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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

YOHANNA SANCHEZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

SU CASA DE CAMBIO CESAR CHAVEZ,
INC., a California corporation, and DOES 1
through 10, inclusive,

Defendants.

Case No.: 21STCV32728

CLASS ACTION

*[Assigned for all purposes to Judge Maren
Nelson, Dept. 17]*

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

*[Filed concurrently with: Declarations of
Justin F. Marquez, Yohanna Sanchez, and
Jarrett Gorlick in Support of Plaintiff's
Motion for Preliminary Approval of Class
Action Settlement; and [Proposed] Order
Granting Plaintiff's Motion for Preliminary
Approval of Class Action Settlement]*

PRELIMINARY APPROVAL HEARING

Date: March 10, 2023

Time: 9:00 a.m.

Dept: 17

Complaint filed: September 3, 2021

FAC filed: February 25, 2022

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

2 PLEASE TAKE NOTICE that on March 10, 2023, at 9:00 a.m., in Department 17 of Los
3 Angeles Superior Court, located at 312 N. Spring Street, Los Angeles, CA 90012, pursuant to Code
4 of Civil Procedure § 382 and California Rules of Court 3.769, *et seq.*, Plaintiff Yohanna Sanchez
5 (“Plaintiff”) will move the Court for an Order granting preliminary approval of the proposed class
6 action settlement between Plaintiff and Defendant Su Casa De Cambio Cesar Chavez, Inc..
7 Plaintiff further moves the Court for an Order:

- 8 1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement
9 and Class Notice (“Settlement” or “Settlement Agreement”);
10 2. Certifying a Class for settlement purposes only;
11 3. Appointing Plaintiff Yohanna Sanchez as Class Representative for settlement purposes
12 only;
13 4. Appointing Plaintiff’s Counsel, Wilshire Law Firm, PLC, as Class Counsel for
14 settlement purposes only;
15 5. Appointing ILYM Group, Inc. as the Settlement Administrator; and
16 6. Scheduling a Final Approval Hearing.

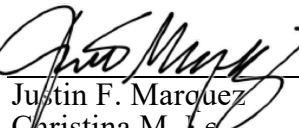
17 The Motion will be based upon this Notice, the attached Memorandum of Points and
18 Authorities, the Declaration of Justin F. Marquez, and the Declaration of Yohanna Sanchez, filed
19 concurrently herewith, the records and files in this action, and any other further evidence or
20 argument that the Court may properly receive at or before the hearing.

21
22 Respectfully submitted,

23 Dated: November 2, 2022

WILSHIRE LAW FIRM

24
25 By


Justin F. Marquez
Christina M. Le
Arsiné Grigoryan

26
27 Attorneys for Plaintiff
28

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Yohanna Sanchez (“Plaintiff”) seeks preliminary approval of a proposed \$353,500.00 non-reversionary, wage and hour class action settlement with Defendant Su Casa De Cambio Cesar Chavez, Inc. (“Defendant,” and together with Plaintiff, the “Parties”). The Settlement will provide substantial monetary payments to approximately 104 class members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, discovery, and negotiations. The negotiations were at arms-length and were facilitated by an experienced class action mediator, Mr. Brandon McKelvey, over the course of a full day of mediation that was conducted via Zoom. Accordingly, Plaintiff requests that the Court preliminarily approve the proposed Settlement and Class Notice, certify the proposed settlement class for settlement purposes only, and set a Final Approval Hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff’s Claims

This is a wage and hour class and Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Plaintiff and the putative class members worked in California as hourly-paid, non-exempt employees for Defendant during the class period. Defendant provides check cashing to the public at various locations throughout California. (Declaration of Justin F. Marquez in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement [“Marquez Decl.”], ¶ 2.)

