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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

NOEL MEDINA, individually, and on behalf of
other members of the general public similarly
situated, an on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act; RICARDO LARA,
individually and on behalf of other members of
the general public similarly situated,

Plaintiffs,

vs.

NATUREWARE, INC., a California
corporation; EUNAH SHIN, an individual; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 30-2021-01215641-CU-OE-CXC
[Related to Case Nos. 30-2021-01211681-CU-
OE-CXC; 30-2021-01217386-CU-OE-CXC]_

*Assigned for all purposes to the Honorable Lon
Hurwitz, Dept. CX103*

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

Date: September 29, 2023
Time: 1:30 p.m.
Dept.: CX103

Complaint Filed: August 9, 2021
FAC Filed: June 14, 2022
Trial Date: Not Set

**TO THE HONORABLE COURT, AND TO ALL PARTIES AND THEIR
ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on September 29, 2023, at 1:30 p.m. or as soon thereafter as may be heard in Department CX103 of the above-entitled court, located at located at 751 West Santa Ana Boulevard, Santa Ana, California 92701, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, Plaintiffs Noel Medina and Ricardo Lara (“Plaintiffs”) will, and hereby do, move the Court for entry of an order granting preliminary approval of the proposed Joint Stipulation of Class Action and PAGA Settlement entered between Plaintiffs and Defendants Natureware, Inc. and Eunah Shin (“Defendants”). Specifically, Plaintiffs request that the Court enter an order:

1. Granting preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement attached as Exhibit 1 to the Declaration of S. Emi Minne in Support of Motion for Preliminary Approval (“Agreement” or “Settlement”);

2. Approving the proposed Notice of Proposed Class Action and PAGA Settlement (“Class Notice”) attached as Exhibit A to the Agreement, the proposed Objection Form attached as Exhibit B to the Agreement, the proposed Request for Exclusion Form attached as Exhibit C to the Agreement, the proposed PAGA Notice attached as Exhibit D to the Agreement, and the proposed deadlines for the Settlement administration process;

3. Approving the opt-out and objection procedures set forth in the Agreement and Class Notice;

4. Provisionally certifying the proposed Class for Settlement purposes;

5. Appointing Plaintiffs as the Class Representatives for the Class for Settlement purposes;

6. Appointing S. Emi Minne and Jill J. Parker of Parker & Minne, LLP and Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and Yasmin Hosseini of Lawyers for Justice, PC as Class Counsel for Settlement purposes;

7. Appointing Phoenix Class Action Administration Solutions as the Settlement Administrator;

8. Directing Defendants to furnish a list containing the following information for all Class Members and PAGA Members to the Administration no later than 14 days after the Court grants preliminary approval of the Settlement: full name, last known mailing address, social security number, start and end dates of active employment as a non-exempt employee of Defendant Natureware, Inc. in the State of California, number of workweeks during the Class Period, and number of workweeks during the PAGA Period, and any other information the Administrator may reasonably require to administer the Settlement;

9. Scheduling a Final Approval hearing.

Good cause exists for the granting of this motion as the proposed Settlement is fair, adequate, and reasonable. Additionally, the proposed notice process complies with California Rules of Court, Rules 3.766 and 3.769, and mailing the proposed Class Notice to the Class Members' last known addresses is an appropriate form of giving notice.

Pursuant to California Labor Code § 2699(1)(2), a copy of the proposed Settlement, as well as information regarding the preliminary approval hearing on this matter, were submitted to the California Labor Workforce Development Agency via online filing at <https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html> on August 28, 2023. *See* Minne Decl. ¶ 74, Exh. 7.

The motion is based upon this notice, the attached memorandum of points and authorities; the Declaration of S. Emi Minne and exhibits thereto; the Declaration of Yasmin Hosseini; the Declaration of Noel Medina; the Declaration of Ricardo Lara; the Declaration of Roy Shin; the Declaration of Jodey Lawrence on behalf of Phoenix Class Action Administration Solutions; the pleadings and other records on file with the Court in this matter; and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: August 28, 2023

PARKER & MINNE, LLP

By:

S. Emi Minne

Attorneys for Plaintiffs

NOEL MEDINA and RICARDO LARA

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MEMORANDUM OF POINT AND AUTHORITIES

I. INTRODUCTION

This is a putative class and representative wage and hour action brought by Plaintiffs Noel Medina and Ricardo Lara (“Plaintiffs”) against Defendants Natureware, Inc. (“Natureware”) and Eunah Shin¹ (collectively, “Defendants”) on behalf of Natureware’s current and former non-exempt employees. By way of this Motion, Plaintiffs seek preliminary approval of a non-reversionary Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Agreement”)², which will resolve the Action in its entirety. The key terms of the Agreement are as follows:

- Size of the Class: approximately 399 individuals.
- Gross Settlement Amount: \$750,000.00, exclusive of employer payroll taxes.
- Settlement Administration Costs: \$10,950.00.
- Requested Class Representative Enhancement Payments: \$5,000.00 to each Plaintiff.
- Requested Attorney’s Fees and Costs: \$262,500.00, plus costs not to exceed \$40,000.00.
- PAGA Penalties: \$75,000.00, 75% of which will be paid to the LWDA, with the remaining 25% paid to PAGA Members.
- Estimated Class Member Settlement Fund: \$351,550.00.
- Average Estimated Individual Class Payment: \$881.08.
- Average Estimated Individual PAGA Payment: \$88.44.

As set forth herein, the Agreement is the product of informed discovery, arms-length negotiations by experienced counsel, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiffs therefore respectfully request that the Court enter an order granting preliminary approval of the proposed Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

Natureware is a distributor of vitamins and health care supplements headquartered in Cypress, California. (Minne Decl., ¶ 3.) Plaintiff Noel Medina (“Plaintiff Medina”) is a former non-exempt

¹Defendant Eunah Shin, the owner of Natureware at the time this lawsuit was initiated, passed away in late January of 2022. (Declaration of S. Emi Minne, ¶ 3.)

² The Joint Stipulation of Class Action and PAGA Settlement is attached as Exhibit 1 to the Declaration of S. Emi Minne (“Minne Decl.”)

employee of Natureware who worked as a packer and order maker from approximately November 2018 to March 2020. (*Id.*, ¶ 4.; Declaration of Noel Medina [“Medina Decl.”], ¶ 3.) Plaintiff Ricardo Lara (“Plaintiff Lara”) is a former non-exempt employee of Natureware who worked as packer from approximately January 2019 to July 2019. (*Id.*, ¶ 5; Declaration of Ricard Lara [“Lara Decl.”], ¶ 3.)

On July 13, 2023, Plaintiff Medina provided written notice to Defendants and the California Labor & Workforce Development Agency (“LWDA”) of his intent to seek civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004, Cal. Labor Code sections 2698, et seq. (“PAGA”). (*Id.*, ¶ 6, Exh. 2.) The LWDA did not respond to Plaintiff Medina’s PAGA Notice.

On August 9, 2021, Plaintiff Medina filed a putative class action complaint against Defendants entitled *Noel Medina v. Natureware, Inc., et al.* (Orange County Superior Court Case No. 30-2021-01215641-CU-OE-CXC, hereinafter “Action”). The Complaint alleged the following causes of action: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime Wages); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure to Keep Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); and (10) Violation of California Business and Professions Code §§ 17200, et seq. (*Id.*, ¶ 7.)

