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9 FRANCISCO RODRIGUEZ, and all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF IMPERIAL**

12 **(UNLIMITED JURISDICTION)**

13 FRANCISCO RODRIGUEZ, on behalf of
14 himself and all others similarly situated, the
15 general public, and as an “aggrieved employee”
16 on behalf of other “aggrieved employees”
17 under the Labor Code Private Attorneys
General Act of 2004,

18 *Plaintiff(s),*

19 vs.

20 JETT HARVEST, INC., a California
21 corporation; JOSE ANTONIO LOPEZ, an
22 individual; PRIME AG SERVICES INC., a
23 California corporation; and DOES 1–50,
inclusive,

24 *Defendant(s).*

Case No. ECU002119

**PLAINTIFF FRANCISCO
RODRIGUEZ’S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing Date: January 29, 2025
Hearing Time: 8:30 a.m.
Hearing Dept.: 9, The Honorable L.
Brooks Anderholt

Action filed: October 21, 2021
Trial Date: Not Set



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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**
2 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 **I. INTRODUCTION**

4 Plaintiff Francisco Rodriguez (“Plaintiff”) submits this memorandum of points and
5 authorities in support of his unopposed motion for preliminary approval of the Settlement
6 Agreement (the “Settlement”)², which provides for a Gross Settlement Amount (“GSA”) of
7 \$360,000.00 in compromise of all disputed claims on behalf of all non-exempt hourly employees
8 who are employed or have been employed by Defendants Jett Harvest, Inc. and/or Prime Ag
9 Services, Inc. in the State of California during the period from October 21, 2017 through July 6,
10 2023 (“Class Period”). These non-exempt, hourly employees also received piece rate pay.
11 Through this Motion, Plaintiff respectfully requests for this Court to (1) provisionally certify the
12 below-defined Class for settlement purposes only under Code of Civil Procedure § 382; (2)
13 preliminarily approve the Settlement; (3) preliminarily appoint Plaintiff as Class Representative;
14 (4) appoint David Spivak of The Spivak Law Firm and Walter L. Haines of United Employees
15 Law Group as Class Counsel; (5) approve the proposed notice procedures and related forms; and
16 (6) schedule a final approval hearing.

17 This Court should grant Plaintiff’s motion because: (1) for settlement purposes, the
18 Settlement Class meets the requirements for class certification under Code of Civil Procedure §
19 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness,
20 reasonableness, and adequacy; (3) for settlement purposes, Plaintiff is adequate to serve as Class
21 Representative; (4) Plaintiff’s attorneys are adequate to serve as Class Counsel; (5) the proposed
22 notice procedures, and related forms, fully comport with due process and adequately apprise Class
23 Members of their rights; and (6) a final approval hearing must be scheduled to allow Settlement
24 Class Members an opportunity to be heard regarding the Settlement and to give it finality.
25 Accordingly, for the reasons detailed below, this Court should grant Plaintiff’s Motion in its
26 entirety and preliminarily approve the Settlement.

27 **II. BACKGROUND**

28 Defendants own, operate, and/or provide labor for agricultural services. DS, ¶ 10.
Defendant employed Plaintiff in California as a loader, cutter, and laborer from about 2011 until
June 3, 2021. *Id.*

² The Settlement, ¶ Is attached as Exhibit (“Ex.”) 1 to the Declaration of David Spivak (“DS”),
which is submitted herewith under a separate cover.



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1 **A. The Claims and Procedural History**

2 On August 30, 2021, Plaintiff notified Defendants and the California Labor and
3 Workforce Development Agency (“LWDA”), pursuant to the California Private Attorneys
4 General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”), of alleged Labor
5 Code violations committed by Defendants. DS, ¶ 11, Ex. 2.

6 On October 21, 2021, Plaintiff filed a Class Action Complaint in the Imperial County
7 Superior Court, Case No. ECU002119, against Defendants on behalf of himself and others
8 similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All Wages
9 Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab.
10 Code §§ 221, 226.2, 510, 1194, 1197, and 1198); (2) Failure to Provide Rest Breaks (Lab. Code
11 §§ 226.7 and 1198); (3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, and 1198);
12 (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5) Wage Statement Penalties (Lab. Code
13 §§ 226 and 226.2); (6) Waiting Time Penalties (Lab. Code §§ 201-203); and (7) Unfair
14 Competition (Bus. & Prof. Code §§ 17200, *et seq.*). DS, ¶ 12, Ex. 3. On November 16, 2021,
15 Plaintiff filed his First Amended Complaint adding a claim under PAGA. DS, ¶ 12, Ex. 4. On
16 January 3, 2022, Defendant Prime Ag Services Inc. filed an answer to Plaintiff’s First Amended
17 Complaint. DS, ¶ 12, Ex. 5. On January 21, 2022, Defendants Jett Harvest, Inc. and Jose Antonio
18 Lopez filed an answer to Plaintiff’s First Amended Complaint. DS, ¶ 12, Ex. 6. Defendants deny
19 all of Plaintiff’s allegations and strongly contend that their wage and hour policies, practices, and
20 procedures are fully compliant with all applicable laws. DS, ¶ 12.

21 **B. Sampling**

22 On April 14, 2022, Plaintiff requested that Defendants informally disclose documents and
23 data to enable Plaintiff to prepare for settlement discussions, including the number of putative
24 class members and aggrieved employees and the number of paychecks and workweeks for the
25 various limitations periods applicable to Plaintiff’s claims. DS, ¶ 13. Plaintiff also requested a
26 reasonable, randomly selected sample of Defendants’ time, payroll, and expense records, and
27 related personnel records. *Id.* Finally, Plaintiff requested Defendants’ written policies applicable
28 to the claims at hand and asked Defendants to identify any and all comparable claims against
29 them.

30 The Parties thereafter engaged in an informal, voluntary exchange of information in the
31 context of privileged settlement discussions to facilitate an early mediation. Defendants produced
32 Plaintiff’s entire personnel file (including policies and agreements he signed and acknowledged)



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1 and copies of their relevant company written policies. DS, ¶ 14.

2 Defendants disclosed that there have not been any comparable claims against them. DS, ¶
3 19.

4 Defendants contend that they employed approximately 10,876 putative class members
5 during the period of January 06, 2019 to May 31, 2023. Defendants produced the records of 5.59%
6 of the putative class members for the period of January 06, 2019 to May 31, 2023. There were
7 records for 608 employees in the sample. Defendants chose the sample. The sample was randomly
8 selected, according to Defendants. The sample consisted of time, payroll, and related records. DS,
9 ¶ 15.

10 Plaintiff retained Sridhar Srinivasan, a data analyst, to analyze the sample. Plaintiff also
11 employed the Raosoft³ Sample Size calculator (<http://www.raosoft.com/samplesize.html>) to
12 determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004)
13 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative
14 margin of error of 32.4 percent was unacceptable whereas the *Duran* court found a relative margin
15 of error of 43.3 percent was unacceptable. Using a margin of error of 32%, a confidence level of
16 95%, and a population size of 10,876, the Raosoft Sample Size Calculator recommended a sample
17 of 10. DS, ¶ 16, **Exhibit 7** (Raosoft Sample Size Calculator results print-out). Thus, the sample
18 population that Plaintiff's data analyst evaluated is statistically reliable. *Id.*

19 **C. Mediation**

20 On July 6, 2023, following much of the foregoing informal discovery and exchange of
21 information, the Parties participated in a mediation session presided over by Mediator Marc
22 Feder, an experienced class action mediator. During the mediation, the Parties had a full day of
23 productive negotiations. Though the case did not settle at mediation, the Parties reached an
24 agreement on a class-wide settlement several months later. During the mediation sessions and
25 over the months that followed, each side, represented by his / their respective counsel, recognized



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3 Raosoft advertises, “Raosoft, Inc. produces EZSurvey for the
Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software
programs for information gathering and analysis. The family of survey software supports data
collection and reporting for any form-based data. Support is for web-surveys and forms, email
distribution, diskette, PDA, laptop or pen-based: all types of distribution.” The Raosoft webpage
advertises that is it “database web survey software for gathering information.”
<http://www.raosoft.com/> . It also advertises, “The parameters of the sample size calculation are
something that you choose.” <http://www.raosoft.com/suggestreading.html>.

1 the risk of an adverse result in the Action, and, after the mediation, the Parties agreed to settle the
2 Action and all other matters covered by this Settlement pursuant to the terms and conditions of
3 this Settlement. DS, ¶ 17.