Plaintiff alleges that Defendant’s payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours worked off the clock by the putative class member. In addition, Plaintiff alleges that Defendant failed to include all remuneration in the employees’ overtime rate and meal period premiums. Plaintiff further alleges that Defendant failed to provide employees with legally compliant meal and rest periods. Based on these allegations, Plaintiff asserts claims against Defendant for failure to pay minimum and straight time wages, failure to pay overtime wages, failure to

1 provide meal periods, failure to authorize and permit rest periods, failure to timely pay all final
2 wages at termination, failure to provide accurate itemized wage statements, and unfair business
3 practices, and civil penalties under PAGA. (*Id.* at ¶ 3.)

4 On September 3, 2021, Plaintiff filed a putative wage-and-hour class action complaint
5 against Defendant for: (1) failure to pay minimum and straight time wages; (2) failure to pay
6 overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest
7 periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate
8 itemized wage statements; and (7) violation of California’s Unfair Competition Law, California
9 Business and Professions Code §§ 17200, et seq. (*Id.* at ¶ 4.)

10 On September 3, 2021, Plaintiff also sent a notice to Defendant and the California Labor
11 & Workforce Development Agency (“LWDA”) alleging similar wage and hour violations
12 pursuant to the Labor Code Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699,
13 et seq.). (*Id.* at ¶ 5.)

14 On November 9, 2021, Plaintiff filed her PAGA complaint. After the parties agreed to
15 mediate this case, they also agreed to Plaintiff filing a First Amended Complaint (“FAC”) to
16 add her PAGA claim to this case. On February 25, 2022, Plaintiff filed her FAC and
17 subsequently dismissed her separately filed PAGA matter. Defendant subsequently answered.
18 (*Id.* at ¶ 6.)

19 Defendant denies all allegations and maintains that its employment practices comply
20 with all applicable laws. Defendant primarily contends that employees were properly
21 compensated for all wages, including minimum wage, overtime, were provided lawfully
22 compliant meal and rest breaks, and were paid all wages at the end of their employment and
23 thus, Defendant is not liable.

24 **B. Discovery and Investigation**

25 Following the filing of the Complaint, the Parties exchanged documents and information
26 before mediating this action. Defendant produced timekeeping and payroll records for the
27 putative class members. Defendant also provided documents of their wage and hour policies
28 and practices during the class period, and information regarding the total number of current and

1 former employees in its informal discovery responses. (*Id.* at ¶ 7.)

2 After reviewing the documents regarding Defendant’s wage and hour policies and
3 practices and analyzing Defendant’s timekeeping and payroll records, Class Counsel was able
4 to evaluate the probability of class certification, success on the merits, and Defendant’s
5 maximum monetary exposure for all claims. (*Id.* at ¶ 8.) Class Counsel also investigated the
6 applicable law regarding the claims and defenses asserted in the Litigation. (*Id.*) Class Counsel
7 reviewed these records and utilized an expert to prepare a damages analysis prior to mediation.
8 (*Id.*)

9 **C. Settlement Negotiations**

10 On June 17, 2021, the Parties participated in private mediation with experienced class
11 action mediator, Brandon McKelvey, Esq. (*Id.* at ¶ 9.) The mediation was conducted via Zoom.
12 The settlement negotiations were at arm’s length and, although conducted in a professional
13 manner, were adversarial. The Parties went into the mediation willing to explore the potential
14 for a settlement of the dispute, but each side was also prepared to litigate their position through
15 trial and appeal if a settlement had not been reached. (*Id.*)

16 After extensive negotiations and discussions regarding the strengths and weaknesses of
17 Plaintiff’s claims and Defendant’s defenses, the Parties were able to reach a resolution, the
18 material terms of which are encompassed within the Settlement Agreement. (*Id.* at ¶ 10; Ex. 1
19 [Class Action and PAGA Settlement Agreement and Class Notice (“Settlement” or “Settlement
20 Agreement”].)

21 Class Counsel has conducted a thorough investigation into the facts of this case. Based
22 on the foregoing discovery and their own independent investigation and evaluation, Class
23 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
24 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
25 of significant delay, the defenses that could be asserted by Defendant both to certification and
26 on the merits, trial risk, and appellate risk. (Marquez Decl., ¶ 17.)

