.g., Sav-*
7 *on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). For purposes of this Settlement
8 *only*, Defendant stipulated to conditional certification of the proposed class. (Settlement ¶ 19.)

9 “The certification question is ‘essentially a procedural one that does not ask whether an action is
10 legally or factually meritorious.’” *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440
11 (2000). The certification question asks whether the theory of recovery advanced by the plaintiff is likely
12 to prove amenable to class treatment. *See, e.g., Jaimez v. Daihatsu USA, Inc.*, 181 Cal. App. 4th 1286,
13 1298 (2010). As the court noted in *Dunk*, although certification requirements are intended “to protect the
14 interests of the non-representative class members,” that concern is “protected by the trial court’s fairness
15 review of the settlement.” *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). In view
16 of these standards, *as discussed more thoroughly as part of the preliminary approval motion*, the
17 Settlement Class should be certified for settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

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

21 California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231,
22 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists
23 to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v.*
24 *Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary
25 settlement approval, notice being given to class members, and a final fairness and approval hearing being
26 held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed
27 below, this Court should finally approve the Settlement and enter Judgment.

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

2 A settlement of class litigation must be reviewed and approved by the court. Rules of Court,
3 Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review and (2) a subsequent
4 (final) review after notice. The present motion seeks *final approval* and entry of a Judgment. To evaluate
5 a settlement, a court must receive “basic information about the nature and magnitude of the claims in
6 question and the basis for concluding that the consideration being paid for the release of those claims
7 represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 133
8 (2008). But the record need *not* contain an explicit statement of the maximum theoretical recovery.
9 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010).

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

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

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

23 [T]he complexity and likely duration of further litigation, the risk of maintaining class
24 action status through trial, the amount offered in settlement, the extent of discovery
25 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.

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

28 Here, the Settlement resulted from thorough, arms’ length negotiations between experienced

counsel with the assistance of a highly-regarded mediator. (Leviant Decl., ¶¶ 8-10.) With respect to the claims at issue in this case, Plaintiff obtained data from Defendants (through informal discovery) and then carefully reviewed that information. Counsel for Plaintiff also examined relevant policies and interviewed witnesses in detail about their work experiences and Defendant's practices. Based on the totality of that review, Plaintiff estimated the potential exposure and then estimated risk factors to adjust the reasonable expected outcome. The investigation that Plaintiff's counsel conducted was sufficient to provide enough information to intelligently evaluate the estimated exposure in this action for purposes of negotiating the Settlement and was also sufficient to allow this Court to do the same. *See, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001). Finally, the number of objections is currently zero, as of the time of filing this motion. Thus, the Settlement is presumed fair.

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

The proposed Settlement of \$1.40 million offers substantial, timely, and guaranteed to Class Members. A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial and does not have to provide 100% of damages sought to be fair and reasonable. "In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba*, 91 Cal. App. 4th at 250.

Here, there are serious risks that support the reduced compromise amount. These risks include, but are not limited to: (i) the risk that Plaintiff would be unable to establish liability for unpaid straight time or overtime wages, *see Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & n. 33 (2014) ("*Duran*"), *citing Dilts v. Penske Logistics, LLC* 2014 WL 205039 (S.D. Cal. 2014) (dismissing certified off-the-clock claims based on proof at trial); (ii) the risk that Defendant's meal and rest period policies might not ultimately support class certification or a class-wide liability finding, *see Duran*, 59 Cal. 4th at 14, n. 28 (citing Court of Appeal decisions favorable on class certification issue without expressing opinion as to ultimate viability of proposition); (iii) the risk that uncertainties pertaining to the ultimate legality of Defendant's policies and practices could preclude class-wide awards of statutory penalties under Labor

Code §§ 203 and 226(e); (iv) the risk that individual differences between Class Members could be construed as pertaining to liability and not solely to damages, *see Duran*, 59 Cal. 4th at 19; (v) the risk that any civil penalties award under the PAGA could be reduced by the Court in its discretion, *see Labor Code § 2699(e)(1)*; (vi) the risk that class treatment could be deemed improper as to one or more claims, except for settlement purposes; (vii) the risk that a Court could have limited the Class in terms of scope (i.e., limiting the Class to a narrower range of job categories or titles, which would have significantly decreased the number of Class Members); (viii) the risk that lengthy appellate litigation could ensue; and, (ix) the risk that violation rate estimates would prove much lower than expected. (Leviant Decl., ¶ 16.) These risks are non-exhaustive.