4 **D. Defendants' Financial Condition**

5 During the negotiations, it became clear that Defendants had insufficient resources to
6 cover the full extent of liability. DS ¶ 18. As part of the settlement negotiations, Defendants
7 disclosed their bank statements from 2018 to 2023, credit card statements from 2019 to 2023, and
8 tax returns from 2018 to 2021. *Id.* Defendant Jett Harvest, Inc. also disclosed its credit line
9 statements from 2019 to 2023, financial statements from January of 2022 through June of 2023,
10 profit and loss statements from 2018 to 2021, and balance sheets from December of 2022 and
11 June of 2023. *Id.* Defendant Prime Ag Services Inc. also disclosed its financial statements from
12 January of 2022 through June of 2023, profit and loss statements from 2019 to 2021, and balance
13 sheets from December of 2022 and June of 2023. *Id.* Plaintiff's Counsel has reviewed the financial
14 records with the aid of an accountant. *Id.* The information provided was sufficient to demonstrate
15 the financial condition of the Defendants and that they will unlikely be able to afford payment of
16 a larger amount than the Settlement amount. Based on such records, Plaintiff, on his own behalf
17 and on behalf of the Class Members, has agreed to settle the lawsuit on the terms set forth in the
18 Settlement. *Id.*

19 **III. OVERVIEW OF THE SETTLEMENT**

20 **A. Settlement Class and Aggrieved Employees Definition**

21 The Settlement defines the Class as all non-exempt hourly employees who are employed
22 or have been employed by Defendants Jett Harvest, Inc. and/or Prime Ag Services, Inc. in the
23 State of California during the Class Period. Settlement, ¶ I.5. The Class Period is October 21,
24 2017 through July 6, 2023. *Id.*, ¶ I.12. The "Aggrieved Employees" are all persons within the
25 State of California who are or were employed by Defendants Jett Harvest, Inc. and/or Prime Ag
26 Services, Inc. as non-exempt employees in the State of California during the PAGA Period.
27 Settlement, ¶ I. 4. The "PAGA Period" begins August 30, 2020 and ends July 6, 2023. *Id.*, ¶ I.29.

28 **B. Monetary Terms**

Gross Settlement Amount. Defendants promise to pay a total maximum settlement
amount of \$360,000 and no more as the Gross Settlement Amount, which includes payments to
Plaintiff and the Class Members, and/or the Aggrieved Employees for claimed wages, penalties,
and interest; Class Counsel Fees Payment; Class Counsel Litigation Expenses Payment; Class



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1 Representative Service Payment; Administration Expenses Payment; and PAGA Penalties, which
2 shall be provided to the designated Administrator upon the Court's final approval of settlement.
3 Defendants also agree to separately pay any and all employer payroll taxes owed on the Wage
4 Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross
5 Settlement Amount prior to the deadline stated in Section IV of the Settlement. The Administrator
6 will disburse the entire Gross Settlement Amount without asking or requiring Participating Class
7 Members or Aggrieved Employees to submit any claim as a condition of payment. None of the
8 Gross Settlement Amount will revert to Defendants. Settlement, ¶ III.1.

9 **Payments from the Gross Settlement Amount.** The Administrator will make and deduct
10 the following payments from the Gross Settlement Amount, in the amounts specified by the Court
11 in the Final Approval.

12 The Administrator will make and deduct from the Gross Settlement Amount the Class
13 Representative Service Payment of no more than \$10,000.00 to Plaintiff (in addition to any
14 Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled
15 to receive as a Participating Class Member). Defendants will not oppose Plaintiff's request for
16 the Class Representative Service Payment that does not exceed this amount. As part of the motion
17 for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court
18 approval for any Class Representative Service Payment no later than sixteen (16) court days prior
19 to the Final Approval Hearing. If the Court approves the Class Representative Service Payment
20 less than the amount requested, the Administrator will retain the remainder in the Net Settlement
21 Amount; said reduced approval amount shall not be cause to invalidate the Settlement. The
22 Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff
23 assumes full responsibility and liability for employee taxes owed on the Class Representative
24 Service Payment. Settlement, ¶ III.2a.

25 The Administrator will make and deduct from the Gross Settlement Amount the Class
26 Counsel Fees Payment of no more than \$120,000.00 (one-third of the Gross Settlement Amount)
27 and a Class Counsel Litigation Expenses Payment of no more than \$17,500.00. Defendants will
28 not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff
and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation
Expenses Payment no later than sixteen (16) court days prior to the Final Approval Hearing. If
the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses



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1 Payment less than the amounts requested, the Administrator will allocate the remainder to the Net
2 Settlement Amount; said reduced approval amount shall not be cause to invalidate the Settlement.
3 Released Parties shall have no liability to Class Counsel or any other Class Counsel arising from
4 any claim to any portion any Class Counsel Fees Payment and/or Class Counsel Litigation
5 Expenses Payment. The Administrator may purchase an annuity to utilize U.S. treasuries and
6 bonds or other attorney fee deferral vehicles for Class Counsel. The Administrator will also pay
7 the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one or
8 more IRS Form 1099. Class Counsel assume full responsibility and liability for taxes owed on
9 the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment, hold
10 Defendants harmless, and indemnify Defendants from any dispute or controversy regarding any
11 division or sharing of any of these payments. Settlement, ¶ III.2b.

12 The Administrator will make and deduct from the Gross Settlement Amount the
13 Administration Expenses Payment not to exceed \$65,000.00 except for a showing of good cause
14 and as approved by the Court. To the extent the Administration Expenses Payment is less, or the
15 Court approves payment less than \$65,000.00, the Administrator will retain the remainder in the
16 Net Settlement Amount; said reduced approval amount shall not be cause to invalidate the
17 Settlement. Settlement, ¶ III.2c.

18 The Administrator will make and deduct from the Gross Settlement Amount to each
19 Participating Class Member an Individual Class Payment, which is calculated by: (a) dividing the
20 Net Settlement Amount by the total number of Class Paychecks paid to all Participating Class
21 Members during the Class Period; and (b) multiplying the result by each Participating Class
22 Member's Class Paychecks during the Class Period. Settlement, ¶ III.2d.

23 **Tax Allocation of Individual Class Payments.** Twenty percent (20%) of each
24 Participating Class Member's Individual Class Payment will be allocated to the settlement of
25 wage claims ("Wage Portion"). The Wage Portions are subject to tax withholding and will be
26 reported on IRS Form W-2. Eighty percent (80%) of each Participating Class Member's
27 Individual Class Payment will be allocated to the settlement of claims for interest and penalties
28 ("Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will
be reported on IRS Form 1099. Participating Class Members assume full responsibility and
liability for any employee taxes owed on their Individual Class Payments. Settlement, ¶ III.2d(i).

Effect of Non-Participating Class Members on Calculation of Individual Class



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1 **Payments.** Non-Participating Class Members will not receive any Individual Class Payments.
2 The Administrator will retain amounts equal to their Individual Class Payments in the Net
3 Settlement Amount for distribution to Participating Class Members on a pro rata basis.
4 Settlement, ¶ III. 2d(ii).

5 The Administrator will make and deduct from the Gross Settlement Amount to the LWDA
6 and Aggrieved Employees: PAGA Penalties in the sum of \$36,000.00 to be paid from the Gross
7 Settlement Amount, seventy-five percent (75%) of which (\$27,000.00) will be allocated to the
8 LWDA as the LWDA PAGA Payment and twenty-five percent (25%) of which (\$9,000.00) will
9 be allocated to the Aggrieved Employees as their Individual PAGA Payments. Settlement, ¶
10 III.2e.

11 The Administrator will calculate each Individual PAGA Payment by: (a) dividing the
12 amount of the Aggrieved Employees' twenty-five percent (25%) share of PAGA Penalties
13 (\$9,000.00) by the total number of PAGA Paychecks paid to all Aggrieved Employees during the
14 PAGA Period; and (b) multiplying the result by each Aggrieved Employee's PAGA Paychecks
15 during the PAGA Period. Aggrieved Employees assume full responsibility and liability for any
16 taxes owed on their Individual PAGA Payment. Settlement, ¶ III. 2e(i).

17 If the Court approves PAGA Penalties of less than the amount requested, the
18 Administrator will allocate the remainder to the Net Settlement Amount. In addition, the
19 Administrator will report the Individual PAGA Payments on IRS Form 1099. Settlement, ¶
20 III.2e(ii).

21 **C. Timing of Payments**

22 **Class Paychecks and PAGA Paychecks.** Based on a review of its records to date,
23 Defendants estimate there are approximately 10,876 Class Members, of whom approximately
24 10,850 are former employees, who were paid a total of approximately 329,204 Class Paychecks,
25 and approximately 8,261 Aggrieved Employees who were paid a total of approximately 250,058
26 PAGA Paychecks. Settlement, ¶ IV.1.

