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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

ELIZABET SANCHEZ and GRISELDA
RAMIREZ, individually and on behalf of all
other similarly situated employees,

Plaintiffs,

vs.

PACIFIC COAST PRODUCERS, a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. STK-CV-UOE-2021-11106

*Assigned for All Purposes to Hon. Robert T.
Waters, Department 11B*

CLASS ACTION

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

Date: _____

Time: 9:00 a.m.

Dept.: 11B

Judge: Hon. Robert T. Waters

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1 **I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

2 Plaintiffs Elizabet Sanchez and Griselda Ramirez (“Plaintiffs”) seek preliminary approval of a
3 wage and hour class action and Private Attorneys General Act (“PAGA”) settlement in the gross amount
4 of \$2,053,000.00. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and PAGA
5 Settlement and Release [“Agreement”]). Through tremendous effort by all involved, the parties were
6 able to come to a global resolution. The Agreement before the Court is the result of extensive litigation
7 across two (2) different cases. The two cases include the present action, *Sanchez, et al. v. Pacific Coast*
8 *Producers*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2021-11106, filed December
9 7, 2021, (“*Sanchez Action*”); and *Ramirez v. Pacific Coast Producers*, San Joaquin County Superior
10 Court, Case No. STK-CV-UOE-2022-0010664, filed November 18, 2022, (“*Ramirez Action*”). The
11 named plaintiffs in each of these actions, Elizabet Sanchez, and Griselda Ramirez, (collectively referred
12 to “Plaintiffs” or “Class Representatives”), and Pacific Coast Producers (“Defendant”) (Plaintiffs and
13 Defendants sometimes collectively referred to as the “Parties”), agreed to consolidate the claims into
14 one operative pleading in this case to ensure an efficient settlement review process that would minimize
15 potential confusion by Settlement Class Members from multiple approval motions, each with their own
16 response deadlines and response procedures. *See, generally*, Exhibit B (Plaintiffs’ Operative
17 Complaint). There are approximately 5,658 Settlement Class Members.

18 Plaintiffs have alleged that Defendant violated California law by 1) failing to pay overtime
19 wages, 2) failing to pay minimum wages, 3) failing to provide meal periods, 4) failing to provide rest
20 periods, 5) failing to provide accurate wage statements, 6) failing to timely pay all final wages, 7)
21 failing to reimburse employees for incurred expenses, 8) failure to pay all wages, 9) unlawful
22 deductions, 10) violation of California’s Quota Laws, and 11) by engaging in unfair competition. *See*
23 *generally* Exhibit B; *see also* Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶¶ 2, 9-10.
24 Plaintiffs have also alleged Defendant is liable for civil penalties under the PAGA based on these
25 violations. *See id.*; Exhibit C (Plaintiffs’ Ltrs. to the Labor and Workforce Development Agency
26 [“LWDA”] Regarding PAGA Claims). Defendant has denied all of Plaintiffs’ allegations in their
27 entirety and any liability or wrongdoing of any kind. *See* Decl. Rodriguez, ¶ 5. Defendant has also
28 denied that this case is appropriate for class certification other than for purposes of settlement. *See id.*

1 However, subject to Court approval, the Parties have been able to compromise and settle all asserted
2 claims as a result of extensive investigations, document and data exchanges, and extended negotiations.
3 See Exhibit A. Plaintiffs and Plaintiffs’ counsel believe the proposed Agreement is fair, reasonable,
4 and adequate based on the investigations, discovery, employee data exchanges, negotiations, and a
5 detailed knowledge of the issues in this case. See Decl. Rodriguez, ¶¶ 6-10; Declaration of Elizabet
6 Sanchez (“Decl. Sanchez”), ¶ 10; Declaration of Daniel J. Hyun (“Decl. Hyun”), ¶¶ 20-22; Declaration
7 of Jose R. Garay (“Garay Decl.”), ¶¶ 7-9; Declaration of Griselda Ramirez (“Decl. Ramiez”), ¶¶ 6-8.