27 Indeed, the \$353,500.00 Settlement represents **62% of the realistic maximum recovery**
28 **of \$567,469.20.** (*Id.* at ¶ 26.) Although Class Counsel estimated that Defendant’s maximum

1 potential liability for all claims was approximately \$2.5 Million, when the risk of prevailing at
2 certification and trial are factored into the equation, Class Counsel believes that Defendant's
3 realistic exposure was \$567,469.20, meaning the Settlement achieves a significant recovery.
4 (*Id.* at ¶¶ 17-30.) Considering the risk and uncertainty of prevailing at class certification and at
5 trial, this is an excellent result for the Class. Indeed, because of the proposed Settlement, class
6 members will receive timely, guaranteed relief and will avoid the risk of an unfavorable
7 judgment.

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

9 Under the Settlement, Defendant will pay \$353,500.00 to resolve this Litigation. This
10 amount is all-inclusive. The Settlement's key terms include:

11 1. Settlement Class: For settlement purposes only, the Parties agree to the
12 certification of a class pursuant to California Code of Civil Procedure § 382 defined as: "means
13 all persons employed by Su Casa de Cambio Cesar Chavez, Inc. in California and classified as an
14 hourly paid, non-exempt employee who worked for Su Casa de Cambio Cesar Chavez, Inc.
15 during the Class Period." (Settlement, § 1.5.)

16 2. Settlement Period: The Settlement Period means the period from March 9, 2017
17 through the date the Court grants Preliminary Approval of the Settlement. (Settlement, § 1.12.)

18 3. Participating Class Members: Class Member who does not submit a
19 valid and timely Request for Exclusion from the Settlement. (Settlement, § 1.35.)

20 4. Participating PAGA Members: Participating PAGA Members means all aggrieved
21 employees who worked for Defendant during the PAGA Period, from March 11, 2020 through the
22 date the Court grants Preliminary Approval of the Settlement. (Settlement, §§ 1.4, 1.31.)

23 5. Gross Settlement Amount: This amount is \$353,500.00, for all claims, including
24 wages, interest, the Class Counsel Award, Litigation costs, Settlement Administration Costs,
25 payment to the Labor and Workforce Development Agency ("LWDA") for the alleged PAGA
26 penalties, all other penalties, and the Class Representative Service Award. (Settlement, §1.22.)

27 6. Uncashed Checks: If a settlement check is returned to the Settlement Administrator
28 as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing

1 address by performing a skip trace search and, if another address is identified, shall mail the check
2 to the newly identified address. Any settlement checks remaining uncashed after one hundred and
3 eighty (180) days shall be deemed unpaid residue pursuant Code of Civil Procedure Section 384(a).
4 Unpaid residue (uncashed or returned checks) shall be transmitted by the Settlement Administrator
5 to the California Controller's Unclaimed Property Fund. (Settlement, § 4.4.3.)

6 7. Release as to All Settlement Class Members: Upon the Effective Date of this
7 Agreement, the class release will be for a release of "all claims that were alleged, or reasonably
8 could have been alleged, based on the Class Period facts stated in the Operative Complaint and
9 ascertained in the course of the Action including, but not limited to, any and all claims for (1)
10 failure to pay minimum and straight time wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and
11 1197); (2) failure to pay overtime wages (Cal. Lab. Code §§ 1194 and 1198); (3) failure to
12 provide meal periods and to pay premium payments (Cal. Lab. Code §§ 226.7, 512); (4) failure to
13 authorize and permit rest periods and to pay premium payments (Cal. Lab. Code §§ 226.7); (5)
14 failure to timely pay final wages at termination (Cal. Lab. Code §§ 201-203); (6) failure to
15 provide accurate itemized wage statements (Cal. Lab. Code § 226); (7) failure to reimburse
16 business-related expenses (Labor Code § 2802); (8) violation of California's Unfair Competition
17 Law (California Business and Professions Code §§17200, et seq.); and failure to maintain records
18 (Labor Code § 1174.5). Except as set forth in Section 6.3 of this Agreement, Participating Class
19 Members do not release any other claims, including claims for vested benefits, wrongful
20 termination, violation of the Fair Employment and Housing Act, unemployment insurance,
21 disability, social security, workers' compensation, or claims based on facts occurring outside the
22 Class Period." (Settlement, §§ 1.18, 6.2.)