27 **Funding of Gross Settlement Amount.** Defendants shall fund the Gross Settlement
28 Amount by transmitting the funds to the Administrator through equal monthly payments of
\$10,000, with the first payment beginning no later than the Effective Date, and the remaining
payments due over the subsequent thirty-five (35) months, until the full Gross Settlement Amount
is funded. Settlement, ¶ IV.2.



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1 **Payments from the Gross Settlement Amount.** Within fourteen (14) calendar days after
2 Defendants fully fund the Gross Settlement Amount, the Administrator will mail checks for all
3 Individual Class Payments, Individual PAGA Payments, LWDA PAGA Payment, Administration
4 Expenses Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment,
5 and Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment,
6 Class Counsel Litigation Expenses Payment, and Class Representative Service Payment shall not
7 precede disbursement of Individual Class Payments and Individual PAGA Payments. Settlement,
8 ¶ IV.3.

9 The Administrator will issue checks for the Individual Class Payments and/or Individual
10 PAGA Payments and send them to the Class Members via first-class United States Postal Service
11 (“USPS”) mail, postage prepaid. The face of each check shall state checks that are not cashed
12 within one hundred eighty (180) calendar days after the date of mailing will be voided. The
13 Administrator will cancel all checks not cashed by the void date. The Administrator will send
14 checks for Individual Class Payments to all Participating Class Members (including those for
15 whom Class Notices were returned undelivered). The Administrator will send checks for
16 Individual PAGA Payments to all Aggrieved Employees, including Non-Participating Class
17 Members who qualify as Aggrieved Employees (including those for whom Class Notices were
18 returned undelivered). The Administrator may send Participating Class Members a single check
19 combining the Individual Class Payment and the Individual PAGA Payment, but the
20 Administrator should create a record describing how much of the payment is allocated toward the
21 Individual Class Payment and how much of the payment is allocated toward the Individual PAGA
22 Payment. Before mailing any checks, the Administrator must update the recipients’ mailing
23 addresses using the NCOA. Settlement, ¶ IV.3a.

24 The Administrator must conduct a Class Member Address Search for all other Class
25 Members whose checks are returned undelivered without USPS forwarding address. Within seven
26 (7) calendar days of receiving a returned check, the Administrator will remail checks to the USPS
27 forwarding address provided or to an address ascertained through the Class Member Address
28 Search. The Administrator shall send a replacement check to any Class Member whose original
check was lost or misplaced if requested by the Class Member prior to the void date. Settlement,
¶ IV.3b.

For any Class Member whose Individual Class Payment check or Individual PAGA



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1 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
2 funds represented by such checks to the California Controller's Unclaimed Property Fund in the
3 name of the Class Member, thereby leaving no "unpaid residue" subject to the requirements of
4 Code of Civil Procedure section 384, subdivision (b). Settlement, ¶ IV.3c.

5 The payment of Individual Class Payments and Individual PAGA Payments shall not
6 obligate Defendants to confer any additional benefits or make any additional payments to Class
7 Members (such as 401(k) contributions or bonuses) beyond those specified in the Settlement.
8 Settlement, ¶ IV.3d.

9 **D. Calculation of Settlement Shares**

10 "Individual Class Payment" means the Participating Class Member's pro rata share of the
11 Net Settlement Amount calculated according to the number of Class Paychecks worked during
12 the Class Period. Settlement, ¶ 1.22. An Individual Class Payment is calculated by: (a) dividing
13 the Net Settlement Amount by the total number of Class Paychecks paid to all Participating Class
14 Members during the Class Period; and (b) multiplying the result by each Participating Class
15 Member's Class Paychecks during the Class Period. *Id.*, ¶ III.2.d.

16 "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of twenty-
17 five percent (25%) of the PAGA Penalties calculated according to the number of Paychecks
18 worked during the PAGA Period. Settlement, ¶ 1.23. The Administrator will calculate each
19 Individual PAGA Payment by: (a) dividing the amount of the Aggrieved Employees' twenty-five
20 percent (25%) share of PAGA Penalties (\$9,000.00) by the total number of PAGA Paychecks
21 paid to all Aggrieved Employees during the PAGA Period; and (b) multiplying the result by each
22 Aggrieved Employee's PAGA Paychecks during the PAGA Period. Aggrieved Employees
23 assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
24 *Id.*, ¶ III.2.e.i.

25 **E. Apportionment of Settlement Shares**

26 Twenty percent (20%) of each Participating Class Member's Individual Class Payment
27 will be allocated to the settlement of wage claims ("Wage Portion"). The Wage Portions are
28 subject to tax withholding and will be reported on IRS Form W-2. Eighty percent (80%) of each
Participating Class Member's Individual Class Payment will be allocated to the settlement of
claims for interest and penalties ("Non-Wage Portion"). The Non-Wage Portions are not subject
to wage withholdings and will be reported on IRS Form 1099. Participating Class Members
assume full responsibility and liability for any employee taxes owed on their Individual Class



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1 Payments. Settlement, ¶ III. 2d(i).

2 **F. The Releases**

3 Effective on the date when Defendants fully fund the entire Gross Settlement Amount and
4 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments and
5 Individual PAGA Payments, Plaintiff, Class Members, Aggrieved Employees, and Class Counsel
6 will release claims against all Released Parties as follows:

7 **Plaintiff's Release.** Plaintiff and his former and present spouses, representatives, agents,
8 attorneys, heirs, administrators, successors, and assigns generally release and discharge the
9 Released Parties from all claims, transactions, or occurrences that occurred during the Class
10 Period, including, but not limited to: (a) all claims that were, or reasonably could have been,
11 alleged based on the facts contained in the Operative Complaint; and (b) all PAGA claims that
12 were, or reasonably could have been, alleged based on facts contained in the PAGA Notice
13 ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce the
14 Settlement, ¶ or to any claims for vested benefits, unemployment benefits, disability benefits,
15 social security benefits, workers' compensation benefits that arose at any time, or based on
16 occurrences outside the Class Period. Plaintiff acknowledges he may discover facts or law
17 different from, or in addition to, the facts or law Plaintiff now knows or believes to be true but
18 agrees Plaintiff's Release shall be and remain effective in all respects, notwithstanding such
19 different or additional facts or Plaintiff's discovery of them. Settlement, ¶ V.1.

20 Plaintiff's Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiff's
21 Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of
22 section 1542 of the Civil Code, which reads:

23 **A general release does not extend to claims that the creditor or releasing party
24 does not know or suspect to exist in his or her favor at the time of executing
25 the release, and that, if known by him or her, would have materially affected
26 his or her settlement with the debtor or released party.**

27 Settlement, ¶ V.1.a.

28 **Release by Participating Class Members.** All Participating Class Members, on behalf
of themselves and their former and present representatives, agents, attorneys, heirs,
administrators, successors, and assigns, release the Released Parties from all claims that were
alleged, or reasonably could have been alleged, based on the facts contained in the Operative
Complaint and that occurred during the Class Period. Except as set forth in Section V.3. of the



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1 Settlement, Participating Class Members do not release any other claims, including claims for
2 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
3 unemployment insurance, disability, social security, workers' compensation, or claims based on
4 facts occurring outside the Class Period. Settlement, ¶ V.2.

5 **Release by Aggrieved Employees.** All Participating and Non-Participating Class
6 Members, who are Aggrieved Employees, are deemed to release, on behalf of themselves and
7 their former and present representatives, agents, attorneys, heirs, administrators, successors, and
8 assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably
9 could have been alleged, based on the facts stated in the Operative Complaint and PAGA Notice
that occurred during the PAGA Period. Settlement, ¶ V.3.

10 **G. Notice and Claims Process and Procedures**

11 No later than fourteen (14) calendar days after the Court grants Preliminary Approval of
12 the Settlement, Defendants will deliver the Class Data to the Administrator in the form of a
13 Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must
14 maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement
15 and for no other purpose, and restrict access to the Class Data to Administrator employees who
16 need access to the Class Data to effect and perform under the Settlement. Defendants have a
17 continuing duty to immediately notify Class Counsel if they discover the Class Data omitted Class
18 Members' identifying information and to provide corrected or updated Class Data as soon as
19 reasonably feasible. Without any extension of the deadline by which Defendants must send the
20 Class Data to the Administrator, the Parties and their counsel will expeditiously use their best
21 efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted
22 Class Data. Settlement, ¶ VII.4.a.

23 No later than three (3) business days after receipt of the Class Data, the Administrator
24 shall notify Class Counsel that the list has been received and state the number of Class Members,
25 Aggrieved Employees, Class Paychecks, and PAGA Paychecks in the Class Data. Settlement, ¶
26 VII.4.b.