8 It is well within the discretion of this Court to grant preliminary approval of the Agreement as it
9 satisfied all applicable criteria under California law. Accordingly, Plaintiffs request that the Court: (1)
10 certify the proposed settlement class on a preliminary and conditional basis; (2) grant preliminary and
11 conditional approval of the proposed Agreement (Exhibit A); (3) approve the form and content of the
12 Notice of Settlement (Exhibit F) and the method for providing notice to Settlement Class Members as
13 set forth in the Agreement; and (4) adopt the implementation schedule contained in the proposed order.

14 II. PROCEDURAL AND LITIGATION HISTORY

15 The Agreement represents a global compromise of all claims across two (2) different cases.
16 The cases include the present action, *Sanchez v. Pacific Coast Producers*, San Joaquin County Superior
17 Court, Case No. STK-CV-UOE-2021-11106, filed December 7, 2021, (“*Sanchez Action*”); and *Ramirez*
18 *v. Pacific Coast Producers*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2022-
19 0010664, filed November 18, 2022. (“*Ramirez Action*”). See Exhibit A, ¶ 2.2; Decl. Rodriguez, ¶ 2.
20 Plaintiffs exhausted administrative remedies under the PAGA by providing notice of the claims and
21 violations to the LWDA. See Exhibit C; Cal. Lab. Code § 2699.3(a), (c); Decl. Rodriguez, ¶ 3. As part
22 of a global settlement, the Parties agreed to consolidate all claims into one operative pleading in this
23 case to streamline the approval process and avoid potential confusion by Settlement Class Members
24 that might arise from multiple, separate approval processes. See Decl. Rodriguez, ¶ 2. Accordingly,
25 Plaintiffs filed a Third Amended Complaint in this case on September 19, 2023. See *id.* Exhibit B.
26 There is no date set for a motion for certification or trial in this matter. See Decl. Rodriguez, ¶ 4.

27 III. INVESTIGATION AND DISCOVERY CONDUCTED

28 Plaintiffs thoroughly investigated issues affecting certification, the merits of the class claims,

1 and potential damages for such claims. *See id.* at ¶¶ 3, 6-10; Decl. Hyun, ¶¶ 20-22; Decl. Garay, ¶¶ 7-
2 9; Decl. Sanchez ¶¶ 3, 5-6; Decl. Ramirez ¶¶ 6-8. Plaintiffs worked during the time all of Defendant's
3 policies and practices at issue in the Complaint were in effect and provided information regarding these
4 policies and practices, enabling pre-filing investigations to take place. *See* Decl. Sanchez, ¶ 2; Decl.
5 Ramirez, ¶ 2. The Parties engaged in informal discovery and exchange of documents, including of
6 employee data, such as time records and payroll history data of all 5,658 Settlement Class Members, of
7 all timecards, paystubs, payroll data, and relevant policies for the entirety of the statute of limitations
8 applicable to the asserted claims. The discovery covered all aspects of the asserted claims, including
9 certification issues, merits issues, damages, the scope and configuration of Settlement Class Members,
10 the content and implementation of the wage and hour policies at issue, issues relating to manageability
11 concerns at trial, among other relevant areas. *See* Decl. Rodriguez, ¶¶ 6-7. The information allowed
12 Plaintiffs to determine the extent and frequency of any violations in accordance with Plaintiffs'
13 contentions and create an accurate damages model to assess the reasonableness of any settlement. *See*
14 *id.*

15 IV. NEGOTIATION AND PROPOSED SETTLEMENT

16 a. Plaintiffs and Defendant Engaged in Extensive Arm's Length Negotiations

17 The final settlement occurred only after extended, arm's length negotiations. Over the course of
18 more than two (2) years, Plaintiffs have been investigating the claims and discussing with Defendant's
19 counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 5-8. A substantial amount
20 of information and legal analysis was exchanged in connection with these discussions. *See id.* It was
21 only after these extended discussions, which included a full day of mediation with Hon. Ann I. Jones
22 (Ret), and months of post-mediation negotiations that the Parties were able resolve all claims and enter
23 into the Agreement. *See id.* at ¶ 8.