In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the 537 members of the Class, the average **gross** recovery is approximately **\$2,607.07** per class member, and the estimated average **net** recovery for each Class Member is approximately **\$1,485.49**. (*Id.*) Given that Defendant could challenge certification and liability, this is a significant sum to have achieved in settlement. Moreover, a Class Member who worked a greater number of weeks for Defendant will receive a larger share of the Settlement than a Class Member who worked for a shorter amount of time during the class period. (*Id.*)

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

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

- 3 • The reasonably estimated exposure for alleged unpaid off-the-clock work (arriving early to
4 complete additional work) over the class period was estimated to be **\$736,493.50**, but with
5 chances of certification and proof of liability (60% and 30% respectively) for a risk-adjusted
6 exposure of **\$132,552.63**.
- 7 • The reasonably estimated exposure for alleged rest break violations over the class period was
8 calculated at **\$310,702.60** (*generously* assuming 100% of the class experienced a rest break
9 issue 20% of the time) but with low chances of certification and proof of liability (30% and
10 20% respectively) for a risk-adjusted exposure of **\$18,642.16**.
- 11 • The reasonably estimated exposure for alleged meal break violations over the class period
12 was calculated at **\$275,615.60** (facial violations, excluding violations that could be eliminate
13 with meal break waivers or employee choice issues), with chances of certification and
14 liability risks (40% and 35% respectively) resulting in a risk-adjusted exposure of
15 **\$38,586.18**.
- 16 • Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were
17 estimated to be approximately **\$115,465.50** and **\$82,083.51**, respectively, on maximum
18 exposures of **\$641,475.00** and **\$456,019.50**, respectively. The certification and liability risk
19 factors are contingent upon the underlying unpaid wage claims and are assumed to be the
20 same as those (60% and 30%) for that reason.
- 21 • Performing risk-adjusted valuations for all claims yields a total value in the range of
22 **\$406,146.98**, excluding PAGA. (*Id.*)
- 23 • PAGA penalties were calculated as having a maximum realistic exposure of **\$6,336,300.00**,
24 but a risk adjusted value of **\$1,267,260.00**, after factoring in risks of reduction in penalties
25 pursuant to Court discretion and the high risk of the inability to prove violations for all
26 aggrieved employees.

27 (*See*, Leviant Decl., ¶ 18.)

28 The \$1,400,000 settlement here is fully supportable. First, it is important to recognize the
wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Leviant Decl., ¶
19.) Second, rest break and meal period claims have been challenging to certify, even after *Brinker*.
(Leviant Decl., ¶ 19.) Third, the certification rates in California are lower than conventional wisdom
holds. *See*, H. Scott Leviant, *Second Interim Report on class actions in California sheds new light on*
certification (February 19, 2010), www.thecomplexlitigator.com, available at
[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)
[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*,
available at <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page
5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a

1 settlement *or* as part of a contested certification motion).

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

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

17 The proposed method of allocating the Settlement to Class Members also is fair. As noted, the
18 Parties agreed to allocate the Settlement based on time worked by the Class Member during the Class
19 Period, in relation to the total amount of time worked by all participating Class Members collectively.
20 This proposed method is fair and reasonable because each Class Member's actual potential damages vary

21
22
23 ¹ 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 ² 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 based on the number of workweeks he or she actually worked. A Class Member who worked a greater
2 number of weeks for Defendant will receive a larger payment under the Settlement than a Class Member
3 who worked for a shorter amount of time during the relevant period. (Leviant Decl., ¶¶ 11, 17.)

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

6 The proposed general release and enhancement payment of \$7,500 to Plaintiff is intended to
7 recognize the value of a general release of all claims and the substantial initiative and significant efforts
8 by Plaintiff on behalf of the Class. Courts routinely approve incentive awards to compensate named
9 plaintiffs for the services they provide and the risks they incur, often in much higher amounts than that
10 sought here. Factors considered when awarding an incentive include the actions the plaintiff has taken to
11 protect the class, the degree to which the class has benefitted, the amount of time and effort the plaintiff
12 expended in the litigation, the risk to the class representative in commencing suit (financial and
13 otherwise), the notoriety and personal difficulties encountered, the duration of the litigation, and the
14 personal benefit (or lack thereof) enjoyed by the plaintiff as a result of the litigation. *Clark v. Am.*
15 *Residential Servs. LLC*, 175 Cal. App. 4th 785, 804 (2009). Here, Plaintiff contributed time to the
16 prosecution of this matter, including assistance prior to the mediation with information and substantial
17 time conferring with counsel over the course of this litigation and before it was filed. (Ibarra Decl., ¶¶ 5-
18 17; Leviant Decl., ¶ 33.) The enhancement also recognizes risks Plaintiff took for the Class to be
19 personally liable for costs incurred regardless of the success of the litigation, as well as the personal risk
20 of facing intrusive discovery and potential disclosure to future employers that Plaintiff sued an employer,
21 making future employment less uncertain. The accompanying Declaration confirms Plaintiff's efforts.