27 Within ten (10) business days of receiving the Aggrieved Employees' and Class
28 Members' information from Defendants, the Settlement Administrator will circulate to counsel
for both Parties an anonymized spreadsheet containing the estimated individual settlement
payments to each Aggrieved Employee and the data used to calculate said payments. The



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1 Settlement Administrator shall obtain approval from all counsel of the calculations before mailing
2 Class Notices, Individual PAGA Payments, or Individual Class Payments. Settlement, ¶ VII.4.c.

3 Before mailing Class Notices, the Administrator shall update Class Member addresses
4 using the NCOA. Using best efforts to perform as soon as possible, and in no event later than
5 fourteen (14) calendar days after receiving the Class Data, the Administrator will send to all Class
6 Members identified in the Class Data the Class Notice substantially in the form attached to the
7 Settlement as Exhibit A via first class USPS mail. The first page of the Class Notice shall
8 prominently estimate the dollar amounts of any Individual Class Payment and/or Individual
9 PAGA Payment payable to the Class Member, and the number of Class Paychecks and PAGA
Paychecks (if applicable) used to calculate these amounts. Settlement, ¶ VII.4.d.

10 No later than three (3) business days after the Administrator's receipt of any Class Notice
11 returned by the USPS as undelivered, the Administrator shall remail the Class Notice using any
12 forwarding address provided by the USPS. If the USPS does not provide a forwarding address,
13 the Administrator shall conduct a Class Member Address Search and remail the Class Notice to
14 the most current address obtained. Settlement, ¶ VII.4.e.

15 The deadlines for Class Members' written objections, challenges to Class Paychecks
16 and/or PAGA Paychecks, and Requests for Exclusion will be extended an additional fourteen (14)
17 calendar days beyond the sixty (60) calendar days otherwise provided in the Class Notice for all
18 Class Members whose notice is remailed. The Administrator will inform the Class Member of the
extended deadline with the remailed Class Notice. Settlement, ¶ VII.4.f.

19 If the Administrator, Defendants, or Class Counsel are contacted by or otherwise discover
20 any persons who believe they should have been included in the Class Data and should have
21 received Class Notice, the Parties will expeditiously meet and confer in person or by telephone
22 or email, and in good faith, to agree on whether to include them as Class Members. If the Parties
23 agree, such persons will be Class Members entitled to the same rights as other Class Members,
24 and the Administrator will send, via email or overnight delivery, a Class Notice requiring them
25 to exercise options under the Settlement no later than fourteen (14) calendar days after receipt of
26 Class Notice or the deadline dates in the Class Notice, whichever is later. Settlement, ¶ VII.4.g.

27 **1. Disputes**

28 **Challenges to Calculation of Class Paychecks and PAGA Paychecks.** Each Class
Member shall have sixty (60) calendar days after the Administrator mails the Class Notice (plus



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1 an additional 14 calendar days for Class Members whose Class Notices are remailed) to challenge
2 the number of Class Paychecks and PAGA Paychecks (if any) allocated to the Class Member in
3 the Class Notice. The Class Member may challenge the allocation by communicating with the
4 Administrator via fax, email, or mail. The Administrator must encourage the challenging Class
5 Member to submit supporting documentation. In the absence of any contrary documentation, the
6 Administrator is entitled to presume that the Class Paychecks and PAGA Paychecks contained in
7 the Class Notice are correct so long as they are consistent with the Class Data. The
8 Administrator's determination of each Class Member's allocation of Class Paychecks and PAGA
9 Paychecks shall be final and not appealable or susceptible to challenge. The Administrator shall
10 promptly provide copies of all challenges to the calculation of Class Paychecks and PAGA
11 Paychecks to Defense Counsel and Class Counsel along with the Administrator's determination
12 of the challenges. Settlement, ¶ VII.6.

12 2. Opting Out

13 Class Members who wish to exclude themselves (opt out of) the Class Settlement must
14 send the Administrator by fax, email, or mail a signed written Request for Exclusion no later than
15 sixty (60) calendar days after the Administrator mails the Class Notice (plus an additional 14
16 calendar days for Class Members whose Class Notices are remailed). A Request for Exclusion is
17 a letter from a Class Member or his/her representative that reasonably communicates the Class
18 Member's election to be excluded from the Settlement and includes the Class Member's: (i) full
19 name; (ii) present address; (iii) email address or telephone number; and (iv) a simple statement
20 electing to be excluded from the Settlement. To be valid, a Request for Exclusion must be timely
21 faxed, emailed, or postmarked by the Response Deadline. Settlement, ¶ VII.5.a.

22 The Administrator may not reject a Request for Exclusion as invalid because it fails to
23 contain all the information specified in the Class Notice. The Administrator shall accept any
24 Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the
25 person as a Class Member and the Class Member's desire to be excluded. The Administrator's
26 determination shall be final and not appealable or susceptible to challenge. If the Administrator
27 has reason to question the authenticity of a Request for Exclusion, the Administrator may demand
28 additional proof of the Class Member's identity. The Administrator's determination of
authenticity shall be final and not appealable or susceptible to challenge. Settlement, ¶ VII.5.b.

Every Class Member who does not submit a timely and valid Request for Exclusion is



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1 deemed to be a Participating Class Member under the Settlement, entitled to all benefits, and
2 bound by all terms and conditions of the Settlement, including the Participating Class Members’
3 Releases under Section E.2. and Section E.3. of the Settlement, regardless of whether the
4 Participating Class Member receives the Class Notice or objects to the Settlement. Settlement, ¶
5 VII.5.c.

6 Every Class Member who submits a valid and timely Request for Exclusion is a Non-
7 Participating Class Member and shall not receive an Individual Class Payment or have the right
8 to object to the class action components of the Settlement. Because future PAGA claims are
9 subject to claim preclusion upon entry of the Judgment, Participating and Non-Participating Class
10 Members who are Aggrieved Employees are deemed to release the claims identified in Section
11 V.3. of this Agreement and are eligible for an Individual PAGA Payment. Settlement, ¶ VII.5.d.

12 **3. Objecting**

13 Only Participating Class Members may object to the class action components of the
14 Settlement, including contesting the fairness of the Settlement, and/or amounts requested for the
15 Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class
16 Representative Service Payment. Settlement, ¶ VII.7.a.

17 Participating Class Members may send signed written objections to the Administrator by
18 fax, email, or mail. The written objection must: (i) indicate what the Class Member is objecting
19 to; (ii) explain why the Class Member is objecting; (iii) include any fact that support the objection;
20 and (iv) include the Class Member’s full name, present address, and email address or telephone
21 number. Settlement, ¶ VII.7.b.

22 Alternatively, Participating Class Members may appear in Court (or hire an attorney to
23 appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class
24 Member who elects to send a written objection to the Administrator must do so no later than sixty
25 (60) calendar days after the Administrator’s mailing of the Class Notice (plus an additional 14
26 calendar days for Class Members whose Class Notices are remailed). Settlement, ¶ VII.7.c.

27 **H. Uncashed Checks**

28 For any Class Member whose Individual Class Payment check or Individual PAGA
Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
funds represented by such checks to the California Controller’s Unclaimed Property Fund in the
name of the Class Member, thereby leaving no “unpaid residue” subject to the requirements of
Code of Civil Procedure section 384, subdivision (b). Settlement, ¶ IV.3.c.



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1 **IV. CERTIFICATION OF THE CLASS IS APPROPRIATE**

2 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable
3 and its members are too numerous for joinder to be practical; (2) the representative and absent
4 class members share a community of interest and questions of law and fact common to the class
5 predominate over questions unique to individual class members; (3) the representative's claims
6 are typical of the class's claims; and (4) the representative will fairly and adequately represent the
7 class's interests. *See, e.g., Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Moreover,
8 in the settlement context, the Court can use a lesser standard to determine the appropriateness of
9 a settlement class as opposed to a litigated class certification. *Dunk v. Ford Motor Co.* (1996) 48
Cal.App.4th 1794, 1807. As explained below, all of these requirements are met in this case.

10 **A. The Settlement Class Is Objectively Ascertainable**

11 A class is ascertainable when it may be readily identified without unreasonable expense
12 or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932
13 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiff maintains that the above-
14 defined Class is ascertainable because its members may be identified by reference to Defendants'
15 records and Defendants have agreed to share the relevant information from their records to
16 facilitate the settlement process. DS, ¶ 21; Settlement, ¶ VII.4.a. Therefore, the Settlement Class
is ascertainable.