24 b. The Terms of the Agreement

25 1. The following groups of individuals are covered by the Agreement: (a) Settlement Class
26 Members, which include all current and former non-exempt, California, hourly paid employees of
27 Defendant at any time from December 7, 2017, through the End Date; and (b) PAGA Employees,
28 which include all persons who are Settlement Class Members who were employed by Defendant at any

time from December 7, 2020, through the End Date. *See* Exhibit A, ¶¶ 1.9, 1.20, 1.22, 1.34, 1.36, 1.37. There are approximately 5,658 Settlement Class Members. *See* Decl. Rodriguez, ¶ 7.

2. Defendant will pay the Gross Settlement Amount of \$2,053,000.00, which is exclusive of the employer's share of payroll taxes. *See id.* at ¶ 5.1. No portion of the Gross Settlement Amount will revert to Defendant. *See id.* at ¶ 5.6. PAGA Employees will still be paid their share of the PAGA Payment regardless of whether they opt out of being Settlement Class Members. *See id.* at ¶¶ 7.5.1, 7.8.3.

3. Up to \$15,000 will be paid to each of the Plaintiffs as an Enhancement Payment. This amount will be in addition to any amount Plaintiffs may be entitled to under the terms of the Agreement. *See id.* at ¶ 5.4.

4. Subject to Court approval, the Parties have selected Apex Class Action, LLC. to act as the Settlement Administrator, who has provided a maximum cost estimate of \$43,500. *See* Exhibit D (Apex Class Action, LLC. Quote); Exhibit A, ¶ 1.32; Decl. Rodriguez, ¶ 22.

5. The Parties agree that \$100,000 of the Gross Settlement Amount shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to PAGA Employees. *See* Exhibit A, ¶ 5.5. Given the risk to proving the claims on the merits, the derivative nature of the penalties, the efforts by Defendant to maintain compliant policies and take corrective action, the presence of what may likely be deemed good faith disputes, and the Court's discretion to reduce any penalty award, Plaintiffs believe the \$100,000 PAGA Payment allocation represents a meaningful settlement aimed at deterring non-compliance given the facts of this case. *See* Decl. Rodriguez, ¶¶ 5-10; *see also Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims based on their being disputed and being part of a class settlement which was evaluated based on the terms of the agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at *8 n.2 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v. Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,00 PAGA settlement allocation where total PAGA

penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

6. The Parties agree that up to thirty five percent (35%) of the Gross Settlement Amount (\$718,550) will be paid for Plaintiffs' attorneys' fees incurred in the litigation of this case. Defendant will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2. Additionally, the Parties agree that Plaintiffs will also be entitled to the actual litigation costs as approved by the Court in an amount not to exceed \$30,000. *See id.* The proposed notice to be sent to Settlement Class Members will state this information. *See* Exhibit F.

7. Any allocated amounts under the Agreement for Settlement Administrator Costs, Class Representative Enhancement Payments, and attorney's fees and costs that are not ultimately awarded by the Court will remain part of the Net Settlement Amount and be paid out to Settlement Class Members on a pro rata basis as set forth in the Agreement. *See* Exhibit A, ¶¶ 5.1-5.5, 5.8. These amounts will be paid out from the Gross Settlement Amount, not in addition to the Gross Settlement Amount. *See* Exhibit A, ¶¶ 5.1-5.5, 5.11.

1 8. Settlement Class Members who fail to timely opt-out of this settlement will waive all
2 Released Class Claims as set forth in the Agreement. *See* Exhibit A, ¶¶ 1.29, 1.31, 1.34, 1.36-1.37, 6.1,
3 6.3. PAGA Employees will waive all Released PAGA Claims as set forth in the Agreement regardless
4 of whether they opt out of being a Class Member. *See id.* at ¶¶ 1.30-1.31, 6.2-6.3, 7.5.1.