23 8. PAGA Release by Plaintiff and Aggrieved Employees: Upon the Effective Date of
24 this Agreement, Plaintiff, all Aggrieved Employees, and The State of California are deemed to
25 release "all claims for PAGA civil penalties, which occurred during the PAGA Period, pursuant to
26 Labor Code section 2698 et seq. alleged or that could have been alleged based on the allegations
27 asserted in the Operative Complaint and PAGA Notice, including but not limited to claims for (1)
28 failure to pay minimum and straight time wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197);

(2) failure to pay overtime wages (Cal. Lab. Code §§ 1194 and 1198); (3) failure to provide meal periods and to pay premium payments (Cal. Lab. Code §§ 226.7, 512); (4) failure to authorize and permit rest periods and to pay premium payments (Cal. Lab. Code §§226.7); (5) failure to timely pay final wages at termination (Cal. Lab. Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Cal. Lab. Code § 226); (7) failure to reimburse business-related expenses (Labor Code § 2802); and (8) failure to maintain records (Labor Code § 1174.5). (Settlement, §§ 1.1, 6.3.)

9. PAGA Allocation: The settlement includes \$25,000.00 allocated to Plaintiff's claims under PAGA, with 75% of which (\$18,750.00) being paid to the LWDA and 25% of which (\$6,250.00) being paid to the Participating PAGA Members. (Settlement, § 3.2.5.) Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for Preliminary Approval. (Marquez Decl., ¶ 11.)

10. Net Settlement Fund: The "Net Settlement Fund" or "Net Settlement Amount" is the amount that remains and that shall be paid to Settlement Class Members after the following amounts are subtracted: (1) attorneys' fees and Litigation costs, (2) Administrative Costs, (3) enhancement to the Named Plaintiff, and (4) the penalties recoverable pursuant to the PAGA. (Settlement, § 4.4.)

11. Distribution Formula: Members of the Settlement Class not opting out will receive a lump sum payment as good and valuable consideration for the waiver and release of claims as set forth in Section 6 of the Settlement Agreement, above, in an amount determined by the Settlement Administrator in accordance with the provisions as outlined in Section 3 of the Settlement Agreement.

12. Tax Allocation: Any settlement money paid to Settlement Class Members will be allocated as 10% wages and 90% interest and penalties. (Settlement, § 3.2.4.1.) The tax allocation breakdown comports with Plaintiff's *Kullar* analysis, as detailed in Justin F. Marquez's Declaration. (Marquez Decl., ¶¶ 17-30; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.)

1 13. Class Representative Service Award: Subject to Court approval, Plaintiff shall be
2 paid an enhancement award not to exceed \$10,000.00. This amount is for Plaintiff's time and
3 effort in bringing and presenting the action, and in exchange for a general release of all claims,
4 known or unknown, pursuant to Civil Code Section 1542. If the Court approves a lesser
5 enhancement, then the unapproved portion or portions shall revert into the Net Settlement Amount
6 to be distributed between the participating Settlement Class Members on a pro-rata basis.
7 (Settlement, § 3.2.1.)

8 14. Attorneys' Fees and Costs: The Settlement provides that Defendant will not oppose
9 a fee application of up to 33 1/3% (\$117,833.33) of the Gross Settlement Amount, plus out-of-
10 pocket costs not to exceed \$16,000.00. (Settlement, § 3.2.2.) At this time, Class Counsel's costs
11 are approximately \$12,662.97. (Marquez Decl., ¶ 41.)