17 **B. The Membership of the Settlement Class Is Sufficiently Numerous**

18 The Settlement Class has sufficiently numerous members to render joinder impractical.
19 No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove*
20 (1972) 28 Cal.App.3d 1017, 1030. Defendants estimate that there are approximately 10,876 Class
21 Members. DS, ¶ 22. Plaintiff maintains that it would be impractical and economically inefficient
22 to require each Class Member to separately maintain an individual action or be joined as a named
23 plaintiff in this action. The California Supreme Court has upheld a class of as few as 10
24 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these considerations,
the Settlement Class's membership is sufficiently numerous. DS, ¶ 22. *See Daar v. Yellow Cab*
Co. (1967) 67 Cal.2d 695.

25 **C. Class Members Share a Well-Defined Community of Interest**

26 The community of interest requirement "embodies three factors: (1) predominant common
27 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
28 (3) class representatives who can adequately represent the class." *Sav-On Drug Stores, Inc. v.*



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1 *Superior Court* (2004) 34 Cal. 4th 319, 326. It “does not mandate that class members have
2 uniform or identical claims.” *Capitol People First v. Dept. of Developmental Servs.* (2007) 155
3 Cal. App. 4th 676, 692. Rather, courts focus on the defendant’s internal policies and “pattern and
4 practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs
renders class certification appropriate.” *Id.* (citing *Sav-On*, 34 Cal. 4th at 333).

5 To justify certification, the class proponent “must show ... that questions of law or fact
6 common to the class predominate over the questions affecting the individual members” *See*,
7 *Arenas v. El Torito Rests., Inc.* (2010) 183 Cal. App. 4th 723, 732 (citing *Washington Mut. Bank*,
8 *FA v. Superior Court* (2001) 248 Cal. 4th 906, 913). In light of the more lenient standard for
9 certification of a settlement class, the Parties agree that for the purposes of the Settlement only,
10 the claims of the Class Members all stem from the same sources. DS, ¶ 36.

11 In this case, Plaintiff asserts all Class Members were subject to the same or similar
12 operations and employment policies, practices, and procedures. The claims arise from
13 Defendants’ alleged policy-driven, and related labor law violations, all of which Plaintiff claims
14 constitute unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common
15 questions include, but are not limited to: (1) Whether Defendants failed to pay all wages earned
16 to Class Members for all hours worked at the correct rates of pay; (2) Whether Defendants failed
17 to provide the class with all meal and rest periods in compliance with California law; (3) Whether
18 Defendants failed to pay the class one additional hour of pay on workdays they failed to provide
19 the class with one or more meal or rest periods in compliance with California law; (4) Whether
20 Defendants failed to indemnify the class for all necessary business expenditures incurred during
21 the discharge of their duties; (5) Whether Defendants knowingly and intentionally failed to
22 provide the class with accurate wage statements; (6) Whether Defendants willfully failed to
23 provide the class with timely final wages; and (7) Whether Defendants engaged in unfair
24 competition within the meaning of Business and Professions Code section 17200, *et seq.*, with
25 respect to the class. DS, ¶ 23. Therefore, common questions predominate.

26 **D. Plaintiff Is Typical of the Settlement Class**

27 The class representative must be similarly situated to the rest of the purported class. *See*
28 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46 (stating “it has never been the law in California
that the class representative must have identical interests with the class members. The only
requirements are ... that the class representative be *similarly* situated”) (emphasis in original); *See*



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1 also Newberg, § 3:29 (typicality “focuses on whether there exists a relationship between the
2 Plaintiff’s claims and the claims alleged on behalf of the class”). Plaintiff contends that his claims
3 are typical for the purposes of certifying the Settlement Class. Plaintiff asserts that he, like absent
4 Class Members, was subject to the same relevant policies and procedures governing his
5 compensation, reimbursement of expenses, hours of work, and meal and rest periods. Because
6 Plaintiff contends that he was subject to the same general course of conduct as absent Class
7 Members, resolving the common questions as they apply to Plaintiff will determine Defendant’s
8 *prima facie* liability to all Class Members. Moreover, Plaintiff’s claims could potentially be
9 subject to the same primary affirmative defenses as those of absent Class Members. Accordingly,
10 Plaintiff’s claims are typical of the Class. DS, ¶ 24.

11 **E. Plaintiff Will Adequately Represent the Settlement Class**

12 The adequacy requirement is met where the plaintiff is represented by counsel qualified
13 to conduct the litigation and the plaintiff’s interest in the litigation is not antagonistic to the class’s
14 interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the
15 plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling
16 conflicts of interest that might hinder the plaintiff’s ability to represent the class. DS, ¶ 25.

17 First, Class Counsel have supplied the Court with declarations to show that they are
18 adequate to represent the Settlement Class and that they have significant experience in
19 employment litigation generally, and wage and hour and employment-related class action
20 litigation specifically. *See* DS, ¶¶ 26-34; Declaration of Walter L. Haines (“Haines Decl.”) ¶ 3.
21 Thus, Plaintiff’s counsel are adequate to serve as Class Counsel.

22 Second, Plaintiff contends that he is an adequate class representative. Plaintiff and the
23 Class Members have strong and co-extensive interests in this litigation because they all worked
24 for Defendants during the relevant time period, allegedly suffered the same alleged injuries from
25 the same alleged course of conduct, and there is no evidence of any conflict of interest between
26 Plaintiff and the Class Members. DS, ¶ 26. Moreover, Plaintiff has demonstrated his commitment
27 to the Settlement Class by, among other things, retaining experienced counsel, providing counsel
28 with documents and extensively speaking with them to assist in identifying the claims asserted in
this case, assisting them in identifying witnesses, as well as exposing himself to the risk of
attorneys’ fees and costs awarded against him if this lawsuit had been unsuccessful. DS, ¶ 26.
Thus, Plaintiff is adequate to serve as settlement class representative. Accordingly, this Court



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1 should find that Plaintiff and his counsel are adequate to represent the Settlement Class as required
2 under Code of Civil Procedure § 382.

3 **F. Class Action Treatment Is the Superior Means For Resolving The Claims**
4 **Of The Class Members**

5 Plaintiff further contends that a class action is also superior to other means of adjudicating
6 the issues in this action. The predominance of common legal and factual questions shows that this
7 Court could fairly adjudicate the claims of Class Members through a single class action. In view
8 of the *theoretical* alternatives that proposed class members could potentially utilize—
9 representative PAGA action (where there is less relief available), individual civil lawsuits or wage
10 claims through the Division of Labor Standards Enforcement (where there would be relatively
11 little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly
12 superior to all of them. Thus, this consideration supports conditional class action treatment for
13 purposes of this Settlement only. DS, ¶ 35.

14 **V. INTRODUCTION: THE COURT SHOULD GRANT PRELIMINARY**
15 **APPROVAL BECAUSE THE SETTLEMENT IS FAIR, ADEQUATE, AND**
16 **REASONABLE**

17 **A. Legal Standard**

18 A class action settlement requires court approval. California Rules of Court (“CRC”),
19 Rule 3.769 provides three steps for approval: (1) Preliminary approval after submission of a
20 written motion for preliminary approval, the proposed class settlement, and the proposed class
21 notice; (2) Issuance of notice of settlement to class members; and (3) A final settlement approval
22 hearing where class members may be heard regarding the settlement and at which evidence and
23 argument concerning the fairness, adequacy, and reasonableness of the settlement is presented.
24 The decision to approve or reject a class settlement is committed to the Court’s broad discretion.
25 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The decision to approve
26 class settlement may be reversed only upon a showing of “clear abuse of discretion.” *Id.*

27 **B. The Settlement Is Presumptively Fair**

28 In assessing preliminary approval, a court evaluates if the settlement process has certain
indicia of fairness. A “presumption of fairness exists where (1) the settlement is reached through
arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage
of objectors is small.” *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford Motor Co.*, (1996)
48 Cal.App.4th at 1794.