5 9. For any portion of the Net Settlement Amount or PAGA Payment allocated to
6 Participating Class Members and/or Aggrieved Employees that is not claimed by them by cashing their
7 respective settlement checks within 180 calendar days of issuance, that remaining amount shall be
8 donated equally, *i.e.*, 50/50 to Capital Pro Bono, Inc., and the Center for Workers' Rights under the
9 doctrine of *cy pres*. *See id.* at ¶ 5.6. Because the Agreement provides for all funds such that there is no
10 residue, the provisions of California Civil Procedure Code section 384 are inapplicable. *See In re*
11 *Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720 (2006). The designated beneficiaries clearly
12 promote the law consistent with the objectives and purposes underlying the lawsuit as they are non-
13 profits aimed at assisting employees with wage and hour claims who cannot afford legal representation,
14 including providing representation for employees in wage claims before the California Labor
15 Commissioner. *See id.* at 722-724; *see also* Decl. Rodriguez, ¶¶ 25-35; Decl. Hyun, ¶ 23; Decl. Garay,
16 ¶ 10.

17 **c. Allocation of Settlement Funds**

18 Payment to Participating Class Members and PAGA Employees will not require the submission
19 of a claim form. A Net Settlement Amount will be determined by subtracting from the Gross
20 Settlement Amount any attorneys' fees and costs, Enhancement Payment to the Class Representatives,
21 Settlement Administrator Costs, and PAGA Payment that are approved and/or awarded by the Court.
22 Each Settlement Class Member's share will be determined by dividing their total Qualifying
23 Workweeks within the Settlement Class Period by the total Qualifying Workweeks worked by all
24 Settlement Class Members within the Class Period. That fraction will then be multiplied by the Net
25 Settlement Amount to arrive at the Settlement Class Member's individual share of the Net Settlement
26 Amount. Each PAGA Employee's share of the 25% portion of the PAGA Payment will be determined
27 by dividing their total Qualifying Pay Periods worked within the PAGA Period by the total Qualifying
28 Pay Periods worked by all PAGA Employees within the PAGA Period. That fraction will then be

multiplied by the 25% portion of the PAGA Payment to arrive at the PAGA Employee's individual share. See Exhibit A, at ¶¶ 1.16, 1.27, 1.28, 5.5, 5.8.

V. THE PROPOSED PROCEDURES TO NOTIFY SETTLEMENT CLASS MEMBERS SATISFY DUE PROCESS AS THEY PROVIDE THE BEST NOTICE PRACTICABLE UNDER THE CIRCUMSTANCES

It is not required that Settlement Class Members be given actual notice of a class settlement; instead, the best practicable notice under the circumstances is all that is required. See *Silber v. Mabon*, 18 F.3d 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017); *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, at *12-14 (N.D. Cal. 2017); *Wright v. Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d 1449 (9th Cir. 1994), the Court rejected a class member's argument that he had not received due process because he did not receive notice until after the opt out period, finding that, so long as the notice process utilized is the best practicable under the circumstances, due process is satisfied even if there is no actual receipt of the notice. See *Silber*, 18 F.3d at 1453-1454. A similar finding was made in *Briseno v. Conagra Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017). With regard to any potential for undeliverable notice mailings, the Court in *Rannis v. Recchia*, 380 F. App'x 646 (9th Cir. 2010) found that Settlement Class Members who did not receive actual notice due to their mailings being deemed undeliverable were still properly held to be part of the class settlement because they received the best notice practicable under the circumstances. See *Rannis v. Recchia*, 380 F. App'x at 650-651. In *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980-984 (2019), the California Supreme Court noted that California has adopted a similar approach regarding providing notice to putative class members.