On September 16, 2021, Plaintiff Medina filed a separate representative action complaint against Defendants alleging a single cause of action pursuant to the Labor Code Private Attorneys General Act of 2004, Cal. Labor Code §§ 2698, et seq. (“PAGA”), entitled *Noel Medina v. Natureware, Inc., et al.* (Orange County Superior Court Case No. 30-2021-01221681-CU-OE-CXC, hereinafter “PAGA Action”). (*Id.*, ¶ 8.) The Parties subsequently stipulated to allow Plaintiff Medina to file a First Amended Complaint (“FAC”) in this Action adding his PAGA claim to the Action, and

1 also adding Plaintiff Lara as an additional named plaintiff and proposed class representative. (*Id.*) The
2 FAC was filed on June 14, 2022. (*Id.*)

3 Shortly after the Action was initiated, Plaintiffs' counsel met and conferred with Defendants'
4 counsel regarding the potential for resolution of the Action. (Minne Decl., ¶ 9.) Pursuant to these
5 discussions, the Parties agreed to exchange informal discovery, engage in private mediation, and stay
6 formal discovery pending the completion of mediation. (Minne Decl., ¶ 9.) Per the Parties' agreement,
7 Natureware provided Plaintiffs' counsel with extensive informal discovery prior to mediation, which
8 included a one-third sampling of Class Members' time and payroll records. (Minne Decl., ¶ 10.) The
9 sampling was randomly selected and included employees across the Class Period. (*Id.*) Natureware
10 also provided Plaintiffs' counsel with all versions of Natureware's employee handbooks in use during
11 the Class Period and other documents evidencing its relevant wage and hour policies and procedures.
12 (*Id.*) Finally, Natureware provided Plaintiffs' counsel with key data points regarding the size and
13 composition of the Class, such as the number of Class Members and PAGA Members (including the
14 number of current versus former employees), the total number of workweeks worked by Class
15 Members, the number of pay periods worked by PAGA Members, and the average rate of pay for the
16 Class. (*Id.*)

17 Prior to mediation, Plaintiffs' counsel thoroughly reviewed the informal discovery produced
18 by Natureware, which included consulting with an expert to analyze Class Members' time and payroll
19 records. (*Id.*, ¶ 11.) Plaintiffs' counsel also engaged in further independent investigation, and
20 conducted further legal research regarding the merits of Plaintiffs' claims and Defendants' potential
21 defenses thereto. (*Id.*) Based on this investigation and informal discovery, Plaintiffs' counsel prepared
22 a detailed and informed assessment of Defendants' potential liability in advance of mediation. (Minne
23 Decl., ¶ 11.) Plaintiffs' counsel also extensively briefed the strengths and weaknesses of Plaintiffs'
24 claims and Defendants' anticipated defenses, and provided their analysis to the mediator for his
25 consideration. (Minne Decl., ¶ 11.)

26 After completing a thorough investigation and analysis of Plaintiffs' claims, on April 24, 2023,
27 the Parties attended a formal mediation with Jeffrey Krivis, Esq., a neutral and respected mediator
28 with extensive experience in complex wage and hour matters. (Minne Decl., ¶ 12.) The Parties engaged

1 in a full day of settlement discussions, during which the Parties debated their respective positions and
2 exchanged views regarding the strengths and weaknesses of their claims and defenses. (Minne Decl.,
3 ¶ 12.) The settlement discussions were at all times at arm’s length and, although conducted with
4 appropriate professional decorum, were adversarial. (Minne Decl., ¶ 12.) Plaintiffs and their counsel
5 went into mediation willing to explore the potential for a settlement of the Action, but were also
6 prepared to litigate Plaintiffs’ claims through class certification, trial, and appeal if a settlement was
7 not reached. (Minne Decl., ¶ 12.) After a full day of negotiations, the mediation culminated in the
8 issuance of a mediator’s proposal, which was accepted by all Parties. (Minne Decl., ¶ 12.)

9 On June 21, 2023, pursuant to the stipulation of the Parties, this Court entered an order
10 dismissing the PAGA Action without prejudice, and instructing that global settlement proceedings of
11 Plaintiffs’ Class and PAGA claims would be conducted in this Action. (Minne Decl., P 13.)

12 On or about July 20, 2023, after further negotiations, the Parties fully executed a long form
13 Joint Stipulation of Class Action and PAGA Settlement. (Minne Decl., ¶ 14, Exh. 1 [“Agreement”].)

14 **III. SUMMARY OF THE SETTLEMENT TERMS**

15 **A. Definition of the Proposed Class and PAGA Members.**

16 For purposes of Settlement only, the Parties have agreed to certify the following class: All
17 current and former hourly-paid, non-exempt employees of Defendant Natureware, Inc. who were
18 employed by Defendant Natureware, Inc. in the State of California at any time during the Class Period,
19 and who have not previously entered into an agreement with Defendants to release the unpaid wage
20 claims alleged in the Action.” (Minne Decl., ¶ 16; Agreement, ¶ 6.) The Class Period commences on
21 August 9, 2017, and ends on March 15, 2023. (Minne Decl., ¶ 16; Agreement, ¶ 10.) There are
22 approximately 399 Class Members. (Minne Decl., ¶ 17; Agreement, ¶ 56.)

23 The Settlement also includes a subgroup of “PAGA Members” which consists of “all current
24 and former non-exempt employees of Defendant Natureware, Inc. who were employed by Defendant
25 Natureware, Inc. in the state of California at any time during the PAGA Period.” (Minne Decl., ¶ 185;
26 Agreement, ¶ 25.) The PAGA Period commences on July 13, 2022, and ends on March 15, 2023.
27 (Minne Decl., ¶ 18; Agreement, ¶ 29.) There are approximately 212 PAGA Members. Approximately
28 111 PAGA Members entered into individual agreements with Defendants to release the unpaid wage

claims alleged in the Action. (Minne Decl., ¶ 19; Agreement, ¶ 26.) These individuals are not part of the proposed Settlement Class, but are still considered “PAGA-Only Members”. (*Id.*) PAGA-Only Members will still receive payment from the 25% portion of PAGA Penalties allocated to employees.

B. Gross Settlement Amount

Subject to Court approval, the Parties have agreed to settle the Class and PAGA claims at issue in the Action for Gross Settlement Amount of \$750,000.00. (Minne Decl., ¶ 20; Agreement, ¶¶ 18, 55.) The Gross Settlement Amount is non-reversionary, and does not include employer-side payroll taxes, which shall be separately paid by Defendants. (*Id.*) The Gross Settlement Amount shall be allocated as follows:

- Attorneys’ Fees to Class Counsel in an amount not to exceed 35% of the Gross Settlement Amount (i.e., \$262,500.00). (Minne Decl., ¶ 21; Agreement, ¶¶ 4, 59.)
- Reimbursement of Class Counsel’s actual litigation costs and expenses, not to exceed \$40,000.00. (Minne Decl., ¶ 21; Agreement, ¶¶ 4, 59.)
- Class Representative Enhancement Payments of \$5,000.00 to each Plaintiff, for a total of \$10,000.00. (Minne Decl., ¶ 21; Agreement, ¶¶ 11, 60.)
- Settlement Administration Costs not to exceed \$10,950.00. (Minne Decl., ¶ 21; Agreement, ¶¶ 42, 61.)
- PAGA Penalties in the amount of \$75,000.00, 75% of which shall be allocated to the LWDA, and 25% of which shall be distributed to PAGA Members. (Minne Decl., ¶ 21; Agreement, ¶¶ 28, 62.)

The Gross Settlement Amount, less the payments listed above, shall be the “Class Member Settlement Fund”, which shall be distributed to Participating Class Members as Individual Class Payments on a pro rata basis according to the number of Workweeks worked during the Class Period. (Minne Decl., ¶¶ 22-23; Agreement ¶¶ 7, 63-64.) The Class Member Settlement Fund is currently estimated to be approximately \$351,550.00. (Minne Decl., ¶ 19; Agreement, ¶ 56.)

The Class Member Settlement Fund will be distributed to Participating Class Members on a pro-rata basis based on the number of Workweeks they worked during the Class Period. (Minne Decl., ¶ 23; Agreement, ¶¶ 19, 64.) It is currently estimated that the average Individual Class Payment to

1 Participating Class Members will be approximately \$881.08. (Minne Decl., ¶ 24.) The specific range
2 of Individual Class Payments will vary based on the total Workweeks they worked and the number of
3 Class Members who ultimately request to be excluded from the Settlement, and will be calculated by
4 the Settlement Administrator upon receipt of the Class List from Defendants. (Minne Decl., ¶ 24.)
5 However, based on Class Counsel’s current estimates, the lowest Individual Class Payment will be
6 approximately \$26.81, and the highest potential Individual Class Payment is approximately \$7,828.52.
7 (*Id.*) Plaintiff Medina’s estimated Individual Class Payment will be approximately \$1,876.70. (*Id.*)
8 Plaintiff Lara’s estimated Individual Class Payment will be approximately \$697.06. (*Id.*) Individual
9 Class Payments shall be allocated as 20% wages subject to all applicable tax withholdings, and 40%
10 interest and 40% penalties not subject to tax withholdings. (Minne Decl., ¶ 25; Agreement, ¶ 65.)