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1 The class settlement here satisfies all of these factors. DS, ¶ 36. The Settlement resulted
2 from thorough, arms' length, negotiations between experienced counsel with the assistance of a
3 respected mediator after sufficient discovery was exchanged to assess the relative strengths and
4 weaknesses of their respective cases and Defendants' estimated exposure. *Id.*

5 On October 21, 2021, Plaintiff commenced this Action by filing a Complaint alleging
6 causes of action against Defendants for failure to pay wages, failure to provide meal periods,
7 failure to authorize and permit rest periods, failure to indemnify, failure to issue proper wage
8 statements, failure to timely pay wages, unfair competition, and related claims. DS, ¶ 12, Ex. 3.
9 On November 16, 2021, Plaintiff filed a First Amended Complaint adding the PAGA cause of
10 action. DS, ¶ 12. Plaintiff prepared "damages" estimates in advance of the mediation. DS, ¶ 37,
11 Ex. 8. Plaintiff determined Defendants' maximum possible exposure for restitution and penalties
12 to be approximately \$558,483,240.19 (consisting of \$7,229,813.65 in unpaid wages,
13 \$7,229,813.65 in liquidated damages, \$876,341.05 in missed meal period premium wages,
14 \$875,201.80 in missed rest break premium wages, \$12,513.60 in unreimbursed expenses,
15 \$24,592,750.00 for wage statement penalties, \$35,049,156.45 for waiting time penalties, and
16 \$512,617,650.00 for civil penalties under PAGA). Plaintiff calculated the damages based on the
17 number of workweeks and pay periods provided by Defendants, Plaintiff's reports, and the sample
18 data. *Id.*

19 Plaintiff also considered the possibility that Defendants could launch a *Pick Up Stix*
20 campaign and pursue individual release agreements from the Class Members. Defendants have
21 already obtained signed arbitration agreements in the wake of Plaintiff's lawsuit would likely
22 seek releases from current employees as a next step. DS, ¶ 38. Defendants also represented that
23 they had interviewed their current employees regarding Plaintiff's claims who would provide
24 declarations, under penalty of perjury, that were favorable to Defendants with respect to the
25 relevant factual issues at issue in Plaintiff's action. Plaintiff's Counsel applied discounts to the
26 maximum possible exposure to account for all other risks discussed below. While it is difficult to
27 assign anything but crudely-determined percentages of risk to any of the claims, it is safe to say
28 that the risk that a *Pick Up Stix* campaign would preclude recovery for such employees is
substantial and alone justifies a significant discount because Defendants would likely by trial have
gathered releases from the majority of the Class Members.

Plaintiff is aware of only two significant awards under the PAGA in a contested



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proceeding, both issued by federal district courts.⁴ DS, ¶ 53. PAGA penalty awards are often small even for egregious, intentional violations of the Labor Code.⁵ *Id.* For instance, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a PAGA penalty of only \$5 per pay period for the defendant’s meal period violations. A similar result could occur here. *Id.*

Plaintiff’s initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. *Id.* Therefore, Plaintiff believes a class settlement for \$360,000.00 is fair and reasonable. *Id.*

C. The Settlement Satisfies the Kullar Factors for Approval

The *Kullar* case sets forth several factors a court should consider in determining whether

⁴ In *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil penalties under the PAGA of \$12,277,500.00 where total adjusted damages were \$18,695,692.58. In this regard, the district court stated,

The plain language of PAGA provides that “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.” Cal. Lab. Code s 2699(e)(2) (emphasis added). The relationship between the amount of total damages and the amount of maximum PAGA penalties is certainly a “circumstance” of the case under the term’s ordinary meaning. The weight given to that circumstance is greater in this case because Plaintiffs’ PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs’ individual claims except for one. As a general matter, it would be excessively punitive for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed the damages caused by that injury or set of injuries.

Id., fn. 9. The district court further stated, “Virgin “has not presented any evidence that the full penalty would be excessive in relation to its ability to pay,” the weight of this factor is lessened.” *Id.*

In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court awarded approximately \$102 million in damages, primarily based on the Defendant’s failures to comply with the requirements of California Labor Code section 226.

⁵ In 2012, Plaintiff’s Counsel tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. The plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under the PAGA.



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1 to approve a class settlement. These factors include: (1) the strength of plaintiff's case; (2) the
2 risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining
3 class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery
4 completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence
5 of a governmental participant; and (8) the reaction of the class members to the proposed
6 settlement. 168 Cal.App.4th at 128. As demonstrated herein, the Settlement satisfies each of these
7 factors.

8 **1. Evaluation of Plaintiff's Case**

9 **a. Risks Associated With the Arbitration Agreements**

10 The arbitration agreements entered into between Defendants on the one hand, and the
11 Class Members, on the other, present a significant risk to the success of Plaintiff's class action
12 litigation. DS ¶ 40. According to Defendants, many members of the Class entered into arbitration
13 agreements with Defendants. *Id.* As the arbitration agreements in question restrict potential
14 litigants from bringing class actions against Defendants, Plaintiff would be effectively barred
15 from pursuing claims on behalf of the Class in Court. *Id.* Thus, there is a significant risk the Court
16 could determine that those Class Members who have not entered into arbitration agreements with
17 Defendants do not constitute a sufficiently numerous class to justify class action treatment. As
18 such, by continuing to trial on class-wide claims, Plaintiff would run the high risk of suffering
19 defeat due to the existence of the arbitration agreement. Moreover, the arbitration agreements
20 would pose danger to any class certification motion brought by Plaintiff. Because different
21 defenses would apply to some Class Members and not others – i.e., the existence of signed
22 arbitration agreements – there is a risk that the Court could determine that Plaintiff's claims
23 present too many individualized inquiries to justify class certification. *Id.*

24 **b. Risks Associated with Defendants' Financial Condition**

25 Defendants' financial condition was the key factor in reaching this Settlement. DS, ¶ 41.
26 Due to Defendants' financial condition, even if Plaintiff prevailed on all claims at trial, he may
27 never recover the damages due to the risk of insolvency. A very large class action judgment would
28 almost certainly put the company out of business and/or would interfere with the company's
ability to carry out its contractual obligations. *Id.* In short, the "poor financial health of [the
defendant will] seriously increase [] the chance that Plaintiffs would be left with nothing if they
continued to litigate their claims." *Torrissi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370,
1376 (the financial condition of defendant predominated in assessing the reasonableness of



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1 settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty
2 concerning defendant's financial stability "strongly supports the reasonableness of the
3 settlement"); *Laguna v. Coverall N. Am., Inc.* (9th Cir. 2014) 2014 U.S. App. LEXIS 10259 at
4 *11 (finding potential insolvency to be additional risk that favors approval of a class action
5 settlement). Accordingly, Defendants' financial distress supports this settlement. *Id.*

6 **c. Risks Associated with the Unpaid Wages Claim**

7 There is a risk that Plaintiff's recovery for unpaid wages would be extremely limited at
8 best, largely because Defendants' written policies throughout the relevant time period prohibited
9 off-the-clock work. DS, ¶ 42. The Parties dispute whether commutes to the worksite that
10 Defendants provided were mandatory and therefore compensable. Off-the-clock claims are
11 difficult where a defendant requires in its written policies that all work must take place while
12 clocked in *See Jong v. Kaiser Foundation Hospital* (2014) 226 Cal.App.4th 391 (employer must
13 have notice of off-the-clock work for it to be compensable). *Id.* In their written employment
14 policies, Defendants mandate that employees must record all time worked accurately on their time
15 records. DS, ¶ 42. Moreover, while Defendants dispute that off-the-clock work occurred, they
16 contend that any time spent off the clock was *de minimis*. The California Supreme Court in
17 *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested that irregular and minute periods
18 of time may still be subject to a *de minimis* defense even if compensable. (Stating that "We do
19 not decide whether there are circumstances where compensable time is so minute or irregular that
20 it is unreasonable to expect the time to be recorded."). Following *Troester*, Defendants contend
21 that the *de minimis* doctrine may apply here because the time spent off the clock was minute and
22 insignificant. Accordingly, a large award of penalties seems unlikely with respect to this claim.
23 *Id.*

24 The difficulty inherent in proving that off-the-clock work occurred poses a significant
25 hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove this claim.
26 Generally, a court will not certify a class unless it can determine an appropriate class-wide
27 methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiff
28 may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given
the lack of records indicating when such off-the-clock work may have taken place. Individualized
inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual
in fact worked "minutes" off-the-clock on a "regular" basis. Accordingly, there is a significant



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1 risk that the Court would consider this evidentiary showing insufficient as a class-wide
2 methodology. DS, ¶ 43.