12 15. Notice of Proposed Class Action Settlement: The Class Notice sets forth in plain
13 terms, a statement of the case, the terms of the Settlement Agreement, the approximate amount of
14 attorneys' fees, costs, and service award being sought, and an explanation of how the settlement
15 allocations are calculated. (Settlement, Class Notice.) The Notice also includes an opt-out form
16 that class members can complete in the event they decide to not participate in the settlement. (*Id.*)
17 Class Members will be notified by first-class mail of the settlement. (Settlement, § 8.4.) ILYM
18 Group, Inc., the proposed Settlement Administrator, will undertake its best efforts to ensure that
19 the notice is provided to the current addresses of class members, including conducting a national
20 change of address search and re-mailing the notice to updated addresses. (*Id.*) (Marquez Decl., ¶
21 13; Ex. 3 [Settlement Administrator Bid].)

22 **III. DISCUSSION**

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

1 is small. (*Dunk*, 48 Cal.App.4th at p. 1800.)

2 In considering whether a settlement is reasonable, the trial court should consider relevant
3 factors, which may include the strength of Plaintiff’s case, the risk, expense, complexity and likely
4 duration of further litigation, the risk of maintaining class action status through trial, the amount
5 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
6 experience and views of counsel, the presence of a governmental participant, and the reaction of
7 the class members to the proposed settlement. (*Kullar, supra*, 168 Cal.App.4th at p. 128.) In order
8 to approve a class action settlement, the court must satisfy itself that the class settlement is within
9 the “ballpark” of reasonableness. (*Id.* at p. 133.) The record need not contain an explicit statement
10 of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*
11 (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not require “an explicit statement of
12 the maximum amount the plaintiff class could recover if it prevailed on all its claims”, but instead,
13 only an “understanding of the amount that is in controversy and the realistic range of outcomes of
14 the litigation.”].)

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

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

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

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

1 The Settlement was reached following extensive negotiations following a full day of
2 mediation with experienced employment mediator, Brandon McKelvey, Esq. (Marquez Decl., ¶¶
3 9-10.) The settlement negotiations were at arm's length and, although conducted in a professional
4 manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential
5 for a settlement of the dispute, but each side was also prepared to litigate their or its position
6 through trial and appeal if a settlement had not been reached. (*Id.*)

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

17 Class Counsel also has considerable experience and has demonstrated competence with
18 litigating wage and hour class actions. (*Id.* at ¶¶ 42-52.) Again, this supports the position that the
19 terms of the Settlement are premised on objective evidence that has been considered and weighed
20 in light of the risks, expenses, and time consumption to both sides of continued litigation of this
21 action.

22 **2. The Settlement Is Fair and Reasonable in Light of the Parties'** 23 **Respective Legal Positions**

24 A settlement is not judged against what might Plaintiff recover had he prevailed at trial, nor
25 does the settlement have to provide 100% of the damages sought to be fair and reasonable.
26 (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 ["Compromise is inherent
27 and necessary in the settlement process...even if the relief afforded by the proposed settlement is
28 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar

1 to a class settlement because the public interest may indeed be served by a voluntary settlement in
2 which each side gives ground in the interest of avoiding litigation.”].)

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

8 The proposed settlement of \$353,500.00 therefore represents a substantial recovery when
9 compared to Plaintiff’s reasonably forecasted recovery. (*Id.* at ¶¶ 17-30.) Because of the proposed
10 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
11 unfavorable judgment. When considering the risks of litigation, the uncertainties involved in
12 achieving class certification, the burdens of proof necessary to establish liability, the probability
13 of appeal of a favorable judgment, it is clear that the settlement amount of \$353,500.00 is within
14 the “ballpark” of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) ***Indeed,***
15 ***each Settlement Class Member is eligible to receive an average net benefit of approximately***
16 ***\$3,399.04.*** (*Id.* at ¶ 29.)