11 In addition to the Individual Class Payments from the Class Member Settlement Fund, PAGA
12 Members shall receive a pro-rata share of the 25% portion of PAGA Penalties allocated for distribution
13 to PAGA Members. (Minne Decl., ¶ 26; Agreement, ¶ 20, 66.) Individual PAGA Payments will be
14 distributed on a pro-rata basis based on the number of Workweeks worked by PAGA Members during
15 the PAGA Period. (*Id.*) The average Individual PAGA Payment to PAGA Members is currently
16 estimated to be \$88.44. (Minne Decl., ¶ 26.)

17 Defendants shall fund the Gross Settlement Amount and all applicable employer-side payroll
18 taxes over the course of two-installment payments. (Minne Decl., ¶ 27; Agreement, ¶¶ 55, 57.) The
19 first installment payment in the amount of \$375,000.00, plus any employer-side payroll taxes
20 calculated by the Settlement Administrator, shall be deposited by Defendants into a Qualified
21 Settlement Fund (“QSF”) on or before April 24, 2024, or, in the event Final Approval is granted after
22 April 24, 2024, by no later than 7 calendar days of Final Approval. (Minne Decl., ¶ 27; Agreement, ¶
23 57.) The second installment payment of \$375,000.00 shall be deposited by Defendants into the QSF
24 on or before April 25, 2025. (*Id.*) This installment plan was a material term of the mediator’s proposal,
25 and was based on Natureware’s representations that it is unable to fund the Gross Settlement Amount
26 in a single installment without incurring financial hardship that substantially impacts its underlying
27 operation. (Minne Decl., ¶ 27; Declaration of Roy Shin, ¶¶ 4-6; Agreement, ¶ 57(a).)
28

1 The Settlement Administrator shall determine the eligibility for, and the amounts of, each
2 Individual Class Payment and Individual PAGA Payment under the terms of the Agreement. (Minne
3 Decl., ¶ 28; Agreement, ¶¶ 42, 58, 64, 66, 69.) Within 7 calendar days of receipt of the First Installment
4 Payment, the Settlement Administrator shall issue full payment for PAGA Penalties owed to the
5 LWDA and Individual PAGA Payments to PAGA Members. (Minne Decl., ¶ 28; Agreement, ¶ 58(a).)
6 The remaining balance of the first installment payment shall be distributed to in payment of the
7 Individual Class Payments, to the extent available. (*Id.*). Within seven (7) calendar days after receipt
8 of the Second Installment Payment, the Settlement Administrator shall issue payments for the
9 remaining amounts due for Individual Class Payments, the Class Representative Enhancement
10 Payments, the Settlement Administration Costs, and Class Counsel’s Fees and Costs. (*Id.*)

11 If an Individual Class Payment check or Individual PAGA Payment check remains uncashed
12 after one hundred eighty (180) days from the initial mailing, the Settlement Administrator shall
13 transfer the value of the uncashed checks to the California Controller’s Unclaimed Property Fund in
14 the name of the Participating Class Member or PAGA Member. (Minne Decl., ¶ 29, Agreement ¶ 86.)
15 As such, no “unpaid residue” under California Code of Civil Procedure § 384 will result from the
16 Settlement. (Minne Decl., ¶ 29.)

17 **C. Release of Class and PAGA Claims.**

18 Upon the funding of the Gross Settlement Amount and all employer payroll taxes, Plaintiffs,
19 Participating Class Members, PAGA Members shall be deemed to have released their respective
20 Released Claims against the Released Parties. (Agreement ¶¶ 34-35, 92-93.) The scope of the release
21 is narrowly tailored to release claims based on facts alleged in the operative Complaint, depending on
22 whether Class Members elect to opt-out of the settlement and whether such individuals qualify as
23 PAGA Members. (*Id.*) All Class Members who are PAGA Members will release PAGA claims even
24 if they request exclusion from the Class. (*Id.*, ¶¶ 35, 93.)

25 In addition to the release of claims made by all Participating Class Members and PAGA
26 Members, Plaintiffs, in their individual capacities, agree to a general release of all claims against
27 Defendants. (*Id.*, ¶ 94.) Plaintiffs’ general release does not include claims that cannot be waived as a
28 matter of law, such as worker’s compensation, unemployment, disability, and social security. (*Id.*)

1 **D. The Settlement Administrator**

2 The Parties have selected Phoenix Class Action Settlement Administration Solutions to
3 administer the Settlement. (Minne Decl., ¶ 30; Agreement ¶ 41.)³ Phoenix Class Action Settlement
4 Administration Solutions has extensive experience administering class action and PAGA settlements,
5 and has procedures in place to protect the security of class data as well as insurance for errors and
6 omissions. (Declaration of Jodey Lawrence [“Lawrence Decl.”], ¶¶ 5-11, Exh. A.) The Parties and
7 their counsel do not have any financial interest in Phoenix Class Action Settlement Administration
8 Solutions that would create a conflict of interest. (Minne Decl., ¶ 31; Lawrence Decl., ¶ 4.)

9 **E. Other Pending Cases**

10 Plaintiffs’ counsel are aware of one other putative class action lawsuit pending in this Court
11 that asserts claims that similar to those asserted in this Action: *Rubi Estrada v. Natureware, Inc.*,
12 Orange County Superior Court 30-2021-01217386-CU-OE-CXC (“*Estrada* Action”). (Minne Decl.,
13 ¶ 70; Declaration of Yasmin Hosseini [“Hosseini Decl.”], ¶ 15.) The *Estrada* Action was originally
14 filed on August 20, 2021, and alleges the following seven (7) causes of action: (1) Failure to Pay
15 Overtime Wages; (2) Failure to pay Minimum Wage; (3) Failure to Pay Meal Period Compensation;
16 (4) Failure to Pay Rest Period Compensation; (5) Failure to Furnish Accurate Wage and Hour
17 Statements; (6) Failure to Pay Wages Upon Discharge; and (7) Unfair Competition. (Minne Decl., ¶
18 70.)

19 ON January 14, 2022, Plaintiffs’ counsel filed a Notice of Related Case advising the Court of
20 the *Estrada* Action. (Minne Decl., ¶ 71; Hosseini Decl., ¶ 15.) The Court entered an order deeming
21 that matters related on May 17, 2022. (*Id.*) On May 8, 2023, Plaintiffs’ counsel informed counsel for
22 the plaintiff in the *Estrada* Action of the proposed Settlement in this Action. (Minne Decl., ¶ 72.)
23 Based on a Joint Status Report filed in the *Estrada* Action on August 16, 2023, it is Plaintiffs’ counsel’s
24 understanding that Ms. Estrada intends to opt-out of the Settlement of this Action and pursue her
25 claims against Defendants on an individual basis. (Minne Decl., ¶ 72, Exh. 6.)

26 _____
27 ³ Plaintiffs’ counsel also obtained administration estimates from ILYM Group, Inc. and Rust
28 Consulting. Phoenix Class Action Administration Solutions was ultimately selected as the Settlement
Administrator because it provided the lowest estimate and, consequently, would result in the highest
net recovery by Participating Class Members. (Minne Decl., ¶ 30, Exh. 3-5.)

1 After conducting a reasonable inquiry, Plaintiffs' counsel have not located any other lawsuits
2 pending against Defendants which involve any claims similar to those asserted in this Action other
3 than the *Estrada* Action. (Minne Decl., ¶ 73; Hosseini Decl., ¶ 16.)