22 **6. The Proposed Award of Attorneys' Fees and Costs Is Also Fair, Adequate,**
23 **and Reasonable and Merits Approval.**

24 *a) Plaintiff's Counsel Should be Awarded Fees Based on a Percentage of*
25 *the Fund Recovered, Consistent with the Common Fund Method*

26 The request for attorneys' fees as a percentage of the settlement fund is supported by the
27 "common fund theory," where "one who expends attorneys' fees in winning a suit which creates a fund
28 from which others derive benefits, may require those passive beneficiaries to bear a fair share of the

litigation costs.” *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977). The common fund doctrine has been applied “consistently in California when an action brought by one party creates a fund in which other persons are entitled to share.” *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995). The lodestar may be cross-checked against the percentage-of-recovery. *See In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-58 (2009).

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

“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 47 n. 11 (2008). This is also consistent with Plaintiffs’ counsels’ experience in these types of cases. Here, Plaintiff’s attorneys request attorneys’ fees of **\$466,666.66** (33 1/3% of the adjusted GSA), and costs of **\$15,223.37**, which includes payment for mediation, filing fees, and other expenses, including the upcoming costs. (Leviant Decl., ¶ 32.) Given the efforts and risks, and the results, these amounts warrant *final approval*.

b) *A Lodestar Cross Check Confirms that Class Counsel’s Requested Attorneys’ Fees Are Reasonable*

Plaintiff’s fee application is also reasonable based on Class Counsel’s lodestar. Under the lodestar method, the court considers a compilation of the time spent and a reasonable hourly compensation of each attorney to evaluate the reasonableness of the fee. *Ramos v. Countrywide Home Loans, Inc.*, 82 Cal. App. 4th 615, 622 (2000). The moving party meets its by submitting “declarations evidencing the reasonable hourly rate for their services and establishing the number of hours spent working on the case” as “California case law permits fee awards in the absence of detailed time sheets.”

³ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing doubt about the use of the percentage method: “The *Dunk* court, while finding the percentage method 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 *Wershba*, 91 Cal. App. 4th at 254-55; *Dunk*, 48 Cal. App. 4th at 1810; *Nightengale v. Hyundai Motors*
2 *America*, 31 Cal. App. 4th 99, 103 (1994). The hours spent and the reasonable hourly compensation are
3 used to arrive at a “lodestar” figure which may then be augmented or diminished taking into account
4 various “multiplier” factors. *See Ramos*, 82 Cal. App. 4th at 622 (*citing Serrano*, 20 Cal. 3d at 48-49).

5 Here, Class Counsel’s billed lodestar, just for Moon & Yang, exceeds \$148,241.50, billed at the
6 attorneys’ customary hourly rates (and omitting about 10 hours of time that were not billed by Mr.
7 Leviant). (Leviant Decl., ¶ 32.) The actual lodestar is estimated to exceed \$145,747.00. (Leviant Decl.,
8 ¶ 32.) The request for **\$466,666.66** in attorneys’ fees, which is **3.38** times the final *billed* lodestar and
9 **3.20** times the *estimated* final lodestar for Moon & Yang is reasonable under the lodestar method.

10 (1) Class Counsel’s Hours Are Reasonable

11 In determining whether the number of hours was reasonable, the court must determine that “the
12 time spent was reasonably necessary and that [] counsel made ‘a good faith effort to exclude from the fee
13 request hours that are excessive, redundant, or otherwise unnecessary.’” *Jordan v. Multnomah County*,
14 815 F.2d 1258, 1263 n.8 (9th Cir. 1987). The court should defer to the lawyer’s judgment as to how
15 much time he was required to spend on the case. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112
16 (9th Cir. 2008) (“[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope
17 of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee.”).
18 Here, Counsel expended a prudent amount of time to achieve the excellent result. (Leviant Decl. ¶ 32.)

19 (2) Class Counsel’s Hourly Rates Are Reasonable

20 The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group,*
21 *Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). “[I]n assessing a reasonable hourly rate, the trial court is
22 allowed to consider the attorneys’ skill as reflected in the quality of work, as well as the attorneys’
23 reputation and status.” *MBNA American Bank, N.A. v. Gorman*, 147 Cal. App. 4th 1, 3 (2006). The trial
24 court may also “find hourly rates reasonable based on evidence of other courts approving similar rates.”
25 *Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010).

