

Justin F. Marquez (SBN 262417)
justin.marquez@wilshirelawfirm.com
Benjamin H. Haber (SBN 315664)
benjamin.haber@wilshirelawfirm.com

WILSHIRE LAW FIRM

3055 Wilshire Blvd., 12th Floor Los
Angeles, California 90010 Telephone:
(213) 381-9988 Facsimile: (213)
381-9989

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

RAUL MORALES REYES and MARIANO
GUTIERREZ GAMA, individually, and on
behalf of all others similarly situated,

Plaintiffs,

v.

GIUMARRA VINEYARDS CORPORATION, a
California corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: BCV-21-102139

**CLASS AND REPRESENTATIVE
ACTION**

*[Assigned for all purposes to: Hon. Gregory
Pulskamp, Dept. J]*

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

*[Filed with the Declaration of Justin F.
Marquez; [Proposed] Order Granting
Motion]*

PRELIMINARY APPROVAL HEARING

Date: January 9, 2025

Time: 8:30 a.m.

Dept: J

Complaint filed: September 10, 2021

FAC filed: June 4, 2024

Trial date: Not set

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

2 PLEASE TAKE NOTICE that on January 9, 2025 at 8:30 a.m., in Department J of the Kern
3 County Superior Court, located at 1215 Truxtan Avenue, Bakersfield, CA 93301, pursuant to Code
4 of Civil Procedure § 382 and California Rules of Court 3.769 *et seq.*, Plaintiffs Raul Morales Reyes
5 and Mariano Gutierrez Gama (collectively, “Plaintiffs”) will move the Court for an Order granting
6 preliminary approval of the proposed class action settlement between Plaintiffs and Defendant
7 Giumarra Vineyards Corporation (“Defendant”). Plaintiffs further moves the Court for an Order:

- 8 1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement
9 and Class Notice;
10 2. Certifying a Class for settlement purposes;
11 3. Approving the Notice and the plan for distribution of the Notice;
12 4. Appointing Plaintiffs Raul Morales Reyes and Mariano Gutierrez Gama as Class
13 Representative for settlement purposes;
14 5. Appointing Plaintiff’s Counsel, Justin F. Marquez, Benjamin H. Haber, and Bradford
15 Smith, Esq. of Wilshire Law Firm, PLC, as Class Counsel for settlement purposes;
16 6. Appointing CPT Group, Inc. as the Settlement Administrator; and
17 7. Scheduling a final approval hearing.

18 The motion will be based upon this notice, the attached memorandum of points and
19 authorities, the Declaration of Justin F. Marquez, filed concurrently herewith, the records and files
20 in this action, and any other further evidence or argument that the Court may properly receive at
21 or before the hearing.

22 Respectfully submitted,

23 Dated: December 5, 2024

WILSHIRE LAW FIRM

24
25 By: _____

Justin F. Marquez
Benjamin H. Haber

Attorneys for Plaintiffs

TABLE OF CONTENTS

TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES.....	iv
MEMORANDUM OF POINTS AND AUTHORITIES.....	1
I. INTRODUCTION.....	1
II. SUMMARY OF THE LITIGATION AND SETTLEMENT.....	1
A. Plaintiffs’ Claims	1
B. Discovery and Investigation.....	2
C. Settlement Negotiations	3
D. Key Terms of the Proposed Settlement.....	4
III. DISCUSSION	8
A. The Settlement Is Fair, Reasonable, Adequate, and the Product of Investigation, Litigation, and Negotiation	9
1. The Settlement Is the Product of Discovery, Investigation, and Informed and Non-Collusive Arm’s-Length Negotiations.....	9
2. The Settlement Is Fair and Reasonable in Light of the Parties’ Respective Legal Positions.....	10
3. Class Counsel Has Extensive Experience in Class Action Litigation.....	11
B. The Proposed Class Notice of Settlement Should Be Approved	11
C. The Proposed Attorneys’ Fees and Costs Are Reasonable	11
1. Class Counsel Request an Award of Fees Based on the “Common Fund” Method	12
2. The Requested Fee Award Is in Line with Typical Cases	13
3. This Matter Involves A “Fee-Shifting” Provision of the Labor Code	13
4. The Experience, Reputation and Ability of Class Counsel Support the Requested Fee Award	14
D. The PAGA Allocation is Reasonable.....	14
E. The Service Awards to Named Plaintiffs Are Reasonable	15

1	IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED	16
2	A. Legal Standard	16
3	B. Plaintiffs Maintain That the Criteria for Class Certification Are Satisfied for	
4	Settlement Purposes.	17
5	1. The Classes Are Ascertainable and Numerous	17
6	2. There are Many Common Issues of Law and Fact Which Predominate.....	18
7	3. Plaintiffs’ Claims Are Typical of the Claims of the Class.....	18
8	4. Plaintiffs and Their Counsel Meet the Adequacy Requirement.....	19
9	5. A Class Action is Superior to a Multiplicity of Litigation.....	19
10	V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND.....	20
11	A. The Proposed Notice Plan Satisfies Due Process	20
12	B. The Notice is Accurate and Informative	20
13	VI. CONCLUSION	20

TABLE OF AUTHORITIES

STATE CASES

Bowles v. Super. Ct., (1955)

44 Cal.2d 574.....18

Cartt v. Super Ct., (1975)

50 Cal.App.3d 96020

Chavez v. Netflix, Inc., (2008)

162 Cal.App.4th 4313

City and County of San Francisco v. Sweet, (1995)

12 Cal.4th 105.....12

Classen v. Weller, (1983)

145 Cal.App.3d 2719

Clothesrigger, Inc. v. GTE Corp., (1987)

191 Cal.App.3d 60518

Collins v. Rocha, (1972)

7 Cal.3d 232.....18

D’Amico v. Bd. of Medical Examiners, (1974)

11 Cal.3d 1.....12

Daar v. Yellow Cab Co., (1967)

67 Cal. 2d 695.....17

Dunk v. Ford Motor Co., (1996)

48 Cal.App.4th 17948

Gentry v. Super. Ct., (2007)

42 Cal.4th 443.....15

Kullar v. Foot Locker Retail, Inc., (2008)

168 Cal.App.4th 1168

Laffitte v. Robert Half Int’l Inc., (2016)