4 **IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL.**

5 **A. Standard of Review for Preliminary Approval**

6 The review and approval of a proposed class action settlement involves a two-step process. *See*
7 Cal. Rules of Court, Rule 3.769(c). First, counsel submit the proposed terms of settlement and the
8 Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the
9 range of a fair settlement to justify providing notice of the proposed settlement to class members.
10 Second, after notice is provided to the class, the Court must conduct a second inquiry into whether the
11 proposed settlement is fair, reasonable and adequate. *Id.*

12 The initial evaluation of a settlement at preliminary approval "is not a fairness hearing."
13 *Armstrong v. Bd. of Sch. Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), overruled
14 on other grounds by *Felzen v. Andreas*, 134 F.3d 873, 875 (7th Cir. 1998). Rather, the limited purpose
15 of this initial inquiry is to determine, at a threshold level, whether the proposed settlement is within
16 the range of possible approval and, as a result, "whether there is any reason to notify the class members
17 of the proposed settlement and to proceed with a fairness hearing." *Id.* As set forth below, the
18 Settlement is within the range of possible approval. Accordingly, preliminary approval should be
19 granted.

20 **B. The Settlement is Entitled to a Presumption of Fairness.**

21 California Courts recognize that a presumption of fairness exists where: (1) the settlement is
22 reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow
23 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
24 percentage of objectors is small. *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006); *7-Eleven*
25 *Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1146 (2000). Because the
26 proposed Settlement was reached through arm's-length negotiations based on sufficient investigation
27
28

and discovery by qualified counsel, it is entitled to a presumption of fairness.⁴

1. The Proposed Settlement Was Reached Through Arm's Length Bargaining.

The Settlement was reached following a full day of mediation with Jeffrey Krivis, Esq., a highly respected mediator. (Minne Decl., ¶ 12.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (Minne Decl., ¶ 12.) The Parties went into settlement discussions willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate its position through class certification, trial, and appeal if a settlement was not reached. (Minne Decl., ¶ 12.) The proposed Settlement was reached at the end of a process that was neither fraudulent nor collusive. (Minne Decl., ¶ 15.) To the contrary, counsel for the Parties advanced their respective positions throughout the settlement negotiations. (*Id.*)

2. Plaintiffs and Their Counsel Conducted Sufficient Investigation and Discovery to Allow the Court and the Parties Act Intelligently.

Courts typically assess the status of discovery in determining whether a proposed class action settlement is fair, reasonable, and adequate. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). As detailed above, prior to reaching the Settlement, Plaintiffs' counsel obtained extensive informal discovery before the mediation, which included: a representative one-third sampling of Class Members' time and payroll documents; all versions of Defendants' employee handbooks in use during the Class Period and other documents reflecting Defendants' applicable wage and hour policies; and data points regarding the size and composition of the Class, such as the number of Class Members and PAGA Members, the total number of workweeks worked by Class Members, the number of pay periods worked by PAGA Members, and the average rate of pay for the Class. (Minne Decl., ¶ 10.) Plaintiffs' counsel thoroughly reviewed this informal discovery prior to mediation, which included consulting with an expert to fully analyze Class Members' time and payroll records. (*Id.*, ¶ 11.) Plaintiffs' counsel also conducted further independent investigation and research of Plaintiffs' claims and Defendants' defenses thereto. (*Id.*) Based on this investigation, Plaintiffs' counsel prepared a detailed assessment of Defendants' potential liability, and extensively briefed the strengths and

⁴ At preliminary approval, the fourth factor – the percentage of objectors – is not applicable, as Class Members have not yet had an opportunity to object to the Settlement.

1 weaknesses of Plaintiffs' claims and Defendants' anticipated defenses prior to mediation. Thus,
2 Plaintiffs' counsel was able to act intelligently and effectively in negotiating the proposed Settlement.
3 (*Id.*)

4 3. Plaintiffs' Counsel is Experienced in Class Action Litigation.

5 The settlement negotiations were conducted by highly capable and experienced counsel.
6 Plaintiffs' counsel are respected members of the bar with strong records of effective advocacy for their
7 clients, and are experienced in handling complex wage-and-hour class action litigation. (Minne Decl.,
8 ¶¶ 63-69; Hosseini Decl., ¶¶ 2-7.) Although Plaintiffs and their counsel were prepared to litigate the
9 claims in this action, they support the proposed Settlement as being in the best interests of the Class
10 Members. (*Id.*, ¶ 57; Hosseini Decl., ¶ 17; Medina Decl., ¶ 8; Lara Decl., ¶ 8.)

11 **C. The Settlement is Fair, Adequate, and Reasonable in Light of the Parties' Respective**
12 **Positions and Risks of Continued Litigation**

13 A settlement is not judged against what might have been recovered had a plaintiff prevailed at
14 trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable.
15 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 246, 250 (2001). In evaluating the
16 reasonableness of a settlement, a trial court must consider "the strength of plaintiffs' case, the risk,
17 expense, complexity and likely duration of further litigation, the risk of maintaining class action status
18 through trial, the amount offered in settlement, the extent of discovery completed and the stage of the
19 proceedings, the experience and views of counsel, the presence of a governmental participant, and the
20 reaction of the class members to the proposed settlement." *Kullar v. Foot Locker Retail, Inc.*, 168
21 Cal.App.4th 116, 128 (2008).

22 Plaintiffs' counsel has carefully considered Plaintiffs' claims and analyzed class-wide
23 violation rates. Based on information gathered by Plaintiffs' counsel, including calculations of
24 Defendants' maximum potential liability exposure and the risks associated with continued litigation,
25 Plaintiffs' counsel has determined that the proposed Settlement is fair, adequate, and reasonable.
26 (Minne Decl., ¶¶ 32-58; Hosseini Decl., ¶ 17.)
27
28

1 a. Defendants' Maximum Potential Exposure.

2 Based on information gathered through discovery, Plaintiffs' counsel estimated that if all class
3 claims were adjudicated in favor of the Class, Defendants' maximum potential liability for the Class
4 claims is \$2,774,382.75, which can be broken down by claim as follows: \$58,295.38 in unpaid
5 overtime and minimum wages due to rounding; \$285,426.21 in unpaid overtime and minimum wages
6 due to off-the-clock work; \$464,788.04 in unpaid meal period premiums; \$437,653.52 in unpaid rest
7 period premiums; \$65,570.00 in unreimbursed business expenses; \$1,058,649.60 in waiting time
8 penalties under Labor Code § 203; and \$404,000.00 in wage statement penalties under Labor Code §
9 226. (Minne Decl., ¶¶ 32-39.)⁵

10 In addition to the Class damages, Plaintiffs' counsel also separately calculated Defendants'
11 potential liability for civil penalties under PAGA to be \$5,034,885.70, which can be broken down by
12 violation as follows: \$569,550.00 for unpaid overtime; \$1,139,100.00 for unpaid minimum wages;
13 \$657,260.70 for meal period violations; \$1,139,100.00 for rest period violations; \$1,139,100.00 for
14 failure to timely pay wages during employment; \$106,000.00 for failure to maintain required payroll
15 records; and \$284,775.00 for failure to reimburse business expense. (Minne Decl., ¶ 40.)⁶

16 b. Strengths and Weaknesses of Plaintiffs' Claims and the Risks of Continued
17 Litigation.

18 Although Defendants' "soaking wet" exposure is substantial, Plaintiffs' counsel recognized
19 that there are significant risks associated with proceeding with this case through class certification,
20 trial, and likely appeals. As with all class actions, this is a complex case that raises difficult
21 management and proof issues. Accordingly, there is a significant risk that the Court may deny class
22 certification. While Plaintiffs and Plaintiffs' counsel were confident that Plaintiffs' claims are
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25
26 ⁵ Penalties associated with violations of Labor Code §§ 204 and 1174, were not considered as part of
27 the Class analysis, but were instead included in my separate calculations regarding Defendants'
28 potential exposure for PAGA. (Minne Decl., ¶¶ 32, 40.)

⁶ These calculations did not include duplicative penalties that Plaintiffs' counsel anticipated would be
recovered as part of the Class claims, such as waiting time penalties under Labor Code § 203 and
wage statement penalties under Labor Code § 226. (Minne Decl., ¶¶ 32-39, 40.)