Under the proposed notice procedures, Settlement Class Members will have forty-five (45) days from the date of mailing to review and respond to the Notice of Settlement, which will also be available online. See Exhibit A, ¶¶ 1.17, 1.18, 7.2. The Notice of Settlement contains all information necessary for Settlement Class Member to assess the litigation, the settlement, and whether they want to participate, object, or opt-out. See *id.* at ¶¶ 7.2, 7.5.1-7.5.3; Exhibit F. National change of address database searches, skip-traces, and surveying of current employees will be utilized as set out in the Agreement to provide the best practical means of ensuring Settlement Class Members receive the notice mailing. See Exhibit A, ¶¶ 7.3-7.4. Any individual whose initial mailing was deemed

undeliverable will have additional time to respond. *See id.* at ¶ 7.4. Additional time to respond will also be provided to cure any deficiencies in opt-outs, objections, or disputes. *See id.* ¶ 7.5.4. This notice method is regularly utilized in wage and hour class actions and similar to the one approved in *Rannis*. Thus, the proposed procedures for notifying Settlement Class Members satisfy due process and should be approved in this case.

VI. THE AGREEMENT WARRANTS PRELIMINARY APPROVAL AS IT IS FAIR, REASONABLE, AND ADEQUATE AS TO ALL SETTLEMENT CLASS MEMBERS BASED ON THE FACTS OF THIS CASE

A class action may not be dismissed, compromised, or settled without Court approval and the decision to approve or reject a settlement is committed to the Court’s sound discretion. *See* Cal. Rules of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(l)(2). However, “[d]ue regard should be given to what is otherwise a private consensual agreement between the parties. The inquiry ‘must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.’” *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *see also Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 581 (2010). The law favors settlement of lawsuits, particularly class actions and other complex cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-1118 (2009); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 n.14 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 581 (2010); *see also Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

a. The Terms of The Settlement Are Fair and Within the Range of Reasonableness

The purpose of the Court’s preliminary evaluation of a proposed class action settlement is to determine only whether it is within the range of possible approval such that notice to the class of its terms and conditions and the scheduling of a formal fairness hearing is warranted. *See Wershba*, 91 Cal.

¹The California Supreme Court has authorized California’s trial courts to rely on these federal resources to decide class certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 App. 4th at 234-35. If the Court finds a proposed settlement falls within “the range of reasonableness,”
2 it should grant preliminary approval of the class action settlement. *See, e.g., North County Contr.’s*
3 *Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90 (1994); *Kullar v. Foot Locker*
4 *Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008). Factors to consider in determining whether the
5 settlement is fair, reasonable, and adequate include the strength of the plaintiff’s case, the risk, expense,
6 complexity and likely duration of further litigation, the risk of maintaining class action status through
7 trial, the amount offered in settlement, the extent of discovery completed and the stage of the
8 proceedings, the experience and views of counsel, the presence of a governmental participant, and the
9 reaction of the Settlement Class Members to the proposed settlement. *See Dunk v. Ford Motor Co.*, 48
10 Cal. App. 4th 1794, 1801 (1996). However, this Court should begin its analysis with a presumption that
11 the proposed settlement is fair. “A presumption of fairness exists where: (1) the settlement is reached
12 through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
13 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
14 objectors is small.” *Id.* at 1802.

15 **i. The Agreement is a Result of Extensive, Non-Collusive Arm’s Length**
16 **Negotiations Between the Parties**

17 Settlement of this case was reached only after substantial litigation and extensive arm’s length
18 negotiations lasting over two (2) years, which included a full day mediation months of post-mediation
19 negotiations. *See Decl. Rodriguez*, ¶ 8. At all times, the negotiations were adversarial, although still
20 professional in nature. *See id.*

21 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
22 **Information to Enter Into an Informed and Reasonable Settlement**

23 The Parties were in possession of all necessary information during the negotiations. The Parties
24 engaged in substantial informal discovery, which included all necessary components for evaluating the
25 class claims and creating an accurate damages model. *See id.* at ¶¶ 6-10. Plaintiffs were in possession
26 of this information prior to calculating any damages in this case. *See id.* As a result, Plaintiffs are able
27 to make a reasonable estimation of Defendant’s potential liability. *See id.* For these reasons, the
28 settlement now before the Court was reached at a stage where “the parties certainly have a clear view of

the strengths and weaknesses of their cases” sufficient to support the settlement. *See Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