1 Cal.5th 480.....12

1	<i>Linder v. Thrifty Oil Co.</i> , (2000)	
2	23 Cal.4th 429.....	17
3	<i>Mallick v. Super. Ct.</i> , (1979)	
4	89 Cal.App.3d 434	8
5	<i>McGhee v. Bank of America</i> , (1976)	
6	60 Cal.App.3d 442	19
7	<i>Miller v. Woods</i> , (1983)	
8	148 Cal. App. 3d 862	19
9	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> , (2010)	
10	186 Cal.App.4th 399	9, 15
11	<i>Quinn v. State of California</i> , (1995)	
12	15 Cal.3d 162.....	12
13	<i>Richmond v. Dart Indus., Inc.</i> , (1981)	
14	29 Cal. 3d 462.....	17
15	<i>Rose v. City of Hayward</i> , (1981)	
16	126 Cal.App.3d 926	18
17	<i>Serrano v. Priest</i> , (1977)	
18	20 Cal.3d 25.....	12
19	<i>Stamburgh v. Super. Ct.</i> , (1976)	
20	62 Cal.App.3d 231	9
21	<i>Wershba v. Apple Computers, Inc.</i> , (2001)	
22	91 Cal.App.4th 224	10
23	<i>Wilner v. Sunset Life Ins. Co.</i> , (2000)	
24	78 Cal.App.4th 952	17

FEDERAL CASES

26	<i>Frank v. Eastman Kodak Co.</i> ,	
27	(W.D.N.Y. 2005) 228 F.R.D. 174	15

///

1	<i>Garcia v. Gordon Trucking, Inc.</i>	
2	(E.D. Cal. Oct. 31, 2012) No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575.....	15
3	<i>Hopson v. Hanesbrands Inc.</i>	
4	(N.D. Cal. Apr. 3, 2009)No. CV-08-0844 EDL, 2009 WL 928133.....	14
5	<i>Jack v. Hartford Fire Ins. Co.</i>	
6	(S.D. Cal. Oct. 13, 2011) 2011 WL 4899942	14
7	<i>Leyva v. Medline Ind.,</i>	
8	(9th Cir. 2013) 716 F.3d 510.....	20
9	<i>McKenzie v. Fed. Express Corp.</i>	
10	(C.D. Cal. Jan. 23, 2012) 2012 WL 12882124.....	14
11	<i>Moreno v. Pretium Packaging, L.L.C.</i>	
12	(C.D. Cal. Aug. 6, 2021) 2021 WL 3673845	16
13	<i>Priddy v. Edelman,</i>	
14	(6th Cir. 1989) 883 F.2d 438.....	9
15	<i>Rodriguez v. W. Publ'g Corp.,</i>	
16	(9th Cir. 2009) 563 F.3d 948.....	15
17	<i>Van Vranken v. Atlantic Richfield Company,</i>	
18	(N.D. Cal. 1995) 901 F.Supp. 294.....	13
19	<i>Vincent v. Hughes Air West, Inc.,</i>	
20	(9th Cir. 1977) 557 F.2d 759.....	12
21	<i>Zubia v. Shamrock Foods Co.</i>	
22	(C.D. Cal. Dec. 21, 2017) No. CV1603128ABAGRX, 2017 WL 10541431.....	14
23	<u>STATE STATUTES</u>	
24	Code of Civil Procedure § 382.....	17, 18
25	Labor Code § 1194	13
26	Labor Code § 90.5	15
27	<u>RULES</u>	
28	California Rules of Court, Rule 3.766.....	20

1	California Rules of Court, Rule 3.769(f).....	11
---	---	----

2 **TREATISES**

3	Conte & Newberg, <i>Newberg on Class Actions</i> (3rd Ed.).....	9, 13, 20
---	---	-----------

4 **OTHER AUTHORITIES**

5	Eisenberg & Miller, <i>Incentive Awards to Class Action Plaintiffs: An Empirical Study</i> , (2006)	
6	53 UCLA L.Rev. 1303	16

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Raul Morales Reyes and Mariano Gutierrez Gama (collectively, “Plaintiffs”) seek
4 preliminary approval of a proposed \$1,250,000.00 non-reversionary, wage and hour class action
5 settlement with Defendant Giumarra Vineyards Corporation (“Defendant”). The Settlement will
6 provide substantial monetary payments to approximately 5,130 class members. And, as set forth
7 more fully below, the proposed Settlement satisfies all the criteria for settlement approval under
8 California law. The Settlement was reached after extensive investigation, discovery, and
9 negotiations. The negotiations were at arms-length and were facilitated by an experienced class
10 action mediator, Hon. Howard Broadman (Ret.), over the course of a full day of mediation that was
11 conducted via Zoom. After extensive negotiations and discussions regarding the strengths and
12 weaknesses of Plaintiffs’ claims and Defendant’s defenses, the Parties reached a settlement on
13 January 20, 2023. Accordingly, Plaintiffs request that the Court preliminarily approve the proposed
14 Settlement, certify the proposed settlement class, approve the proposed notice, and set a final
15 approval hearing.

16 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

17 **A. Plaintiffs’ Claims**

18 This is a wage and hour class action and Private Attorneys General Act (“PAGA”) (Cal.
19 Lab. Code §§ 2699, *et seq.*) representative action. Plaintiffs and putative class members worked
20 in California as hourly-paid or non-exempt employees for Defendant during the class period.
21 Defendant is headquartered in Edison, California and is a family-owned and operated grower,
22 packer, and shipper of premium California Table Grapes, with vineyards stretching from the
23 Southern end of the San Joaquin Valley to Ducor in Tulare County. (Declaration of Justin F.
24 Marquez in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement
[“Marquez Decl.”], ¶ 2.)

25 Plaintiffs allege that Defendant’s payroll, timekeeping, and wage and hour practices
26 resulted in Labor Code violations. Plaintiffs allege that Defendant failed to pay for all hours
27 worked. Plaintiffs further allege that Defendant failed to provide employees with legally
28 compliant meal and rest periods, and Defendant failed to reimburse business expenses. Based

1 on these allegations, Plaintiffs asserts related claims for failure to provide accurate wage
2 statements, failure to pay all final wages at termination, unfair business practices, and civil
3 penalties under PAGA. (*Id.* at ¶ 3.)