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

18 The settlement negotiations were conducted by highly capable and experienced counsel.
19 Class Counsel have a strong record of vigorous and effective advocacy for their clients and are
20 experienced in handling complex wage and hour class action litigation. (Marquez Decl., ¶¶ 42-
21 52.) Although Plaintiff and his counsel were prepared to litigate the claims alleged in the litigation,
22 they support the proposed Settlement as being in the best interests of the class.

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

24 The Notice of Proposed Class Action Settlement, in the form attached to the Settlement
25 Agreement, should be approved for dissemination to the class. The Notice informs the class of the
26 terms of the settlement and of their rights to be excluded from the settlement. And if there are
27 class members who wish to object to this proposed class action settlement, they will have the
28 opportunity to file their objections and be heard at the Final Approval Hearing. Accordingly, the

1 proposed Notice meets all the requirements of Rule 3.769(f) of the California Rules of Court. In
2 particular, the Parties used the Los Angeles Superior Court Model Class Notice which was obtained
3 from the Court's website.

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

5 Under the Settlement, subject to the Court's approval, Defendant agrees to pay Class
6 Counsel reasonable attorneys' fees in amount of \$117,833.33, which is 33 1/3% of the gross
7 Settlement Amount, and up to \$16,000.00 in costs. These amounts are disclosed to all class
8 members in the Notice of Proposed Class Action Settlement and are reasonable.

9 **1. Class Counsel Request an Award of Fees Based on the "Common**
10 **Fund" Method**

11 California courts have long awarded attorneys' fees as a percentage of the benefit created
12 by counsel in pursuing claims on behalf of a class. The California Supreme Court held that "when
13 a number of persons is entitled in common to a specific fund, and an action brought by a plaintiff
14 or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff
15 or plaintiffs may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977) 20 Cal.3d
16 25, 34, quoting *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

17 Class Counsel seek an award of attorneys' fees on the "percentage of recovery/common
18 fund" theory. The purpose of this approach is to "spread litigation costs proportionally among all
19 the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent*,
20 *supra*, 557 F.2d at p. 769.) In *Quinn v. State of California* (1995) 15 Cal.3d 162, the California
21 Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund
22 from which others derive benefits may require those passive beneficiaries to bear a fair share of
23 the litigation costs." (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet*
24 (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine
25 has been applied "consistently in California when an action brought by one party creates a fund in
26 which other persons are entitled to share." (*Id.* at p. 110.)

27 The California Supreme Court recently affirmed in *Laffitte v. Robert Half Int'l Inc.* (2016)
28 1 Cal.5th 480 that, "when class action litigation establishes a monetary fund for the benefit of the

1 class members, and the trial court in its equitable powers awards class counsel a fee out of that
2 fund, the court may determine the amount of a reasonable fee by choosing an appropriate
3 percentage of the fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages
4 of the percentage method—including relative ease of calculation, alignment of incentives between
5 counsel and the class, a better approximation of market conditions in a contingency case, and the
6 encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging
7 the litigation—convince us the percentage method is a valuable tool that should not be denied our
8 trial courts.” (*Id.* [internal citations omitted].)

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

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

20 Here, Plaintiff requests attorneys’ fees equal to 33 1/3% of the Settlement Amount, which
21 is in line with the prevailing guidelines established in California case law and academic literature
22 and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th
23 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage method or the
24 lodestar method is used, fee awards in class actions average around one-third of the recovery.”].)
25 Accordingly, Plaintiff respectfully requests that the Court approve the attorneys’ fees as negotiated
26 by the Parties and requested herein.

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

2 Labor Code § 1194(a) provides for the recovery of “minimum wage or overtime
3 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Under this
4 section, Plaintiff would be permitted to recover his actual attorneys’ fees, even if those fees were
5 larger than the total class recovery at the conclusion of this case. This settlement is beneficial in
6 that it limits the risk of continued expenses and consumption of time, energy, and resources facing
7 Defendant while at the same time rewarding Class Counsel for their decision to assume risk by
8 taking on this matter. In fact, prosecution of this action involved significant financial risk for Class
9 Counsel. (Marquez Decl., ¶¶ 36-41.) Class Counsel undertook this matter solely on a contingent
10 basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the
11 Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class
12 ahead of all other concerns.