1 fundamentally meritorious and suitable for class-wide resolution, consideration of these risks factored
2 into their decision to enter into the Settlement at this point in the litigation. (Minne Decl., ¶¶ 41-58.)

3 For example, a significant portion of Defendants' estimated liability is based on Plaintiffs'
4 meal period claim. Plaintiffs contend that Natureware's formal meal period policies are facially
5 unlawful, as they failed to inform Class Members of their right to take a meal period when they worked
6 shifts of over 5 hours, and a second meal period when they worked shifts over 10 hours. Plaintiffs
7 further contend that, as a matter of actual practice, Class Members were often required to skip meal
8 periods, to delay meal periods after their fifth hour of work, and to cut their meal periods short, and
9 were not paid meal premiums for such violations. At mediation, Natureware asserted that its written
10 meal period policies substantially complied with California law. Natureware also maintained that as a
11 matter of practice it provided ample opportunity for Class Members to take meal periods, and that if
12 Class Members did not take compliant meal breaks, it is because they voluntarily chose not to do so.
13 Natureware also argued that questions of whether employees had received compliant meal periods,
14 why such meal periods were not taken, and whether such meal and rest periods were voluntarily
15 waived were individualized issues that would bar certification. Natureware also asserted that Class
16 Members worked in a variety of different job positions with different job duties in different locations.
17 While Plaintiffs' counsel strongly disagreed with Natureware's arguments contentions, they
18 recognized that there was a risk that the Court could ultimately deny class certification based on
19 concerns regarding manageability and/or individualized issues. Plaintiffs' counsel also recognized that
20 even if Plaintiffs successfully certify this claim, Plaintiffs will be required to defend such claims
21 against attempts to decertify the class, as well as a potential motion for summary judgment. Plaintiffs
22 will also bear the burden of ultimately establishing Defendants' liability at trial. Defendants will
23 undoubtedly present numerous defenses at trial, including but not limited to arguments that employees
24 voluntarily chose to skip, shorten, or delay meal periods. Given these defenses, it is unlikely Plaintiffs
25 will be able to establish liability for every potential meal period violation reflected in the time records.
26 (Minne Decl., ¶ 42.)

27 Plaintiffs' counsel was also cognizant of the challenges associated with maintaining Plaintiffs'
28 rest period claims on a class-wide basis. As with meal periods, Plaintiffs contend that Natureware's

1 formal rest period policies failed to advise Class Members of their right to a 10-minute rest period for
2 every 4 hours worked or major fraction thereof, and also failed to advise Class Members of their to
3 right to premium wages for non-compliant rest periods. Plaintiffs further contend that, as a matter of
4 actual practice, Class Members were often required to skip or shorten their rest periods, and were not
5 paid rest period premiums for such violations. Natureware asserted that its policies authorized
6 employees to take all rest periods required under California law, and that Class Members who worked
7 through their rest periods did so voluntarily. Natureware likewise argued that whether Class Members
8 had received a compliant rest period and the reasons why Class Members failed to receive compliant
9 rest periods raised individualized issues that could not be certified. While Plaintiffs’ counsel disagreed
10 with Defendants’ positions, they also recognized that rest period claims are inherently difficult to
11 certify and prove, given that an employer has no obligation to maintain records of rest periods. Further,
12 just as with meal periods, even if this claim is certified, Plaintiffs will be required to defend against an
13 anticipated motion to decertify and motion for summary judgment, and will ultimately bear the burden
14 of establishing liability with at trial. Given that there are no direct records of rest periods, there is
15 significant risk that Plaintiffs will be unable to establish Defendant is liable for every single potential
16 rest period violation with requisite certainty at trial. (Minne Decl., ¶ 43.)

17 Plaintiffs’ minimum wage and overtime claims are based on two different practices Plaintiffs
18 contend resulted in the underpayment of wages to employees: (1) rounding of time records; and (2)
19 requiring employees to work off-the-clock. (Minne Decl., ¶¶ 41-42.) With respect to rounding,
20 Natureware asserted that its rounding policy was neutral on its face on its face under *See’s Candy*
21 *Shops, Inc. v. Superior Court*, 210 Cal. App. 4th 889, 895 (2012). (Minne Decl., ¶ 41.) The California
22 Supreme Court recently granted review to address whether the practice of “neutral” time rounding by
23 employers remains lawful in view of technological advance advances that allow employers to track
24 time precisely. *See Camp v. Home Depot U.S.A., Inc.*, 304 Cal.Rptr.3d 82 (Feb. 1, 2023, No. S277518).
25 Plaintiffs’ counsel is confident that current trends in California jurisprudence indicate that the
26 California Supreme Court will eventually hold that any rounding of time records is unlawful.
27 Nevertheless, Plaintiffs’ counsel recognized that the law governing the legality of Defendant’s
28

1 rounding practices is currently in a state of flux, creating uncertainty as to the ultimate viability of this
2 claim. (Minne Decl., ¶ 44.)

3 Plaintiffs' claims for unpaid overtime and minimum wages stemming from off-the-clock work
4 presented significantly greater challenges. Plaintiffs' off-the-clock claims were based Plaintiff's
5 contention that Natureware pressured Class Members to work off-the-clock before and after their shifts
6 and while clocked out for purported meal period. Natureware denied that employees were required to
7 do any work before clocking or after clocking out, and asserted that Class Members were instructed
8 to record all hours worked. (Minne Decl., ¶ 45.) Natureware further argued that individual liability
9 issues predominated, including: (1) whether each employee worked off-the-clock; and (2) whether
10 Natureware knew or should have known about each employee's off-the-clock work. (*Id.*) Moreover,
11 given that these claims were based on off-the-clock work not reflected in Natureware's time records,
12 Natureware argued that proving damages at trial would not be manageable. While Plaintiffs' counsel
13 strongly disagreed with Natureware's contentions, they recognized that the off-the-clock claims are
14 particularly challenging to certify and prove due to potential for individualized issues and lack of
15 records. (Minne Decl., ¶ 45.)

16 Plaintiffs' reimbursement claim was based on expenses incurred in the use of employees'
17 personal cell phones, gloves, box cutters, and protective gear. Natureware asserted that the majority
18 of employees were not required to use their personal cell phones for work related purposes, and that
19 employees were provided with all tools and protective gear required for performance of their job
20 duties. Natureware further contended that the reason for why a Class Member incurred expenses and
21 failed to receive reimbursement for certain expenses would raise individual issues that could not be
22 certified. (Minne Decl., ¶ 46.)

23 There are also substantial risks attached to Plaintiffs' claims for waiting time penalties and
24 wage statement penalties. Such claims are derivative of Plaintiffs' primary claims for meal period, rest
25 period, minimum wage and overtime violations. Thus, if certification is denied on the primary claims,
26 these derivative claims would also likely fail. Moreover, even if Plaintiffs prevails on the underlying
27 claims, Plaintiffs would still be required to show that Defendants' conduct was willful in order to
28 obtain Labor Code § 203 penalties, a difficult prospect. *See, e.g., Choate v. Celite Corp.*, 215 Cal App.

4th 1460, 1468 (2013) (holding that “an employer’s reasonable, good faith belief that wages are not owed may negate a finding of willfulness”). Wage statement claims have also seen varying treatment at the appellate level because such claims have an element of discretion attached to them. *Cf., Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) with *Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011). Accordingly, these derivative claims were extremely uncertain. (Minne Decl., ¶¶ 47-48.)