4 On September 10, 2021, Plaintiff Reyes filed a putative wage-and-hour class action
5 complaint against Defendant for: (1) failure to pay minimum and straight time wages (Labor
6 Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194
7 and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to
8 authorize and permit rest periods (Labor Code §§ 226.7 and 512); (5) failure to timely pay final
9 wages at termination (Labor Code §§ 201-203); (6) failure to provide accurate itemized wage
10 statements (Labor Code § 226); (7) failure to indemnify employees for expenditures (Labor
11 Code § 2802); and (8) unfair business practices (Business and Professions Code 17200 et seq.).
12 On June 4, 2024, Plaintiff Reyes filed joint stipulation for leave to file a First Amended
13 Complaint against Defendant adding Plaintiff Mariano Gutierrez Gama and adding claims for
14 Unlawful Deductions (Labor Code § 221), Paid Sick Leave and Paid COVID Supplemental Sick
15 Leave Violations (Labor Code §§ 246, 248.2, and 248.6), and civil penalties under Private
16 Attorneys General Act “PAGA” (Labor Code §§ 2698, *et seq.*) Plaintiff sent a notice to
17 Defendant and the California Labor & Workforce Development Agency (“LWDA”) alleging
18 similar wage and hour violations pursuant to the PAGA on September 10, 2021. (Marquez
Decl., ¶ 4.)

19 **B. Discovery and Investigation**

20 Following the filing of the Complaint, the Parties exchanged documents and information
21 before mediating this action. Defendant produced a sample of time and pay records for class
22 members. Defendant also provided documents of its wage and hour policies and practices
23 during the class period, and information regarding the total number of current and former
24 employees in its informal discovery responses. During the mediation process, Class Counsel
25 also reviewed financial information and documents through the mediator that demonstrated
26 Defendant’s inability to fund a larger settlement. (*Id.* at ¶ 5.)

27 After reviewing documents regarding Defendant’s wage and hour policies and practices,
28 analyzing Defendant’s timekeeping and payroll records, and interviewing Class Members, Class

Counsel was able to evaluate the probability of class certification, success on the merits, Defendant's maximum monetary exposure for all claims, and Defendant's ability to fund a class settlement. (*Id.* at ¶ 6.) Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Class Counsel reviewed these records and prepared a damage analysis prior to mediation. (*Id.*)

C. **Settlement Negotiations**

On January 12, 2023, the parties participated in private mediation with experienced class action mediator Hon. Howard Broadman (Ret.). (*Id.* at ¶ 7.) The mediation was conducted via Zoom. The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) The Parties did not immediately resolve the action at mediation, but instead considered a mediator's proposal that was ultimately accepted by all Parties. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses, the Parties reached a settlement the material terms of which are encompassed within the Settlement. (*Id.* at ¶ 8, Ex. 1 [Joint Stipulation to Class Action and PAGA Settlement].)

Class Counsel has conducted a thorough investigation into the facts of this case. Based on the foregoing discovery and their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk. (*Id.* at ¶ 15.)

Indeed, the \$1,250,000.00 Settlement represents **34.37%** of **the realistic maximum recovery of \$5,271,097.12**. (*Id.* at ¶ 24.) Although Class Counsel estimated that Defendant's maximum potential liability for all claims was approximately \$52.7 million, when the risk of prevailing at certification and trial are factored into the equation, Class Counsel believes that Defendant's realistic exposure was \$3,645,312.97, meaning the Settlement achieves a significant recovery. (*Id.* at ¶¶ 15-28.) Considering the risk and uncertainty of prevailing at

1 class certification and at trial, and the risk of not collecting on any judgment, this is an good
2 result for the Class. (*Id.* at ¶ 28.) Indeed, because of the proposed Settlement, class members
3 will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment.

4 **D. Key Terms of the Proposed Settlement**

5 The Settlement’s key terms include:

6 1. Class Definition: For settlement purposes only, the Parties agree to the certification
7 of a class pursuant to California Code of Civil Procedure § 382 defined as: “all persons currently
8 or formerly directly employed as non-exempt employees in California by Defendant at any time
9 during the Class Period (defined below) who do not timely and validly exclude themselves from
10 the Class in compliance with the exclusion procedures set forth in this Settlement.” (Settlement,
11 § I(C).)

12 2. Class Period: “means September 10, 2017 through the Preliminary Approval Date
13 of the Settlement or an earlier date at Defendant’s discretion per Section III (D)(5).” (Settlement,
14 § I(G).)

15 3. Participating Class Members: “is defined as a Class Member who does not timely
16 exclude himself or herself from the Settlement and will therefore receive his or her share of the
17 Settlement proceeds automatically without the need to return a claim form. Each Participating
18 Class Member will be paid his/her Individual Class Payment.” (Settlement, § I(Y).)

19 4. Aggrieved Employees: “means all persons currently or formerly directly employed
20 as non-exempt employees in California by Defendant at any time during the PAGA Period (defined
21 below). ‘Aggrieved Employees’ shall not include any persons assigned to Defendant by a third-
22 party staffing agency or labor contractor during the PAGA Period to the extent such persons did
23 not also work as a direct hire for Defendant during the PAGA Period.” (Settlement, § I(B).)

24 5. PAGA Period: “means September 10, 2020, though the Preliminary Approval.”
(Settlement, § I(X).)

25 6. Gross Settlement Amount: This amount is \$1,250,000.00, for all claims, including
26 all wages, damages, interest, penalties, and all administration cots, attorney’s fees and costs,
27 Enhancement Awards, and LWDA Payment pursuant to Section III(D)(7) below, and all applicable
28 employee-side payroll taxes shall be out of the Gross Settlement Amount. The employer’s share

of payroll taxes arising from the payments made under this settlement shall be paid by Defendant separate from and in addition to the Gross Settlement Amount.” (Settlement, § I(P).)

7. Uncashed Checks: If a settlement check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, shall mail the check to the newly identified address. Any settlement checks remaining uncashed after one hundred and eighty (180) days shall be disbursed to the California Farmworker Foundation, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Settlement, § III(D)(7)(e).)