3 **d. Risks Associated with the Meal Period Claims**

4 There are risks to Plaintiff's meal period claim. DS, ¶ 44. Defendants contend that, to
5 establish a violation for missed meal periods, a plaintiff must do more than show that a meal break
6 was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a
7 "reasonable opportunity" to take a duty-free meal period, it has no further duty to "police meal
8 breaks and ensure no work thereafter is performed." *Id.* at 1040-41. *Id.* Instead, a plaintiff must
9 show the employer impeded, discouraged, or prohibited the employee from taking a proper break,
10 or otherwise failed to release the employee of all control. *Id.* "Thus, the crucial issue with regard
11 to the meal break claim is the reason that a particular employee may have failed to take a meal
12 break." *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

13 Defendants contend they did not impede or discourage Plaintiff, or any other employees,
14 from taking their meal or rest periods. DS, ¶ 44. Defendants' policies mandate that employees
15 take at least a 30-minute, uninterrupted meal period and record the beginning and ending time of
16 their meal breaks each day on their time records. *Id.* The time records that comprise the random
17 sample Defendants produced to Plaintiff for purposes of mediation show that meal periods were
18 taken the vast majority of the time. *Id.* Of the time records that show a late, short, or no lunch,
19 individualized evidence may be necessary to determine whether they occurred due to conduct of
20 the Defendants or each of the employees concerned. Accordingly, there is a significant risk that
21 the value of Plaintiff's meal period claim would be substantially reduced at trial. *Id.*

22 **e. Risks Associated with the Rest Break Claims**

23 There are risks to Plaintiff's rest period claim. DS, ¶ 46. Employers are not required to
24 record rest periods, and such periods are paid. *Id.* Defendants contend they provided non-exempt
25 employees the opportunity to take rest periods in accordance with California law. Further,
26 Defendants' written policies on meal and rest periods are consistent with the Wage Order. *Id.*
27 Thus, unlike meal periods, where there are often records showing whether an employee clocked
28 out or not, there is no such evidence to prove a missed rest period or that the employer refused to
authorize and permit one. *Id.* Managing such claims at trial has become exceedingly difficult. *Id.*
Plaintiff will depend on sample witness testimony and surveys to prove the claims. *Id.* While a
victory with such evidence is certainly possible, relevant caselaw makes such claims risky from
a trial management and due process perspective. *Id.*, *See Duran v. U.S. Bank National Assn.*,



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(2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

f. Risks Associated with the Failure to Indemnify Claim

There is a risk that the Court may consider Plaintiff’s claims as to Defendants’ alleged failure to indemnify for business expenses to be individual in nature and thus decline to certify the class. DS, ¶ 47. Plaintiff alleges that Defendants required Plaintiff and the Class Members to use their personal items including farming tools and gear and failed to indemnify them for these business expenses. *Id.* Defendants presented evidence that they have supplied their employees with tools, equipment, and other supplies and had an expense reimbursement policy. As such, there is a risk that the Court may consider Plaintiff’s claims to be individual in nature and unfit for class wide resolution. *Id.*

g. Risks Associated with the Pay Stub Claims

Plaintiff also asserts claims for wage statement violations, untimely wage violations, and PAGA penalties. Under Labor Code section 226, wage statements must include various information, including the applicable rates of pay, corresponding hours worked, and gross pay. DS, ¶ 48.

Here, Plaintiff’s wage statement claim has the same underlying risks as the above claims, as it is derivative of them. *Id.* On their face, the wage statements issued by Defendants comply with the requirements of Labor Code § 226. DS, ¶ 48.

h. Risks Associated with the Waiting Time Penalty Claims

Without proof of willful behavior, Plaintiff will be unable to recover these penalties.

i. Risks Associated with the PAGA Claim

Regarding PAGA, a court has discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants have posed valid defenses to the Labor Code claims underlying Plaintiff’s PAGA allegations. Thus, the PAGA claims likewise face significant uncertainty. DS, ¶ 50. There is a risk that the Court would consider the maximum civil penalty available to be confiscatory. This is particularly the case considering Defendants’ financial condition. *Id.* Moreover, the COVID-19 pandemic could motivate the Court to further reduce the penalty award to avoid what it may consider a



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1 confiscatory taking. *Id.*

2 This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and required a
3 significant discount for settlement purposes. DS, ¶ 52. For mediation purposes, Plaintiff's counsel
4 estimated a maximum possible exposure of approximately \$512,617,650.00 in civil penalties.
5 This estimate did not take into account any of the risks discussed above and assumed a violation
6 for every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same
7 pay period for the same alleged violations of different Labor Code provisions and derivative
8 violations. *Id.* Although two federal district court decisions held that "stacking" PAGA penalties
9 in this fashion may be appropriate to determine the amount in controversy for purposes of removal
10 jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs
11 multiple PAGA penalties for the same violation for the same pay period under different Labor
12 Code provisions. *Id.* This may be because the PAGA does not provide for what many employers
13 characterize as claim splitting and not merely stacking. *Id.*

14 **i. Risks Associated with a Pick Up Stix Campaign**

15 An employer enjoys the right to settle a putative class member's disputed wage claims
16 individually, without the consent or involvement of class counsel. DS, ¶ 55. *See Chindarah v.*
17 *Pick Up Stix, Inc.* (2009) 171 Cal. App. 4th 796. *Id.* As discussed above, Defendants may launch
18 a "pick off" settlement campaign to pursue individual release agreements from the Class
19 Members, thereby potentially narrowing the size of the Settlement Class – 10,876 members –
20 until it is no longer numerous enough for class certification. *Id.* Plaintiff, then, may not have
21 sufficient number of employees to represent. This led to a significant reduction of claim value in
22 settlement negotiations. *Id.*

23 While the evidence gathered through Plaintiff's discovery supports the merits of the
24 claims asserted in this lawsuit, Plaintiff and his counsel recognize that continued litigation
25 presents significant risks that support a downward departure from Defendants' estimated liability
26 exposure. DS, ¶ 56. In view of the risks, the Settlement reflects Plaintiff's estimate of the total
27 amount of damages, monetary penalties, or other relief that the Class could reasonably expect to
28 be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. *Id.*
It also represents a fair, adequate, and reasonable compromise amount for these claims and
warrants preliminary approval. *Id.*, *Torrissi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370,
1376 (the financial condition of defendant predominated in assessing the reasonableness of



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1 settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty
2 concerning defendant's financial stability "strongly supports the reasonableness of the
3 settlement"); *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014
4 WL 2465049, * 3.

5 **2. Allocation of the PAGA Payment**

6 The settlement of PAGA penalties in the sum of \$36,000.00, of which 75% (\$27,000.00)
7 will be paid to the LWDA and 25% (\$9,000.00) will be distributed to the Class, is reasonable and
8 appropriate under the circumstances. DS, ¶ 57. The Parties negotiated a good faith amount for
9 \$36,000.00 to be paid to the LWDA and to the Class. *Id.* The portion to be paid to the LWDA
10 was not the result of self-interest at the expense of other Class Members. *Id.* Where settlements
11 "negotiate[] a good faith amount" for PAGA penalties and "there is no indication that this amount
12 was the result of self-interest at the expense of other Class Members," such amounts are generally
13 considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844
14 EDL, 2009 WL 928133, at *9. Likewise, where the employer did not act willfully, and made good
15 faith attempts to comply with wage and hour laws, a reduction or lesser penalty is warranted
16 because imposing maximum PAGA penalty for each violation would have been unjust, arbitrary,
17 and oppressive. *Id. Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming
18 trial court's award of only 10% of maximum PAGA penalty for meal break violations). *Id.* The
19 amount to be paid to the LWDA comports with PAGA settlement amounts approved by other
20 courts. *See, e.g., Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL
21 67245, 81 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common fund);
22 *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA
23 payment of \$7,500 to LWDA out of \$1.25 million common fund settlement); *Hopson v.*
24 *Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving PAGA
25 settlement of 0.3% or \$1,500); *see Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589
26 (approving PAGA settlement and release that allocated \$0 to PAGA claim). Courts have also
27 approved settlements for \$20,000 or less. *See, e.g., Hicks v. Toys 'R' Us-Delaware, Inc.*, (C.D.
28 Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in a case
involving \$4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012)
2012 WL 5941801 at *14 (approving PAGA penalties of \$10,000 as part of \$2.5 million
settlement); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3



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(approving PAGA payment of \$10,000 as part of \$3.7 million common-fund settlement). *Id.*

3. Presence of Governmental Participant

As required under Labor Code section 2699(l)(2), Plaintiff will provide notice of this settlement to the LWDA with the filing and service of this motion. DS, ¶ 103, Ex. 21.

4. Reaction of Class Members to Proposed Settlement

If the Settlement is preliminarily approved, Class Members will be provided with the Class Notice (attached as Exhibit A to the Settlement) and an opportunity to object. DS, ¶ 84. The Parties' proposed notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed settlement. *Id.*

VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY COMPENSATES CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY COMPARED TO OTHER CLASS MEMBERS

The Individual Settlement Payments will be paid to each Class Member based on his or her eligible Class Paychecks compared to the total Class Paychecks. DS, ¶ 76, Settlement § III.2.d. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendants longer would have been subject to more alleged violations, it is fair, adequate, and reasonable. *Id.*

Plaintiff estimates that there are 329,204 Class Paychecks for the Class Period. So, each Class Paycheck has a value of approximately \$0.34 (\$111,500.00 Net Settlement Amount / 329,204 Class Paychecks = \$0.34). Plaintiff had 1,321 Class Paychecks during the Class Period. Based on this, it is anticipated that Plaintiff Francisco Rodriguez will receive an Individual Class Payment of approximately \$449.14 as a Participating Class Member (1,321 Class Paychecks x \$0.34 = \$449.14) while the average estimated Individual Class Payment to Participating Class Members will be approximately \$10.25 (\$111,500.00 Net Settlement Amount / 10,876 Class Members = \$10.25). Some Class Members – those who earned more Class Paychecks during the Class Period – will receive more, and some less. The highest possible Individual Class Payment to a Participating Class Member (i.e., to those who qualify for all Class Paychecks in the Class Period) will be approximately \$705.84. The lowest possible Individual Class Payment to a Participating Class Member (i.e., to those who qualify for only one Class Paycheck in the Class Period) will be approximately \$0.34. *See* DS, ¶ 75.