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

15 As demonstrated by their past experience in pursuing class actions on behalf of consumers
16 and employees, Class Counsel possess considerable expertise in litigating class actions. (Marquez
17 Decl., ¶¶ 42-52.) Class Counsel has been involved as lead counsel or co-counsel in several class
18 actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class
19 counsel commensurate with their skill, reputation and experience, Class Counsel’s requested fee
20 award is supported here.

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

1 **D. The Service Award to Named Plaintiff Is Reasonable**

2 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
3 compensate them for the expense or risk they have incurred in conferring a benefit on other
4 members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval
5 of class action settlement agreements containing enhancements for the class representatives, which
6 are necessary to provide incentive to represent the class, and are appropriate given the benefit the
7 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir.
8 2009) 563 F.3d 948, 958-59.)

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

19 Under the Settlement Agreement, subject to the Court’s approval, Defendant agreed to pay
20 a Service Award in the amount of \$10,000.00 to Plaintiff. This amount is also in exchange for
21 Plaintiff’s general release of all known and unknown claims against Defendant. Class Counsel
22 represent that Plaintiff devoted a great deal of time and work assisting counsel in the case,
23 communicated with counsel very frequently for litigation and to prepare for mediation, and was
24 frequently in contact with Class Counsel during the mediation. (Marquez Decl., ¶¶ 31-32;
25 Declaration of Yohanna Sanchez in Support of Plaintiff’s Motion for Preliminary Approval of
26 Class Action Settlement [“Sanchez Decl.”], ¶¶ 4-9.) This amount is reasonable particularly in light
27 of the substantial benefits Plaintiff generated for all class members. (*Id.*) Indeed, in *Karl Adams,*
28 *III, et al. v. MarketStar Corporation, et al.*, No. 2:14-cv-02509-TLN-DB, Class Counsel Justin F.

1 Marquez helped negotiate a \$2.5 million class action settlement for 339 class members, and the
2 court approved a \$25,000.00 class representative incentive award for each named plaintiff.
3 (Marquez Decl., ¶ 35)

4 When compared with the amounts awarded in typical class action cases, the amount
5 requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive
6 award given to class action plaintiffs from **1993 to 2002** found that the “average award per class
7 representative was \$15,992 and the median award per class representative was \$4,357.” (Theodore
8 Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study”,
9 53 UCLA L. Rev. 1303, 1308 (2006).) That same study found that named plaintiffs in employment
10 discrimination class actions received an average award of \$69,850 and a median award of \$31,081,
11 while named plaintiffs in other employment class actions received an average award of \$12,121
12 and a median award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards
13 in employment cases reflected the “courts’ wish to make representative plaintiffs whole by
14 compensating them for the high costs of their service to the class, including risks of stigmatization
15 or retaliation on the job.” (*Id.* at p. 1308.)

16 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS WARRANTED**

17 **A. Legal Standard**

18 The proposed Settlement Class is well suited for class certification. All of the claims derive
19 from a core set of alleged violations of California’s wage and hour laws and regulations. For the
20 reasons set forth more fully below, for purposes of settlement only, the Class satisfies the
21 prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides: “when
22 the question is one of a common or general interest, of many persons, or when the parties are
23 numerous, and it is impracticable to bring them all before the court, one or more may sue or defend
24 for the benefit of all.” (Code Civ. Proc., § 382.) There are two requirements to section 382: “(1)
25 There must be an ascertainable class; and (2) there must be a well-defined community of interest
26 in the questions of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow*
27 *Cab Co.* (1967) 67 Cal. 2d 695, 704 [citations omitted].) To clarify these requirements, the
28 California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the

community-of-interest requirement itself embodies three factors: “(1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal. 3d 462, 470.)