Plaintiffs’ counsel also separately contemplated the numerous risks of proceeding with a PAGA claim. First, the same defenses and merits-based risks associated with Plaintiffs’ direct Labor Code claims are also applicable to a PAGA claim. *See Green v. Lawrence Service Co.*, 2013 U.S. Dist. LEXIS 109270, at *5, fn. 5 (C.D. Cal. 2013) (“whether each PAGA claims succeeds or fails is determined by the merits of the substantive claims on which each is based.”) Second, although California law is clear that PAGA actions need not satisfy class action requirements, there is currently a split in authority over whether PAGA claims may nevertheless be stricken based on manageability concerns. *Cf. Wesson v. Staples The Office Superstore*, 68 Cal.App.5th 746 (2021) with *Estrada v. Royalty Carpet Mills, Inc.*, 76 Cal.App.5th 685 (2022). Even if Plaintiffs defeated any challenges to manageability, the Court could ultimately exercise its discretion to find that the imposition of heightened civil penalties was inappropriate, particularly if Plaintiffs prevailed on their class claims. Cal. Lab. Code § 2699(2); *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1122 (2012).⁷ (Minne Decl., ¶¶ 50-54.)

Finally, Plaintiffs’ counsel recognized the significant risk and expense generally associated with continued litigation, trial, and possible appeals, all of which would substantially delay and reduce any recovery by the Class Members. Even if Plaintiffs prevailed at class certification, proving the amount of wages due to each Class Member would be an expensive, time-consuming, and extremely uncertain proposition. In order to prove liability and damages, Plaintiffs’ counsel will need to request and analyze thousands of pages of documents, obtain the Class Members’ contact information, contact them and obtain numerous declarations at great expense. Obtaining the cooperation of current

⁷ *See also, Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (reducing penalties by 97.5%); *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590, *8-9 (C.D. Cal. 2011) (reducing potential PAGA penalties by over 80 percent); *Magadia v. Wal-Mart Assocs. et al.*, 384 F. Supp. 3d 1058, 1069 (N.D. Cal. 2019)(applying 67% and 80% reductions to PAGA Penalties).

employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. On the other hand, Natureware would likely be able to obtain the cooperation of its current employees. Indeed, Natureware was able to obtain individual releases from 111 of its employees prior to the Parties' mediation in this matter, 102 of whom were current employees. Moreover, even if Plaintiffs prevail at class certification and trial, possible appeals would substantially delay any recovery by the Class. These risks are all obviated by the Settlement, which if approved by the Court will ensure that class members receive timely relief without the risk of an unfavorable judgment. (Minne Decl., ¶ 56.)

Taking into account the specific strengths and weaknesses of each claim, and the unique risks associated therewith, the general risks and significant costs associated with litigation this Action through class certification, trial, and appeals, Plaintiffs' counsel estimated that Defendants faced a risk-adjusted liability of \$731,925.27 for Plaintiffs' Class claims, and \$629,360.71 for Plaintiffs' PAGA claims. (Minne Decl., ¶¶ 42-49, 55.)

Therefore, after considering the strengths and weaknesses of each claim, and the unique risks associated therewith, the general risks of continue litigation, and the significant costs, expenses, and delay that would result from continued litigation, it is clear that the Settlement is fair, reasonable, and adequate, and is in the best interest of the Class. (Minne Decl., ¶ 57; Hosseini Decl., ¶ 17.) Moreover, the Gross Settlement Amount of \$750,000.00 – which represents 27% of the maximum damages and 102.5% of the risk-adjusted liability for the direct Class claims at issue - falls within an acceptable range of recovery for this type of litigation given the strengths and weaknesses of the case and the inhere costs and risks associated with class certification, representative adjudication, trial, and/or appeals. (Minne Decl., ¶ 57.) *See, e.g., See, e.g., Cavazos v. Salas Concrete, Inc.*, 2022 U.S. Dist. LEXIS 132056 (E.D. Cal. 2022) (granting preliminary approval of settlement representing approximately 5.8% of maximum damages); *Ferrell v. Buckingham Prop. Mgmt.*, 2020 U.S. Dist. LEXIS 135617 (E.D. Cal. 2020) (granting preliminary approval of settlement representing approximately 5.3% of maximum damages); *Ayala v. UPS Supply Chain Solutions, Inc.*, 2021 U.S. Dist. LEXIS 194362 (C.D. Cal. 2021) (granting preliminary approval of settlement representing approximately 7.8% of maximum damages); *Perez v. Core & Main, L.P.*, 2021 U.S. Dist. LEXIS

258958 (C.D. Cal. 2021) (granting preliminary approval of settlement representing 10.3% of maximum damages); *Singh v. Roadrunner Intermodal Servs., LLC*, 2018 U.S. Dist. LEXIS 89308 (E.D. Cal. 2018) (granting preliminary approval of settlement representing approximately 12% of maximum damages); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017) (approving settlement where gross recovery was 11% of the maximum damages); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015) (granting final approval of settlement amount representing approximately 10% of the maximum); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 256 (N.D. Cal. 2015) (approving settlement representing approximately 8.5% of the maximum damages); *Ma v. Covidien Holding, Inc.*, 2014 U.S. Dist. LEXIS 13296 (C.D. Cal. 2014) (granting preliminary approval of settlement representing 9.1% of maximum damages); *Balderas v. Massage Envy Franchising, LLC*, 2014 U.S. Dist. LEXIS 99966 (N.D. Cal. 2014) (granting preliminary approval of settlement representing 8% of maximum damages); *Thomas v. Cognizant Tech. Sols. U.S. Corp.*, 2013 U.S. Dist. LEXIS 204256 (C.D. Cal. 2013) (granting final approval of settlement representing 5% of maximum liability).

D. The PAGA Allocation is Reasonable.

The \$75,000.00 allocated for penalties under PAGA is fair and reasonable. PAGA is fundamentally not intended to be compensatory in nature, but is instead intended to facilitate enforcement of California’s labor laws by financing state activities and educating and deterring non-compliance. *See* Cal. Labor Code § 2699(i); *Arias v. Sup. Ct.*, 46 Cal. 4th 980; *Williams v. Sup. Ct.*, 3 Cal.5th 531, 546 (2017); *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 379 (2014). Where, as here, the parties reach a substantial class-wide settlement providing employees with monetary compensation for underlying Labor Code violations, many of PAGA’s underlying policy objectives are satisfied. Indeed, the \$75,000.00 PAGA Payment (10% of the Gross Settlement Amount) is well-within the range approved by California courts. *See Nordstrom Comm. Cases*, 186 Cal.App.4th 576, 589 (2010)(finding no abuse of trial court’s discretion in approval of release that included PAGA claims but allocated \$0 to PAGA penalties); *Alcala v. Meyer Logistics, Inc.*, 2019 WL 4452961, *9 (C.D. Cal. June 17, 2019) (settlement of claims for PAGA penalties representing 1.25% of gross settlement amount was reasonable, as it “falls within the zero to two percent range for PAGA

claims approved by courts.”); *In re M.L. Stern Overtime Litig.*, 2009 WL 995864, *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2%); *Hopson v. Hanesbrands, Inc.*, 2008 WL 3385452, *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 0.3%). (Minne Decl., ¶ 58.)

V. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED.

Code of Civil Procedure § 382 provides that three basic requirements must be met in order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined community of interest in the question of law or fact affecting the parties to be represented; and (3) certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class is superior to other methods. *Fireside Bank v. Superior Court*, 40 Cal.4th 1069, 1089 (2007); *see also Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326 (2004). Courts utilize a less stringent standard for class certification during settlement. *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal.App.4th 836, 859 (2003). The reason: “no trial is anticipated in a settlement class case, so the case management issues inherent in the ascertainable class determination need not be confronted.” *Id.*

As demonstrated below, all three requirements for certification of the Class as defined by the Settlement are satisfied. Furthermore, Defendants have stipulated to certification of the proposed Class for settlement purposes only. (Agreement, ¶ 54.)

A. There is an Ascertainable Class.

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal.App.3d 862, 873 (1983). In this case, all three considerations strongly favor class certification. Here, the Class is defined as all persons employed by Natureware in California and classified as hourly-paid and/or non-exempt who worked for Natureware at any time from May 5, 2018, to May 5, 2023. (Agreement, ¶¶ 6-7.) This provides a clear and definite scope for the proposed class.