8. Release: “Upon the Effective Date, Participating Class Members and Aggrieved Employees release Released Parties of all Released Claims, as defined below, during the Class Period and PAGA Period, as applicable. Such release shall be subsequently invalidated if, after the Effective Date, Defendant fails to fund the Gross Settlement Amount per the schedule set forth herein. Nonetheless, Released Parties shall have the right to enforce the release set forth herein as to Participating Class Members and Aggrieved Employees, as applicable, without regard to their receipt of an Individual Class Payment and/or Individual PAGA Payment and prior to fully funding the Gross Settlement Amount, so long as Defendant has complied with the procedures set forth herein as of the time it seeks to enforce the release. Any claims released under this Settlement by a Participating Class Member or Aggrieved Employee as of the Effective Date shall be deemed tolled for statute of limitations purposes between the Effective Date and Defendant’s deadline to fully fund the Settlement, such that if a Class Member’s release is subsequently invalidated after the Effective Date due to Defendant’s failure to fully fund the Agreement, the Class Member’s time to bring an action shall be extended between the Effective Date and the date the release is invalidated (i.e., the date of Defendant’s failure, if any, to fund the Settlement as scheduled herein).” (Settlement, § V(A).)

9. Released Claims: “The released claims shall include, but are not limited to all claims alleged by Plaintiff in the operative complaint(s), or which could have been alleged by Plaintiff in the operative complaint(s) by reason of or in connection with any matter or fact set forth or referred to in operative complaint(s), including any and all claims, debts, liabilities, demands, actions, or

1 causes of action arising from or relating to the Released Claims during the Class Period or PAGA
2 Period, as defined herein. Without limiting the foregoing, the Released Claims shall include claims
3 for unpaid wages, including but not limited to failure to pay minimum wages, straight time
4 compensation, overtime compensation, and interest; failure to timely pay regular and final wages;
5 failure to provide compliant meal, rest, and/or recovery periods; failure to pay premiums at all or
6 at the correct rate for any violation of meal, rest, and recovery period obligations; claims arising
7 from invalid meal period waivers and on-duty meal period waivers; payment for all hours worked;
8 wage statements and paystubs, including wage statements and paystubs furnished or available in
9 physical, electronic, or other forms; failure to keep accurate records; making unlawful deductions;
10 failing to reimburse business expenses; unfair business practices; any and all related penalties,
11 including recordkeeping penalties, wage statement penalties, minimum wage penalties, and
12 waiting time penalties; and statutory penalties and/or civil penalties associated with any of the
13 foregoing. Such released claims shall include, but are not limited to those claims arising under
14 California Labor Code sections 201-204, 204b, 205.5, 206, 210, 218, 218.5, 218.6, 221, 222, 222.5,
15 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.7, 233, 234, 246, 246.5, 247, 247.5, 248, 248.1, 248.2,
16 248.3, 248.5, 248.6, 248.7, 400-410, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2,
17 1197, 1197.1, 1198, 1199, 2800, 2802, 2698 *et seq.*, and 2699 *et seq.*, and/or those arising under
18 the applicable Industrial Welfare Commission Wage Order(s) (including but not limited to
19 subsections 3, 4, 5, 7, 8, 9, 11, 12, 13, 18, and 20 of the applicable Wage Order(s) [including the
20 provisions of the California Code of Regulations codifying the applicable Wage Order(s)], which
21 may include but are not limited to Wage Orders 8-2001 and 14-2001); 8 C.C.R. §3395; California
22 Business and Professions Code section 17200 *et seq.* (including, without limitation, California
23 Business and Professions Code §§17200 through 17208); the California Civil Code sections 3287,
24 3289, and 3294; California Code of Civil Procedure section 1021.5; and any related claims under
25 the claims under the Fair Labor Standards Act (“FLSA”) (29 U.S.C. §§ 201, *et seq.*) (Settlement,
§ V(A).)

26 10. Effective Date: “means the date by which both of the following have occurred: (a)
27 the Court enters Judgment; and (b) the Judgment is “final.” (Settlement, §I(L).)

28 ///

1 11. No Reversion: “No part of the Gross Settlement Amount shall revert to Defendant.”
2 (Settlement, § I(Q).)

3 12. PAGA Allocation: The settlement includes \$50,000.00 allocated to Plaintiffs’
4 claims under PAGA, with 75% of which (\$37,500.00) being paid to the LWDA and 25%
5 (\$12,500.00) being paid to the Aggrieved Employees. (Settlement, § III(D)(7)(e).) Class Counsel
6 submitted the proposed settlement to the LWDA before filing this Motion for Preliminary
7 Approval. (Marquez Decl., ¶ 9.)

8 13. Net Settlement Amount: “means the Gross Settlement Amount less the Court-
9 approved settlement administration costs, attorney’s fees and costs, Enhancement Awards,
10 Individual PAGA Payments, and LWDA Payment, pursuant to Section III(D)(7) below.”
11 (Settlement, § I(U).)

12 14. Distribution Formula: “To calculate the amount each Class Member will receive,
13 the Net Settlement Amount will be divided by the total number of Qualifying Workweeks by all
14 Class Members during the Class Period and then allocated on a pro rata basis (i.e., according to
15 the Qualifying Workweeks worked by each of the individual Class Members during the Class
16 Period.) (Settlement, § III(D)(7)(f).) As to PAGA: “. . . Twenty-Five (25%) [12,500.00] will be
17 paid on a pro rata basis to all Aggrieved Employees based on the individual Qualifying Pay Periods
18 worked during the PAGA Period by each Aggrieved Employee, regardless of whether or not they
19 opt out of this Settlement (“Individual PAGA Payment”).” (Settlement, § (D)(7)(e).)

20 15. Tax Allocation: Any settlement money paid to Settlement Class Members will be
21 allocated as 5% wages, 85% to penalties and interest, and 10% reimbursements. (Settlement, §
22 (D)(7)(f).)

23 16. Class Representative Service Award: Subject to Court approval, Plaintiff Raul
24 Morales Reyes shall be paid an enhancement award not to exceed \$5,000.00 and Plaintiff Mariano
25 Gutierrez Gama shall be paid an enhancement award not to exceed \$1,000.00. (Settlement, §
26 III(D)(7)(d).) This amount is for Plaintiffs’ time and effort in bringing and presenting the action,
27 and in exchange for a general release of all claims, known or unknown, pursuant to Civil Code
28 Section 1542. (Settlement, § V(B).) If the Court approves a lesser enhancement, then the
unapproved portion or portions shall revert into the Net Settlement Amount to be distributed

1 between the participating Settlement Class Members on a pro-rata basis. (Settlement, §
2 III(D)(7)(d).)