It is anticipated that the average Aggrieved Employee Individual PAGA Payment will be \$1.09. *Id.* Plaintiff's Individual PAGA Payment, his individual share of 25% of the \$36,000.00



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PAGA Penalties, will be less than that of some absent Aggrieved Employees. Under the Settlement, each Aggrieved Employee will receive a *pro rata* distribution of 25% of the PAGA Penalties proportionate to the number of paychecks he or she had with Defendants during the PAGA Period, compared to the total of all paychecks of all Aggrieved Employees during the PAGA Period, as reflected by Defendants' records. Plaintiff estimates that there are 250,058 PAGA Paychecks for the PAGA Period. So, each PAGA Paycheck from the PAGA Period has a value of approximately \$0.04 (25% of \$36,000.00 in PAGA Penalties / 250,058 PAGA Paychecks = \$0.04). It is anticipated that Plaintiff Francisco Rodriguez will receive an Individual PAGA Payment of approximately \$11.08 as an Aggrieved Employee (277 PAGA Paychecks during the PAGA Period x \$0.04 paycheck value = \$11.08) while the average estimated Individual PAGA Payment to an Aggrieved Employee will be approximately \$1.09 (\$9,000.00, 25% of \$36,000.00 in PAGA Penalties / 8,261 Aggrieved Employees during the PAGA Period = \$1.09 Individual PAGA Payment). Some Aggrieved Employees – those who had more paychecks during the PAGA Period – will receive more, and some less. The highest possible Individual PAGA Payment to an Aggrieved Employee (i.e., to those who qualify for all paychecks in the PAGA Period) will be approximately \$37.43. The lowest possible Individual PAGA Payment to an Aggrieved Employee (i.e., to those who qualify for only one paycheck in the PAGA Period) will be approximately \$0.04. *See* DS, ¶ 77.

VII. ALLOCATION FOR CLASS COUNSEL'S FEE AWARD AND ATTORNEYS' FEES AND COSTS AWARD FOR LITIGATION EXPENSES IS APPROPRIATE

The Settlement states Class Counsel may seek attorneys' fees of up to \$120,000.00 (one-third of the GSA) and up to \$17,500 for actual reasonable litigation costs and expenses incurred in prosecuting the Action. Settlement § III.2.b. These amounts are reasonable, given the facts and circumstances of the case. DS, ¶¶ 58-61.

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.* (2000) 82 Cal. App. 4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Intl, Inc.* (2016) 1 Cal. 5th 480, 503 (citing *Lealao, supra*, 82 Cal.App.4th at p. 48-49). The Supreme Court has recently approved fees equal to one-third (1/3)



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1 of the common fund. *Laffitte, supra*, 1 Cal. 5th 480. Many courts have similarly approved fee
2 awards equal to or greater than the percentage requested here. *See, e.g., In re Pacific Enterprises*
3 (9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of the common fund); *In re Activision* (N.D.
4 Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the common fund); *In re Ampicillin Antitrust*
5 *Litig.* (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of settlement fund).

6 The amount of fees and costs requested are commensurate with (1) the risk Class Counsel
7 took in bringing the case, (2) the extensive time, effort, and expense dedicated to the case, (3) the
8 skill and determination Class Counsel have shown, (4) the results Class Counsel achieved, (5) the
9 value of the Class Counsel achieved for the Class, and (6) the other cases Class Counsel turned
10 down to devote time to this matter. DS, ¶ 59. Class Counsel interviewed and obtained information
11 from putative class members, met and conferred with Defendants' counsel on numerous
12 occasions, reviewed and analyzed hundreds of pages of data and documents provided by
13 Defendants and obtained through other sources, researched applicable law, and provided
14 estimates of "damages" for purposes of settlement discussions, among other tasks. *Id.*

15 Class Counsel have borne all the risks and costs of litigation and will receive no
16 compensation until recovery is obtained. DS, ¶ 60. Class Counsel are well-experienced in wage-
17 and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.*
18 Considering the amount of the attorneys' fees requested, the work performed, and the risks
19 incurred, the requested fees and costs are reasonable and should be awarded. *Id.*

20 **VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENT TO PLAINTIFF**
21 **SHOULD BE PRELIMINARILY APPROVED BECAUSE IT IS FAIR,**
22 **ADEQUATE, AND REASONABLE**

23 Courts routinely approve incentive awards to compensate named plaintiffs for the services
24 they provide and the risks they incur during class action litigation, often in much higher amounts
25 than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726
26 (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van*
27 *Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving \$50,000
28 enhancement award). The Settlement provides that Plaintiff may seek a Class Representative
Service Payment of up to \$10,000. Settlement, ¶ III.2.a. This amount is entirely reasonable given
Plaintiff's efforts in this action and the risks he undertook on behalf of Class Members. DS, ¶ 62.
Plaintiff has devoted many hours advancing the interests of the Settlement Class. Plaintiff has
done this by, among other things, retaining experienced counsel, providing them with information



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1 about his work history with Defendants and Defendants’ policies and practices with respect to the
2 wage and hour claims at issue, participating in mediation, and being actively involved in the
3 settlement process to ensure a fair result for the Settlement Class as a whole. In doing this, Plaintiff
4 has been exposed to significant risks, including the risk of an order to pay Defendants’ attorneys’
5 fees and costs if this action had been unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts
6 and risks that Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class
7 Representative Service Payment is fair, adequate, and reasonable, and thus warrants preliminary
8 approval. DS, ¶ 62.

9 **IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE**
10 **PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE,**
11 **AND REASONABLE**

12 With regard to the settlement administration costs (“Administration Expenses Payment”)
13 provision, it is reasonable. Before agreeing to ILYM Group, Inc. and its bid of \$47,750.00, the
14 Parties sought and reviewed bids from other reputable third-party administrators which provided
15 higher bids. DS, ¶ 97-98, Exs. 18, 19, and 20. Thus, the settlement administration costs provision
16 should be given preliminary approval.

17 **X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN**
18 **SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED TO**
19 **GIVE ACTUAL NOTICE TO CLASS MEMBERS AND SUFFICIENT TIME TO**
20 **EXERCISE THEIR RIGHTS**

21 This Court should approve the proposed plans for giving notice to the Settlement Class
22 and administering the Settlement. The standard for determining the adequacy of notice is whether
23 the notice has “a reasonable chance of reaching a substantial percentage of the class members.”
24 *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple
25 measures to ensure that as many Class Members as practicable receive actual notice of the
26 Settlement and have enough time to exercise their rights. The Settlement requires distribution of
27 the Notice by First Class U.S. mail only. Settlement, ¶ VII.4.d. Although there are current
28 employee Class Members, it is uncertain whether Defendants’ records of their contact information
include email addresses, and Class Members, who perform all of their work away from a desk,
are not in a position to check their emails. As such, notice by mail alone is fair, adequate, and
reasonable. DS, ¶ 84.

With respect to its content, “[The] notice given to the class must fairly apprise the class
members of the terms of the proposed compromise and of the options open to dissenting class



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members.” *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152. The purpose of the notice in class settlement context is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Settlement) provides Class Members with all pertinent information that they need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the individual Settlement Class Member’s estimated payment. Additionally, the Class Notice will include the number of Class Paychecks and PAGA Paychecks a Class Member had during the Class Period. Accordingly, the Notice should be approved because it describes the Settlement with sufficient clarity and specificity to explain to Class Members what this action is about, their rights under the Settlement, and how to exercise those rights. DS, ¶ 87.

XI. CONCLUSION

For the reasons stated above, this Court should grant Plaintiff’s Motion in its entirety and adopt the proposed order submitted concurrently herewith.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: December 20, 2024

By:



DAVID G. SPIVAK and LAUREN R. DAVIS, Attorneys for Plaintiff, FRANCISCO RODRIGUEZ, and all others similarly situated



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