Next, the class is sufficiently numerous. There is no magic number that satisfies the numerosity requirement. Under the Federal Rules, the minimum number of a class is 100 individuals. Under California law, that number is significantly less. *See e.g., Rose v. City of Haywood*, 126 Cal.App.3d 926, 934 (1981) (holding 42 class members sufficient to satisfy numerosity); *Bowles v. Superior Court*,

1 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous). Here, the estimated Class size
2 of 399 individuals plainly favors class certification. (Minne Decl., ¶ 17.)

3 Finally, the question whether class members are easily identifiable turns on whether a plaintiff
4 can establish “the existence of an ascertainable class.” *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 706
5 (1967). The existence of an ascertainable class in this case can be established through Defendants’
6 payroll records, and the class definition is sufficiently specific to enable the parties, potential Class
7 Members and the Court to determine the parameters of the Class.

8 **B. The Class Shares a Well-Defined Community of Interest.**

9 The community of interest requirement embodies three factors: (1) predominant questions of
10 law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class
11 representatives who can adequately represent the class. *Dunk*, 48 Cal.App.4th at 1806. This case easily
12 satisfies all three requirements.

13 1. Common Issues of Law and Fact Predominate.

14 The commonality criterion requires the existence of common question of law or fact and is
15 generally established with the issues of predominance and typicality. *See Daar*, 67 Cal.2d 695, 706.
16 What is required is that a common question of fact or law exist which predominates over issues unique
17 to individual plaintiffs. The existence of individual issues or facts—generally present in any case
18 arising from employment—is not a bar to class certification as long as they do not render class
19 litigation unmanageable or predominate over the common issues. *See B.W.I. Custom Kitchen v.*
20 *Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

21 Here, Plaintiffs’ claims present sufficient common issues of law and fact that predominate and
22 warrant class certification. Plaintiffs allege that Natureware prohibited employees from taking
23 compliant meal and rest periods, and required Class Members to perform work off-the-clock. These
24 policies and practices meant that Natureware failed to pay required meal period premiums, minimum
25 wages, and overtime wages, and other related claims. Plaintiffs allege that Defendants’ policies and
26 practices were uniform as to all Class Members. Thus, class treatment is appropriate.

1 2. Plaintiffs' Claims are Typical of the Class.

2 To satisfy the typicality requirement, California law does not require that Plaintiffs have claims
3 identical to the other class members. Rather, the test of typicality for a class representative is whether
4 other members have the same or similar injury, whether the action is based on conduct which is not
5 unique to the named plaintiff, and whether other class members have been injured by the same course
6 of conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007). The typicality
7 requirement for a class representative refers to the nature of the claim or defense of the representative,
8 and not to the specific facts from which it arose or the relief sought. *See Id.*

9 Here, Plaintiffs allege that their claims are based on the same legal theories, arise out of the
10 same unlawful policies and practices, and seek the same relief. Because Plaintiffs' claims are based
11 on the same alleged conduct and business practices as the claims of the other Class Members, the
12 typicality requirement is satisfied.

13 3. Plaintiffs and Their Counsel Will Fairly and Adequately Represent the Class.

14 The question of adequacy of representation "depends on whether the plaintiff's attorney
15 qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests
16 of the class." *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations
17 are satisfied. Class Counsel are well-regarded and accomplished lawyers who are qualified and
18 experienced in employment-related, class-action litigation, and who do not have any conflicts of
19 interest which would impede their representation of the Class. (Minne Decl., ¶¶ 63-69; Hosseini Decl.,
20 ¶¶ 2-7.) Furthermore, because Plaintiffs' claims are typical of those of other Class Members, and are
21 not based on unique circumstances that might jeopardize the claims of the class, there is no antagonism
22 of interests between Plaintiffs and the Class. Plaintiffs are also fully aware of their duties as the class
23 representatives, and will vigorously and adequately represent the interests of the Class. (Medina Decl.,
24 ¶¶ 4-10; Lara Decl., ¶¶ 4-10.) Therefore, the adequacy requirement is satisfied.

25 **C. A Class Action is Superior to a Multiplicity of Litigation.**

26 Under the circumstances, proceeding as a class action is a superior means of resolving this
27 dispute, as the Class Members and the court will derive substantial benefits. Class certification would
28 serve as the only means to deter and redress the alleged violations. *See Linder v. Thrifty Oil Co.*, 23

Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will come forward to prove their separate claim and whether the class approach would actually serve to deter and redress the alleged wrongdoing). Further, individual actions arising out of the same operative facts would unduly burden the courts and could result in inconsistent results. Therefore, class action proceedings are superior to individual litigation.

VI. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE.

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal, Inc.*, 82 Cal.App.4th 19, 41 (2000). Where the amount of a settlement is a "certain easily calculable sum of money," California courts may calculate attorneys' fees as a reasonable percentage of the settlement created. *See Dunk*, 48 Cal.App.4th at 1808. The ultimate goal is the award of a "reasonable" fee to compensate counsel for their efforts, irrespective of the method of calculation. *See Apple Computer, Inc. v. Sup. Ct.*, 126 Cal.App.4th 1253, 1270 (2005). California law further provides that attorneys' fees awards should be equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation based on the result achieved and risk incurred. *Lealao*, 82 Cal.App.4th at 47, 50. Fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." *Id.* at 53.

Therefore, fees in class and representative actions should approximate the probable terms of a contingent-fee contract negotiated by a sophisticated attorney and client in comparable litigation. *Id.* at 47. The percentage-of-the-benefit approach is preferred in such cases because "it better approximates the workings of the marketplace than the lodestar approach." *Id.* Historically, courts have awarded fees as high as fifty percent (50%) of the settlement. *Newberg on Class Actions*, § 14.03 (4th Ed.); *see also In re Ampicillin Antitrust Litig.*, 526 F.Supp. 494 (D.D.C. 1981) (awarding attorneys' fees in the amount of 45% of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys' fees). California courts routinely approve class action attorneys' fee awards averaging around one-third of the recovery. *In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 558

at n.13 (2009); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (20 to 40 percent range of contingency fee in marketplace was appropriate in class actions.)

Here, the Agreement provides for an award of attorneys' fees in the amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount or \$262,500.00, which falls within the range of reasonableness that *potentially* could be approved by the Court at Final Approval. (Agreement, ¶¶ 4, 59.) The requested award of attorney's fees and costs is disclosed to Class Members in the proposed Class Notice and to PAGA-Only Members in the PAGA Notice. (Minne Decl., ¶60; Agreement, Exh. A, D.) The requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by Defendants.

The Motion for Final Approval will further elaborate on the nature of the legal services provided, the time incurred in performing these services, and Plaintiffs' Counsel's hourly rates in sufficient detail to allow the Court to perform a lodestar analysis. (Minne Decl., ¶ 60.) The Motion for Final Approval will also provide evidence detailing the litigation costs and expenses Plaintiffs' counsel seeks to recover, in an amount that shall not exceed \$40,000.00. (Minne Decl., ¶ 61.) In the event the final actual costs incurred by Plaintiff's Counsel are less than the \$40,000.00 earmarked under the Settlement, the difference will be allocated to the Net Settlement Amount to be distributed to Participating Class Members. (Minne Decl., ¶ 61 Agreement, ¶ 59.)

VII. THE PROPOSED ENHANCEMENT PAYMENT IS REASONABLE.

Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). Courts routinely grant approval of class action settlement agreements containing enhancements for the class representative, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. *See Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995) (approving \$50,000.00 enhancement); *In re Online DVD Rental*, 779 F.3d 934, 947-948 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding

1 service award of \$15,000 to be “fair and reasonable”); *Miller v. CEVA Logistics USA, Inc.*, 2015 WL
2 4730176, at * 9 (E.D. Cal. Aug. 10, 2015)(approving service award of \$15,000 to each plaintiff); *Glass*
3 *v. UBS Financial Services, Inc.*, 2007 WL 221862 at *16 (N.D. Cal. 2007) (approving payments of \$25,000
4 to each named plaintiff); *In re Heritage Bond Litigation*, 2005 WL 1594403 at *18 (C.D. Cal. 2005)
5 (awarding incentive payments between \$5,000 and \$18,000).