3 17. Attorneys' Fees and Costs: The Settlement provides that Defendant will not oppose
4 a fee application of up to 33 1/3% (\$416,666.67) of the Gross Settlement Amount, plus out-of-
5 pocket costs not to exceed \$30,000.00. (Settlement, § III(D)(7)(b).)

6 18. Notice of Proposed Class Action Settlement: The Notice sets forth in plain terms, a
7 statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys'
8 fees, costs, and service award being sought, and an explanation of how the settlement allocations
9 are calculated. (Settlement, Ex. 1, Class Notice.) Class Members will be notified by first-class
10 mail of the settlement. (Settlement, § III(C).) CPT Group, Inc., the proposed Settlement
11 Administrator, will undertake its best efforts to ensure that the notice is provided to the current
12 addresses of class members, including conducting a national change of address search and re-
13 mailing the notice to updated addresses. (*Id.*; Marquez Decl., ¶ 10, Ex. 2 [Settlement Administrator
14 Bid].)

15 **III. DISCUSSION**

16 To prevent fraud, collusion, or unfairness to the class, the settlement of a class action
17 requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This
18 Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super.*
19 *Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached
20 through arm's-length bargaining; (2) investigation is sufficient to allow counsel and the court to
21 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
22 is small. (*Dunk*, 48 Cal.App.4th at p. 1800.)

23 In considering whether a settlement is reasonable, the trial court should consider relevant
24 factors, which may include the strength of plaintiff's case, the risk, expense, complexity and likely
25 duration of further litigation, the risk of maintaining class action status through trial, the amount
26 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
27 experience and views of counsel, the presence of a governmental participant, and the reaction of
28 the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.*, (2008) 168
Cal.App.4th 116, 128.) In order to approve a class action settlement, the court must satisfy itself

1 that the class settlement is within the “ballpark” of reasonableness. (*Id.* at p. 133.) The record
2 need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-*
3 *Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not
4 require “an explicit statement of the maximum amount the plaintiff class could recover if it
5 prevailed on all its claims”, but instead, only an “understanding of the amount that is in controversy
6 and the realistic range of outcomes of the litigation.”].)

7 As discussed below, Class Counsel has provided information exceeding the threshold
8 required to provide this Court with materials and information necessary to determine that the
9 proposed settlement is fair, adequate, and reasonable.

10 **A. The Settlement Is Fair, Reasonable, Adequate, and the Product of**
11 **Investigation, Litigation, and Negotiation**

12 **1. The Settlement Is the Product of Discovery, Investigation, and Informed**
13 **and Non-Collusive Arm’s-Length Negotiations**

14 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
15 evidence to the contrary is offered; thus, there is a presumption here that the negotiations were
16 conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.)
17 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super.*
18 *Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The
19 fact that a plaintiff might have received more if the case had been fully litigated is no reason not
20 to approve the settlement.”].)

21 The Settlement was reached following extensive negotiations following one day of
22 mediation with experienced employment mediator, Hon. Howard Broadman (Ret.). (Marquez
23 Decl. ¶ 7.) The settlement negotiations were at arm’s length and, although conducted in a
24 professional manner, were adversarial. (*Id.*) The parties went into the mediation willing to explore
25 the potential for a settlement of the dispute, but each side was also prepared to litigate their or its
26 position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive
27 negotiations and discussions regarding the strengths and weaknesses of Plaintiffs’ claims and
28 Defendant’s defenses, the Parties reached an agreement. (Marquez Decl. ¶ 8.)

///

1 Prior to reaching this settlement, Class Counsel conducted informal discovery concerning
2 the claims set forth in the Litigation, such as a sample of class member timekeeping and payroll
3 records, Defendant’s policies and procedures concerning the payment of wages, the provision of
4 meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well
5 as information regarding the number of putative class members and the mix of current versus
6 former employees, the wage rates in effect, and the amount of meal and rest period premium wages
7 paid to class members. (*Id.* at ¶¶ 5-6.) In conjunction with their extensive factual investigation,
8 Class Counsel investigated the applicable law regarding the claims and defenses asserted in the
9 litigation. (*Id.*) Thus, Plaintiffs and their counsel were able to act intelligently and effectively in
10 negotiating the proposed Settlement. (*Id.*)

11 Class Counsel also has considerable experience and has demonstrated competence with
12 litigating wage and hour class actions. (*Id.* at ¶¶ 39-50.) Again, this supports the position that the
13 terms of the Settlement are premised on objective evidence that has been considered and weighed
14 in light of the risks, expenses, and time consumption to both sides of continued litigation of this
15 action.

16 **2. The Settlement Is Fair and Reasonable in Light of the Parties’** 17 **Respective Legal Positions**

18 A settlement is not judged against what might plaintiff recover had he prevailed at trial, nor
19 does the settlement have to provide 100% of the damages sought to be fair and reasonable.
20 (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 [“Compromise is inherent
21 and necessary in the settlement process . . . even if the relief afforded by the proposed settlement
22 is substantially narrower than it would be if the suits were to be successfully litigated, this is no
23 bar to a class settlement because the public interest may indeed be served by a voluntary settlement
24 in which each side gives ground in the interest of avoiding litigation.”].)

25 This settlement avoids the risks and the accompanying expense of further litigation.
26 (Marquez Decl., ¶ 26.) While Plaintiffs are confident in the merits of their claims, a legitimate
27 controversy exists as to each cause of action. (*Id.* at ¶ 25.) Plaintiffs also recognizes that proving
28 the amount of wages due to each class member would be an expensive, time-consuming, and
uncertain proposition. (*Id.*)

1 The proposed settlement of \$1,250,000.00 therefore represents a substantial recovery when
2 compared to Plaintiffs' reasonably forecasted recovery. (*Id.* at ¶¶ 15-28.) Because of the proposed
3 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
4 unfavorable judgment. When considering the risks of litigation, the uncertainties involved in
5 achieving class certification, the burdens of proof necessary to establish liability, the probability
6 of appeal of a favorable judgment, it is clear that the settlement amount of \$1,250,000.00 is within
7 the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) ***Indeed,***
8 ***each Settlement Class Member is eligible to receive an average net benefit of approximately***
9 ***\$154.23.*** (*Id.* at ¶ 27.)

10 **3. Class Counsel Has Extensive Experience in Class Action Litigation**

11 The settlement negotiations were conducted by highly capable and experienced counsel.
12 Class Counsel have a strong record of vigorous and effective advocacy for their clients and are
13 experienced in handling complex wage and hour class action litigation. (Marquez Decl., ¶¶ 39-
14 50.) Although Plaintiffs and their counsel were prepared to litigate the claims alleged in the
15 litigation, they support the proposed Settlement as being in the best interests of the class.