26 Class Counsel are experienced litigators who specialize in employment law, with a substantial
27 wage and hour class action practice. (Leviant Decl. ¶¶ 21-27.) A number of courts, including this Court,
28 have approved Class Counsel’s hourly rates. (Leviant Decl. ¶ 27.) Given the skill and experience of

Class Counsel, and the excellent result achieved, Class Counsel's hourly rates are reasonable.

c) Class Counsel's Costs Are Reasonable

The Settlement Agreement provides for reimbursement of costs not to exceed \$20,000.00. Moon & Yang, APC seeks costs in the amount of \$15,223.37. (Leviant Decl., ¶ 32 and Exh. 2.) These costs were reasonably incurred in prosecuting the Action on behalf of the Class Members and should be approved by the Court. Accordingly, Class Counsel respectfully requests the Court approve total costs in the amount of **\$15,223.37**. (Leviant Decl., ¶ 32 and Exh. 2.)

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

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

8. The PAGA Allocation is Reasonable

The ultimate decision as to the amount of penalties is always up to the discretion of the Court. Labor Code § 2699(e)(2) states: "In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in federal court decisions addressing that question. In their view, a PAGA allocation, even if a small portion of the total settlement, could be reasonable if the settlement of the underlying wage and hour claims is robust and serves the deterrent purpose of the PAGA statute. *O'Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) ("By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA."). *Moniz* then provided explicit confirmation that this was an appropriate yardstick by which to measure reasonableness of a PAGA settlement. *Moniz*, 72 Cal. App.

1 5th at 77. *Moniz*, in agreeing with the federal courts that have considered how to evaluate a PAGA
2 settlement, concluded that the class action factors are appropriately considered, along with a
3 consideration of whether the settlement furthers “PAGA’s purposes to remediate present labor law
4 violations, deter future ones, and to maximize enforcement of state labor laws.”

5 As to the first set of elements (the class-type analysis), it is embodied in Plaintiff’s discussion of
6 the adequacy of the settlement generally. Here, the expense, complexity and likely duration of future
7 litigation was to some extent an unknown, but the nature of the work performed by Class Members
8 suggested difficulties going forward. However, what is certain is that to adequately establish the
9 violations that would support a substantial penalty, tremendous time and expense would be invested.

10 The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*,
11 PAGA’s purposes include (1) remediation of present labor law violations, (2) deterrence of future
12 violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major
13 portion of settlement funds to class members still advances the goal of labor law violation remediation.
14 The allocation of a major portion of settlement funds to class members also deters future violations. This
15 is a \$1,400,000 settlement, not a trivial sum. Deterrence is fulfilled. Finally, allocation of a major portion
16 of settlement funds to class members still advances the goal of enforcement of state labor law. This
17 settlement is, by definition, a response to alleged violations of state labor laws, balanced against risks.

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

27 Finally, the PAGA allocation is fair. The LWDA is receiving \$75,000.00. The Class is
28 receiving, net, an estimated \$793,333.34 for the releases of seven other theories of recovery (inclusive of

1 the \$25,000.00 as the aggrieved employees' share of the PAGA Allocation). While the proportion is
2 tipped in favor of the Class Members, an allocation to the LWDA equal to about 10% of the Net
3 Settlement Amount is not unfair and satisfies the policies underlying California's wage and hour laws.

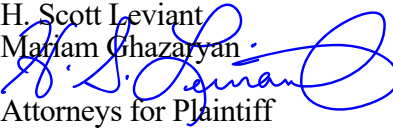
4 **VII. CONCLUSION**

5 For all the foregoing reasons, because the Class meets the requirements for certification, because
6 the Settlement bears all requisite indicia of fairness, and because the notice procedure complied with
7 Rule 3.766 and due process, this Court should grant this Motion for Final Approval.

8 Respectfully submitted,

9 Dated: May 19, 2023

MOON & YANG, APC

10 By: _____
11 Kane Moon
12 H. Scott Leviant
13 Mariam Ghazaryan
14 
15 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 FINAL APPROVAL OF CLASS AND REPRESENTATIVE ACTION**
7 **SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this
8 action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated
9 on the attached service list:

10 Katherine C. Den Bleyker
11 Katherine.DenBleyker@lewisbrisbois.com
12 Tim Keegan
13 Tim.Keegan@lewisbrisbois.com
14 Barber Ranen, LLP
15 550 South Hope Street, Suite 2400
16 Los Angeles, CA 90071
17 Tel: (385) 517-3001

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 **May 19, 2023** at Los Angeles, California.

27 H. Scott Leviant
28 Type or Print Name


Signature