iii. Plaintiffs’ Counsel are Experienced in Similar Litigation

Plaintiffs’ counsel have considerable experience in complex litigation such as class and PAGA actions. *See* Decl. Rodriguez, ¶¶ 12-19; Decl. Hyun, ¶¶ 2-19; Decl. Garay, ¶¶ 2-6. Thus, Plaintiffs’ counsel are qualified to evaluate the class claims, the value of settlement versus moving forward with litigation, and viability of possible affirmative defenses. Plaintiffs’ counsel believe that the Agreement is fair, reasonable, and adequate in light of the risks associated with the claims, the uncertainties of complex litigation, and the secured benefit to Settlement Class Members. *See id.*

iv. The Settlement is Fair, Reasonable, and Adequate Based on the Strength of Plaintiffs’ Case and the Risks and Costs of Further Litigation

Plaintiffs’ claims and the ability to obtain and maintain certification all the way through trial were heavily disputed by Defendant. *See* Decl. Rodriguez, ¶¶ 5-9. Based on the records and facts of this case, Plaintiffs have secured a gross recovery that ranges between approximately 14% and 169% of the realistic range of recovery for the asserted claims. *See id.* at ¶¶ 9-10. The net recovery represents between approximately 8% to 93% of the realistic range of recovery for the asserted claims. The average net recovery is approximately \$203.16. *See id.*

This settlement is a reasonable compromise of the class and PAGA claims, and is within the percentile ranges of the total available damages that have been approved in other class settlements. *See Wershba*, 91 Cal.App.4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of 6% of maximum potential recovery after reduction for attorney’s fees was higher than median percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving a settlement where the net recovery to Settlement Class Members was approximately 7.5% of the projected maximum recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017) (approving a settlement with a gross recovery of 11% of the projected

1 maximum damages available and a net recovery of approximately 6.7% of the projected maximum
2 recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal. 2015) (approving a
3 settlement where the gross recovery was approximately 8.5% of the projected maximum recovery);
4 *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal. 2012) ("Settlement
5 Class Members will receive an average of approximately \$198.70, with the highest payment to a Class
6 Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is
7 highlighted by the fact that there was no objection to the settlement amount or the attorneys' fees
8 requested."); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) ("the
9 results achieved in this case were very favorable. Settlement Class Members are provided with
10 immediate monetary relief, with an average award of around several hundred dollars and a minimum
11 award of \$50").

12 **v. The Proposed Settlement is a Reasonable Compromise of Claims**

13 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional
14 information be presented in class action settlements "to ensure that the recovery represents a reasonable
15 compromise, given the magnitude and apparent merit of the claims being released, discounted by the
16 risks and expenses of attempting to establish and collect on those claims by pursuing the
17 litigation" *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399
18 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure
19 without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar*
20 also does not require an explicit statement of the maximum amount to be recovered if a plaintiff
21 prevailed on all the claims, provided there is a record that allows "an understanding of the amount that
22 is in controversy and the realistic range of outcomes of the litigation." *Id.* at 409.

23 Plaintiffs have thoroughly set forth the realistic range of outcomes in this litigation as well as
24 the data points relied upon in reaching these ranges. See Decl. Rodriguez ¶¶ 9-10. The record
25 demonstrates that the compromises made by Plaintiffs were reasonable and have resulted in a
26 settlement with recovery percentage well within the range of what has been found to be sufficient in
27 several other cases. See, *supra*, Section VI.a.iv; see also *Linney v. Cellular Alaska P'ship*, 151 F.3d
28 1234, 1242 (9th Cir. 1998) ("The fact that a proposed settlement may only amount to a fraction of the

1 potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate
2 and should be disapproved”); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (“In
3 fact there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth
4 or even a thousandth part of a single percent of the potential recovery”).