16 **B. The Proposed Class Notice of Settlement Should Be Approved**

17 The proposed Notice, in the form attached to the Settlement Agreement, should be approved
18 for dissemination to the class. The Notice informs the class of the terms of the settlement and of
19 their rights to be excluded from the settlement. And if there are class members who wish to object
20 to this proposed class action settlement, they will have the opportunity to file their objections and
21 be heard at the Final Approval Hearing. Accordingly, the proposed Notice meets all the
22 requirements of Rule 3.769(f) of the California Rules of Court.

23 **C. The Proposed Attorneys' Fees and Costs Are Reasonable**

24 Under the Settlement, subject to the Court's approval, Defendant agrees to pay Class
25 Counsel reasonable attorneys' fees in amount of \$416,666.67, which is 33 1/3% of the gross
26 Settlement Amount, and up to \$30,000.00 in costs. These amounts are disclosed to all class
27 members in the proposed Notice and are reasonable.

28 ///

///

1 **1. Class Counsel Request an Award of Fees Based on the “Common Fund”**
2 **Method**

3 California courts have long awarded attorneys’ fees as a percentage of the benefit created
4 by counsel in creating a common fund. The California Supreme Court held that “when a number
5 of persons is entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs
6 for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs
7 may be awarded attorneys’ fees out of the fund.” (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34,
8 quoting *D’Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

9 Class Counsel seeks an award of attorneys’ fees on the “percentage of recovery/ common
10 fund” theory. The purpose of this approach is to “spread litigation costs proportionally among all
11 the beneficiaries so that the active beneficiary does not bear the entire burden alone.” (*Vincent v.*
12 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1995)
13 15 Cal.3d 162, the California Supreme Court stated: “[O]ne who expends attorneys’ fees in
14 winning a suit which creates a fund from which others derive benefits may require those passive
15 beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in *City and*
16 *County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized
17 that the common fund doctrine has been applied “consistently in California when an action brought
18 by one party creates a fund in which other persons are entitled to share.” (*Id.* at p. 110.)

19 The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th
20 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
21 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
22 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
23 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
24 method—including relative ease of calculation, alignment of incentives between counsel and the
25 class, a better approximation of market conditions in a contingency case, and the encouragement
26 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—
27 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
28 (*Id.* [internal citations omitted].)

///

1 **2. The Requested Fee Award Is in Line with Typical Cases**

2 According to a leading treatise on class actions, “No general rule can be articulated on what
3 is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a
4 reasonable fee award from a common fund in order to assure that the fees do not consume a
5 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
6 are not unprecedented.” (*See* Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 14.03.)
7 Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with thirty
8 to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; see also
9 *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most
10 cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10
11 million].)

12 Here, Plaintiffs request attorneys’ fees equal to 33 1/3% of the Settlement Amount, which
13 is in line with the prevailing guidelines established in California case law and academic literature
14 and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th
15 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage method or the
16 lodestar method is used, fee awards in class actions average around one-third of the recovery.”].)
17 Accordingly, Plaintiffs respectfully request that the Court approve the attorneys’ fees as negotiated
18 by the parties and requested herein.

19 **3. This Matter Involves A “Fee-Shifting” Provision of the Labor Code**

20 Labor Code § 1194 (a) provides for the recovery of “minimum wage or overtime
21 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Under this
22 section, Plaintiffs would be permitted to recover their actual attorneys’ fees, even if those fees were
23 larger than the total class recovery at the conclusion of this case. This settlement is beneficial in
24 that it limits the risk of continued expenses and consumption of time, energy, and resources facing
25 Defendant while at the same time rewarding Class Counsel for their decision to assume risk by
26 taking on this matter. In fact, prosecution of this action involved significant financial risk for Class
27 Counsel. (Marquez Decl., ¶¶ 37-38.) Class Counsel undertook this matter solely on a contingent
28 basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the
Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class

1 ahead of all other concerns.

2 **4. The Experience, Reputation and Ability of Class Counsel Support the**
3 **Requested Fee Award**

4 As demonstrated by their past experience in pursuing class actions on behalf of consumers
5 and employees, Class Counsel possess considerable expertise in litigating class actions. (*Id.* at ¶¶
6 39-51.) Class Counsel has been involved as lead counsel or co-counsel in several class actions that
7 resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class counsel
8 commensurate with their skill, reputation and experience, Class Counsel’s requested fee award is
9 supported here.

10 Class Counsel’s experience in wage and hour class actions was integral in evaluating the
11 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement.
12 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning
13 the rapidly evolving substantive law (state and federal), as well as the procedural law of class
14 action litigation. Based on these and other factors, Class Counsel has frequently received fee
15 awards of this percentage from the gross recovery for the class. Therefore, the requested fee award
16 is reasonable and fair.

16 **D. The PAGA Allocation is Reasonable**

17 Where settlements negotiate a good faith amount for PAGA penalties and “there is no
18 indication that this amount was the result of self-interest at the expense of other” class members,
19 such amounts are generally considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr.
20 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133 at *1, 9.) Courts have approved amounts for
21 PAGA penalties in the range of zero to two percent of the total maximum amount of the Settlement.
22 (*Id.* [approving a PAGA payment of 0.3%, or \$1,500]; see also *Jack v. Hartford Fire Ins. Co.* (S.D.
23 Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a PAGA payment of 0.25%]; *McKenzie v.*
24 *Fed. Express Corp.* (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5 [acknowledging that courts
25 approve PAGA claim settlements in the range of zero to two percent of the total settlement].) Here,
26 the amount to be paid to the LWDA is larger than many other PAGA settlement amounts approved
27 by the courts where seemingly nominal amounts were allocated for such claims. (See, e.g. *Zubia*
28 *v. Shamrock Foods Co.* (C.D. Cal. Dec. 21, 2017) No. CV1603128ABAGRX, 2017 WL 10541431,

1 at *14 [approving a PAGA settlement of 0.1%]; *Hopson, supra*, (N.D. Cal. Aug. 8, 2008) 2008
2 WL 3385452, at *1 [approving a PAGA settlement of 0.3% or \$1,500]; *Garcia v. Gordon Trucking,*
3 *Inc.* (E.D. Cal. Oct. 31, 2012) No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 [approving
4 a PAGA settlement of 0.27%].) Here, the Parties negotiated a good faith amount of \$50,000.00,
5 75% percent of which (\$37,500.00) will be paid to the LWDA, with 25% (\$12,500.00) to be
6 distributed to the Aggrieved Employees. (Settlement at § III(D)(7)(e).) The negotiated \$50,000.00
7 settlement amount for PAGA equates to approximately 4% of the Gross Settlement Amount, which
8 far exceeds amounts that are routinely approved.