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

B. Plaintiff Maintains That the Criteria for Class Certification Are Satisfied for Settlement Purposes

1. The Class is Ascertainable and Numerous

Plaintiff contends that the proposed class that Plaintiff seeks to represent is easily ascertainable, and includes approximately 104 employees of Defendant.

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

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

1 Plaintiff contends that numerosity is plainly satisfied.

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

3 The Court should grant conditional class certification for settlement purposes here on the
4 grounds that questions of law and fact common to all class predominate over any individual
5 questions. This inquiry tests whether proposed classes are sufficiently cohesive to warrant
6 adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d
7 605.)

8 Here, the alleged employment practices at issue are: whether Defendant had legally
9 compliant policies and practices for all hours worked, including overtime wages; whether
10 Defendant had legally compliant policies and practices to provide employees with meal periods;
11 whether Defendant had legally compliant policies and practices authorizing and permitting its
12 employees to take rest periods; whether final payment of wages was untimely and excluded unpaid
13 wages, including meal period premium and rest period premium wages; whether the wage
14 statements were consequently non-compliant; and whether Defendant adequately reimbursed
15 employees for business expenditures. Plaintiff contends that the factual and legal issues are the
16 same for all of the identified class members, including Plaintiff. Further, all class members are
17 alleged to have suffered from, and seek redress for, the same alleged injuries. Defendant denies
18 all allegations and maintains that its employment practices comply with all applicable laws.
19 Defendant primarily contends that employees were properly compensated all wages, including
20 minimum wage, overtime, were provided lawfully compliant meal and rest breaks, and were paid
21 all wages at the end of their employment, and thus, Defendant is not liable. Additionally,
22 Defendant would assert that Plaintiff would be unable to certify her alleged class claims and that
23 even if Plaintiff prevailed on one or more claims, any PAGA penalties awarded would be
24 substantially reduced pursuant to Labor Code section 2699(e)(2).

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

26 The typicality requirement does not focus on the individual characteristics or circumstances
27 of the representative plaintiff compared to those of the remainder of the class, but rather upon the
28 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. Plaintiff is a former employee of Defendant; as such, she alleges that she was subject to the same policies and practices as other similarly situated employees.

4. Plaintiff and His 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. Plaintiff retained counsel with extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Marquez Decl., ¶¶ 42-52.) 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, Plaintiff has no conflicts, and Plaintiff has, with counsel, litigated this case and diligently reviewed the settlement terms, showing their dedication. Plaintiff’s willingness to serve as a representative demonstrates her 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

1 prosecute individual actions. (*Gentry v. Super. Ct.* (2007) 42 Cal. 4th 443, 457-62; *Leyva v.*
2 *Medline Ind.* (9th Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the
3 superiority concerns are essentially non-existent.

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

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

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

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

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

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

1 **VI. CONCLUSION**

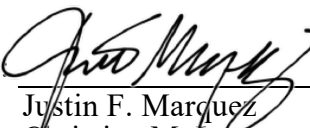
2 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
3 approval of the proposed Settlement and set a Final Approval Hearing on July 10, 2023, or the
4 first available date thereafter.

5
6 Respectfully submitted,

7 Dated: November 2, 2022

WILSHIRE LAW FIRM

8
9 By


Justin F. Marquez
Christina M. Le
Arsiné Grigoryan
Attorneys for Plaintiff

PROOF OF SERVICE

Sanchez v. Su Casa de Cambio Cesar Chavez, Inc.
21STCV32728

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Sandy S. Sespene, 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 ssespene@wilshirelawfirm.com.

On **November 2, 2022**, I served the foregoing **PLAINTIFF’S 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:

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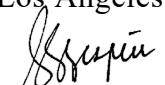
Attorneys for Defendant, Su Casa de Cambio Cesar Chavez, Inc.

(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.

(X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.

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

Executed on November 2, 2022, at Los Angeles, California.



Sandy S. Sespene