6 Plaintiffs initiated this litigation on behalf of their former co-workers who can now collect
7 monetary payment from the Settlement. Plaintiffs invested substantial time and effort into litigation
8 including their own research, reviewing documents, and extensive discussions with Class Counsel.
9 (Medina Decl., ¶¶ 4-10.; Lara Decl., ¶¶ 4-10.) Further, the requested Enhancement Payments are
10 extremely reasonable given the benefit gained by other Class Members. The requested Enhancement
11 Payments of \$5,000.00 to each Plaintiff are disclosed to Class Members in the Class Notice and to
12 PAGA-Only Members in the PAGA Notice. (Agreement, Exh. A, D.) For these reasons, Plaintiffs
13 request that Enhancement Payments of \$5,000.00 be preliminarily approved by the Court. (Minne
14 Decl., ¶ 59; Hosseini Decl., ¶ 14; Medina Decl., ¶ 11; Lara Decl., ¶ 11.)

15 **VIII. THE PROPOSED CLASS NOTICE, AND OPT-OUT AND OBJECTION**
16 **PROCEDURES SATISFY DUE PROCESS REQUIREMENTS**

17 “The principal purpose of notice to the class is the protection of the integrity of the class action
18 process.” *Cartt v. Superior Court* , 50 Cal.App.3d 960, 970 (1975). The notice ““must fairly apprise
19 the class members of the terms of the proposed compromise and of the options open to the
20 dissenting class members.”” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 251 (2001).
21 Additionally, the notice given should have a reasonable chance of reaching a substantial percentage
22 of the class members. *Cartt*, 50 Cal.App.3d at 974.

23 The Parties have jointly drafted a Notice of Class Action and PAGA Settlement (“Class
24 Notice”) which will be sent to Class Members in both in both English and Spanish. (Agreement, ¶¶ 8,
25 73-34, Exh. A). The Class Notice describes the nature of the lawsuit, the key terms of the Settlement,
26 the scope of the released claims, Class Members’ estimated Individual Settlement Payment and, if
27 applicable, Individual PAGA Payment, Class Members’ total workweeks during the Class Period, and
28 PAGA Member’s total workweeks during the PAGA Period. (Agreement, Exh. A.) The Class Notice

1 informs Class Members how to opt-out of the Settlement, object to the Settlement, and challenge their
2 reported workweeks. (*Id.*) The Class Notice further includes an Objection Form and Request for
3 Exclusion Form that can be used by Class Members to submit objections to the Settlement or to opt
4 out of the Settlement. (Agreement, Exh. B-C.) The Class Notice also includes instructions on how to
5 obtain all relevant Settlement documents, and informs Class Members of their right to attend the Final
6 Approval hearing. (Agreement, Exh. A.)

7 The Parties have also drafted a separate version of the notice (“PAGA Notice”) that will be
8 sent to PAGA-Only Members.⁸ (Agreement, Exh. D.) The PAGA Notice informs PAGA-Only
9 Members that, although they do not qualify as Class Members, they are still eligible to receive an
10 Individual PAGA Payment from the 25% portion of PAGA Penalties allocated towards PAGA
11 Members. (*Id.*) As with the Class Notice, the PAGA Notice describes the nature of the lawsuit, the
12 key terms of the Settlement, the scope of the released claims, the PAGA-Only Member’s estimated
13 Individual PAGA Payment, and PAGA-Only Member’s total workweeks during the PAGA Period.
14 (*Id.*) The PAGA Notice also includes instructions on how to obtain all relevant Settlement documents,
15 and contains information about the Final Approval hearing. (*Id.*)

16 No later than 14 calendar days after the Court grants Preliminary Approval of the Settlement,
17 Defendants shall provide the Administrator with the Class and PAGA List containing all Class
18 Members’ and PAGA-Only Members’: (1) full name; (2) last known home address; (3) last known
19 telephone number; (4) social security number; (5) start and end dates of active employment as a non-
20 exempt employee Natureware in the State of California; (6) total Workweeks during the Class Period
21 (for Class Members only); (7) total Workweeks during the PAGA Period (for PAGA Members).
22 (Agreement, ¶¶ 5, 40.) No later than 7 calendar days after receiving the Class and PAGA List from
23 Defendants, the Administrator shall mail copies of the Class Notice to all Class Members and PAGA
24 Notice to all PAGA-Only Members via regular First-Class U.S. Mail. (*Id.*, ¶ 71) Before mailing the
25 Class Notices and PAGA notices, the Administrator shall perform a search based on the National
26

27 ⁸ As discussed above, “PAGA-Only” Members refers to those non-exempt, hourly paid employees
28 who entered into *Pick-Up Stix* Releases with Defendants, and therefore do not qualify as Class
Members, but who remain qualified to receive an Individual PAGA Payment.

1 Change of Address Database to update and correct any known or identifiable address changes. (*Id.*, ¶
2 72.) If any Class Notice or PAGA Notice is returned as undeliverable, the Administrator shall promptly
3 re-mail such returned Class Notices and PAGA Notices to the forwarding address provided by the
4 USPS. (*Id.*) If no forwarding address is provided, the Administrator shall search for a current address
5 using all readily available resources, such as skip tracing, and re-mail the Class Notice to the most
6 current address obtained. (*Id.*) Class Members shall have 60 days after the mailing of the Class Notice
7 to submit request for exclusions, objections, or workweek disputes by fax, email, or mail. (*Id.*, ¶¶ 39,
8 75, 76, 80.) Further, the Response Deadline shall be extended by 15 calendar days for all Class
9 Members whose Class Notices are re-mailed. (*Id.*, ¶ 39, 72.)

10 Direct mail notice to Class Members' last known addresses is the best possible notice under
11 the circumstances. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 319 (1950); *Eisen*
12 *v. Carlisle & Jacquelin*, 417 U.S. 156, 173-176 (1974). Furthermore, the Class Notice comports with
13 the requirements of California Rules of Court, Rules 3.769 and 3.766. Accordingly, Plaintiff
14 respectfully requests that the Court direct the mailing of the Class Notice to the Class Members based
15 on the proposed deadlines set forth in the Agreement.

16 Direct mail notice to Class Members' last known addresses is the best possible notice under
17 the circumstances. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 319 (1950); *Eisen*
18 *v. Carlisle & Jacquelin*, 417 U.S. 156, 173-176 (1974). Furthermore, the Class Notice comports with
19 the requirements of California Rules of Court, Rules 3.769 and 3.766. Pursuant to Rule 3.769(f), the
20 class notice must contain an explanation of the proposed settlement and procedures for class members
21 to follow in filing written objections to it and arranging to appear at the hearing and state objections to
22 the proposed settlement. Cal. R. Ct. 3.769(f). Rule 3.766 further requires that the class notice include
23 (1) a brief explanation of the case, including the basic contentions and denials of the parties; (2) a
24 procedure for the class member to follow in requesting exclusion, and a statement that the Court will
25 exclude the class member from the class if he or she so requests by the specified deadline; (3) a
26 statement that the judgment, whether favorable or not, will bind all class members who do not request
27 exclusion; (4) a statement that any class member who does not request exclusion may, if the class
28 member so desires, object and enter an appearance through counsel. The proposed Class Notice satisfies

1 each of these requirements. *See* Agreement, Exh. A.

2 Accordingly, Plaintiffs respectfully request that the Court appoint Phoenix Class Action
3 Administration Solutions as the Settlement Administrator and direct the mailing of the Class Notice
4 to the Class Members and the PAGA Notice to PAGA-Only Members in the manner outlined and
5 based on the proposed deadlines as described herein and set forth in the Agreement.

6 **IX. CONCLUSION**

7 For the reasons set forth above, Plaintiffs respectfully request that the Court: (1) grant
8 Preliminary Approval of the Settlement; (2) approve the Class Notice and PAGA Notice and plan for
9 distribution of the Class Notice and PAGA Notice; (3) provisionally certify the Class for settlement
10 purposes only; and (4) schedule a hearing on Final Approval of the Settlement.

11
12
13 Dated: August 28, 2023

Respectfully submitted,

PARKER & MINNE, LLP

14
15 By:



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