9 **E. The Service Awards to Named Plaintiffs Are Reasonable**

10 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
11 compensate them for the expense or risk they have incurred in conferring a benefit on other
12 members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval
13 of class action settlement agreements containing enhancements for the class representatives, which
14 are necessary to provide incentive to represent the class, and are appropriate given the benefit the
15 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir.
16 2009) 563 F.3d 948, 958-59.)

17 Service awards are particularly important to plaintiffs in wage and hour cases because they
18 promote the important public policies underlying the wage and hour laws. This strong policy is
19 codified in California Labor Code § 90.5, which provides, “it is the policy of this state to vigorously
20 enforce minimum labor standards in order to ensure employees are not required or permitted to
21 work under substandard unlawful conditions”). Nonetheless, the California Supreme Court
22 has noted that “retaliation against employees for asserting statutory rights under the Labor Code is
23 widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.*
24 (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should be rewarded for
25 assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.*
26 (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

27 Under the settlement agreement, subject to the Court’s approval, Defendant agreed to pay
28 Service Awards in the amount of \$5,000.000 to Plaintiff Reyes and \$1,000.00 to Plaintiff Mariano
Gutierrez Gama. This amount is also in exchange for Plaintiffs’ general release of all claims

1 against Defendant. Courts routinely approve up to a \$10,000 enhancement award for plaintiffs
2 represented by Class Counsel. (*See, e.g., Moreno v. Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6,
3 2021) 2021 WL 3673845, *3 [“The Court concludes a \$10,000 incentive award is appropriate.”];
4 *Suarez, supra*, 2024 WL 150721 at p. *4 [“The court approves awards of \$10,000 for each class
5 representative.”].) Class Counsel represent that Plaintiff devoted a great deal of time and work
6 assisting counsel in the case, communicated with counsel very frequently for litigation and to
7 prepare for mediation, and was frequently in contact with Class Counsel during the mediation.
8 (Marquez Decl., ¶¶ 30-34.) This amount is reasonable particularly in light of the substantial
9 benefits Plaintiff generated for all class members. (*Id.*) Indeed, in *Karl Adams, III, et al. v.*
10 *MarketStar Corporation, et al.*, No. 2:14-cv-02509-TLN-DB, Class Counsel Justin F. Marquez
11 helped negotiate a \$2.5 million class action settlement for 339 class members, and the court
12 approved a \$25,000 class representative incentive award for each named plaintiff. (Marquez Decl.,
13 ¶ 34.)

14 When compared with the amounts awarded in typical class action cases, the amount
15 requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive
16 award given to class action plaintiffs from **1993 to 2002** found that the “average award per class
17 representative was \$15,992 and the median award per class representative was \$4,357.” (Eisenberg
18 & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L.Rev.
19 1303, 1308.) That same study found that named plaintiffs in employment discrimination class
20 actions received an average award of \$69,850 and a median award of \$31,081, while named
21 plaintiffs in other employment class actions received an average award of \$12,121 and a median
22 award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards in
23 employment cases reflected the “courts’ wish to make representative plaintiffs whole by
24 compensating them for the high costs of their service to the class, including risks of stigmatization
or retaliation on the job.” (*Id.* at p. 1308.)

25 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

26 **A. Legal Standard**

27 The proposed Settlement Class is well suited for class certification. All of the claims derive
28 from a core set of alleged violations of California’s wage and hour laws and regulations. For the

1 reasons set forth more fully below, for purposes of settlement only, the Class satisfies the
2 prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides: “when
3 the question is one of a common or general interest, of many persons, or when the parties are
4 numerous, and it is impracticable to bring them all before the court, one or more may sue or defend
5 for the benefit of all.” (Code Civ. Proc., § 382.) There are two requirements to section 382: “(1)
6 There must be an ascertainable class; and (2) there must be a well-defined community of interest
7 in the questions of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow*
8 *Cab Co.* (1967) 67 Cal. 2d 695, 704 [citations omitted].) To clarify these requirements, the
9 California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the
10 community-of-interest requirement itself embodies three factors: “(1) predominant questions of
11 law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class
12 representatives who can adequately represent the class.” (*Richmond v. Dart Indus., Inc.* (1981) 29
13 Cal. 3d 462, 470.)

14 California law and policy favor the fullest and most flexible use of the class action device.
15 (*Id.* at pp. 469-73.) Indeed, “Courts long have acknowledged the importance of class actions as a
16 means to prevent a failure of justice in our judicial system” particularly where the rights of
17 consumers are at issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434.) Any doubt as to
18 the appropriateness of class treatment should be resolved in favor of certification. (*Richmond*,
supra, 29 Cal.3d at pp. 473-75.)

19 **B. Plaintiffs Maintain That the Criteria for Class Certification Are Satisfied for**
20 **Settlement Purposes.**

21 **1. The Classes Are Ascertainable and Numerous**

22 The proposed class that Plaintiffs seek to represent is easily ascertainable and includes
23 approximately 4,719 employees of Defendant.

24 Plaintiffs maintain that there is an easily ascertainable class, defined by objective and
25 precise criteria. Because class members are identified using specific criteria in the regular business
26 records of Defendant, i.e., job position, the class is ascertainable. (*Wilner v. Sunset Life Ins. Co.*
27 (2000) 78 Cal.App.4th 952, 959-60 [class membership defined by ownership of product that is the
28 subject of the lawsuit is sufficient to make the class ascertainable].)

1 “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a
2 class action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981)
3 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action
4 may be maintained as a class action even where the parties are numerous and it is in fact practicable
5 to join them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a
6 class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries
7 of a trust in an action for removal of the trustees.” (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d
8 574; see also, *Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.]) Therefore,
9 Plaintiffs contend that numerosity is plainly satisfied.

10 **2. There are Many Common Issues of Law and Fact Which Predominate**

11 The Court should grant conditional class certification for settlement purposes here on the
12 grounds that questions of law and fact common to all class and subclass predominate over any
13 individual questions. This inquiry tests whether proposed classes are sufficiently cohesive to
14 warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191
15 Cal.App.3d 605.)

16 Here, the employment practices at issue are: whether Defendant had legally compliant
17 policies and practices to provide employees with meal periods; whether Defendant had legally
18 compliant policies and practices authorizing and permitting its employees to take rest periods;
19 whether Defendant had legally compliant policies and practices for all hours worked, including
20 overtime wages; whether Defendant reimbursed employees for business expenses; whether final
21 payment of wages was untimely and excluded unpaid wages, including meal period premium
22 wages, and rest period premium wages; and whether the wage statements were consequently non-
23 compliant. Plaintiffs contend that the factual and legal issues are the same for all of the identified
24 class members, including Plaintiffs. Further, all class members suffered from, and seek redress
25 for, the same alleged injuries.

26 **3. Plaintiffs’ Claims Are Typical of the Claims of the Class**

27 The typicality requirement does not focus on the individual characteristics or circumstances
28 of the representative plaintiff compared to those of the remainder of the class, but rather upon the
typicality of the proposed representative’s claims as they relate to the defendant’s conduct and

activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 [“[t]he only requirements are that common questions of law and fact predominate and that the class representative be similarly situated” vis-à-vis the class.].) A representative plaintiff’s claims are typical of the class if they arise from the same event, practice or course of conduct, and if the claims rest on the same legal theories. (*Id.*) That is precisely the case here. Plaintiffs are former employees of Defendant; as such, they allege that they were subject to the same policies and practices as other similarly situated employees.

4. Plaintiffs and Their Counsel Meet the Adequacy Requirement

The adequacy of representation requirements is met by fulfilling two conditions: first, a named plaintiff must be represented by counsel qualified to conduct the pending litigation; second, a named plaintiff’s interests cannot be antagonistic to those of the class. (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451.)

All of these requirements are met here for settlement purposes. Plaintiffs retained counsel with extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Marquez Decl., ¶¶ 39-50.) Class Counsel unquestionably is “qualified, experienced and generally able to conduct the proposed litigation.” (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 875.) In addition, Plaintiffs have no conflicts, and Plaintiffs have, with counsel, litigated this case and diligently reviewed the settlement terms, showing her dedication. Plaintiffs’ willingness to serve as a representative demonstrates their serious commitment to bringing about the best results possible for the class. (*McGhee, supra*, 60 Cal.App.3d at p. 451.)

5. A Class Action is Superior to a Multiplicity of Litigation

Finally, in making its class certification decision, the Court must determine that a class action would be superior to alternative means for the fair and efficient adjudication of the litigation. By consolidating many potential individual actions into a single proceeding, this Court’s use of the class action device enables it to manage this litigation in a manner that serves the economics of time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly-situated employees with small but nevertheless meritorious claims for damages would, as a practical matter, have no means of redress because of the time, effort and expense required to prosecute individual actions. (*Gentry v. Super. Ct.* (2007) 42 Cal. 4th 443, 457-62; *Leyva v.*

1 *Medline Ind.* (9th Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the
2 superiority concerns are essentially non-existent.

3 **V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND**

4 **A. The Proposed Notice Plan Satisfies Due Process**

5 Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,
6 Rule 3.766 (e), (f).) California law vests the Court with broad discretion in fashioning an
7 appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no
8 statutory or due process requirement that all class members receive actual notice, but in this matter,
9 the class members will receive direct mailed notice. As the Court of Appeals has explained, “[t]he
10 notice given should have a reasonable chance of reaching a substantial percentage of the Class
11 Members” (*Id.* at p. 974.) In this case, notice of the proposed settlement will be provided
12 by direct mailing, the best possible form of notice.

13 **B. The Notice is Accurate and Informative**

14 The proposed Notice should be approved. It will be disseminated through direct U.S. first
15 class mail to the last known address for each Class Member. It informs the Class Members of the
16 terms of the settlement and their right to be excluded from the Settlement. And if there are Class
17 Members who wish to object to this proposed class action settlement, they will have the
18 opportunity to file their objections and be heard at the Final Approval Hearing.

19 The Notice also fulfills the requirement of neutrality in class notices. (Conte & Newberg,
20 *Newberg on Class Actions* (3rd Ed.) § 8.39.) It summarizes the proceedings to date and the
21 terms and conditions of the settlement agreement, in an informative and coherent manner. It
22 makes clear that the settlement agreement does not constitute an admission of liability by the
23 Defendant, who denies all liability, and it recognizes that this Court has not ruled on the merits
24 of the action. It also states that the final settlement approval decision has yet to be made. The
25 Notice thus complies with the standards of fairness, completeness, and neutrality required of a
combined settlement-certification class notice.

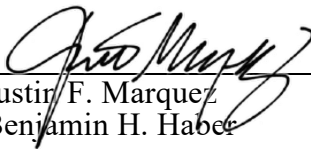
26 **VI. CONCLUSION**

27 For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary
28 approval of the proposed settlement and set a Final Approval Hearing in May 2025.

1
2 Dated: December 5, 2024

Respectfully submitted,

WILSHIRE LAW FIRM

3
4 By: 

Justin F. Marquez
Benjamin H. Haber

5 *Attorneys for Plaintiffs*
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

Morales v. Giumarra Vineyards Corporation, et al.
BCV-21-102139 JEB

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Rebecca Padilla, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is rebecca.padilla@wilshirelawfirm.com.

On December 5, 2024, I served the foregoing **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

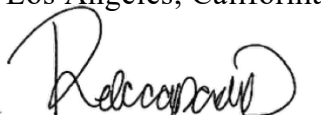
Ian B. Wieland (SBN 285721)
ian@sw2law.com
Michael J. Conway (SBN 322030)
mikec@sw2law.com
Tristan Matthews
tristan@sw2law.com
Stephanie Garcia
stephanie@sw2law.com
SAGASER, WATKINS & WIELAND PC
5260 N. Palm A venue, Suite 400
Fresno, California 93 704
Telephone: (559) 421-7000
Facsimile: (559) 473-1483

Attorneys for Defendant

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

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on December 5, 2024, at Los Angeles, California.


Rebecca Padilla