5
6 **b. The Enhancement Payment to the Named Plaintiffs for Plaintiffs’ Services to the
Putative Class Is Reasonable and Routinely Awarded by Courts**

7 The Enhancement Payment to the named Plaintiffs is intended to recognize the time and effort
8 expended on behalf of the class. Indeed, Courts routinely approve enhancement payments to
9 compensate named plaintiffs for the services they provide and the risks they incurred during the course
10 of the class action litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001).
11 In *Ingram*, the Court approved enhancement payments of \$300,000.00 to each named plaintiff in
12 recognition of the services they provided to the class by responding to discovery, participating in the
13 mediation process, and taking the risk of stepping forward on behalf of the class. *See Id.* at 694; *see*
14 *also Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00
15 enhancement payment); *West v. Circle K Stores, Inc.*, 2006 U.S. Dist. LEXIS 76558, at *7-*8, *12, *27
16 (E.D. Cal. 2006) (awarding a \$15,000 representative enhancement where 10,000 Settlement Class
17 Members were to receive a gross award of approximately \$500 each from the \$5,000,000 settlement);
18 *Dent v. ITC Serv. Group*, 2013 U.S. Dist. LEXIS 139359, at *9-*10, *15-*16 (D. Nev. 2013) (awarding
19 a \$15,000 representative enhancement out of a \$150,000 settlement for approximately 530 Settlement
20 Class Members).

21 In this case, Plaintiffs provided and explained documents, being available at all times to discuss
22 the case with Plaintiffs’ counsel. *See* Decl. Rodriguez, ¶ 7; Decl. Hyunh, ¶ 20; Decl. Garay, ¶ 7; Decl.
23 Sanchez, ¶¶ 5-8; Decl. Ramirez, ¶¶ 4-8. Plaintiffs spent a significant amount of time pursuing this
24 litigation for the benefit of all Settlement Class Members. *See id.* Plaintiffs brought this action
25 knowing there would be a delay in any payment as the litigation progressed, rather than proceeding on
26 individual claims in front of the California Labor Commissioner. *See id.* Additionally, Plaintiffs
27 agreed to a general release of claims pursuant to Code of Civil Procedure section 1542. *See* Exhibit A,
28 ¶¶ 1.4, 6.4. Payment of \$15,000.00, each, to Plaintiffs is appropriate given the risk, assistance, time

required in bringing this case and resolution of this case.

c. Awarding Attorneys' Fees as a Percentage of the Common Fund Is Reasonable and Customarily Approved by Courts

California state and federal courts have recognized that when a litigant's efforts create or preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) ("A lawyer who recovers a common fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney's fee from the fund as a whole."); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970); *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); *see also Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.2d at 769; *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1977). California state courts have approved use of a percentage of the fund to calculate reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable sum of money. *See Dunk*, 48 Cal. App. 4th at 1808.

The Ninth Circuit has also held that the common fund doctrine applies when: (1) the class of beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989). These criteria are "easily met" when "each member of a certified class has an undisputed and mathematically ascertainable claim to part of a lump-sum settlement recovered on her behalf." *Id.* at 271 (citations omitted). Under the three (3) factors set forth in *Paul, Johnson, Alston & Hunt*, the common fund doctrine applies in this case because there is a sufficiently identifiable class of beneficiaries (*e.g.* the settlement class), the benefits can be accurately traced to the settlement Plaintiffs and Plaintiffs' counsel were able to negotiate on behalf of the class, and the fee can be shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the common fund. As set forth in the fee award examples provided below for the Court's reference, it is an accepted

1 practice in wage and hour class action settlements to award attorneys' fees based on a percentage of the
2 common fund. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 967-972 (9th Cir. 2003); *Sanders v. City*
3 *of Los Angeles*, 3 Cal.3d 252, 261, 263 (1970); *Wershba*, 91 Cal. App. 4th at 254; *Bell v. Farmers Ins.*
4 *Exchange*, 115 Cal. App. 4th 715, 726, 765 (2004).

5 Historically, attorneys' fee awards in common fund cases in general range from 20% to 50% of
6 the fund, depending on the circumstances of the case. *See Newberg on Class Actions*, (3rd Ed.), 1992,
7 §14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are
8 generally approved as reasonable in wage and hour settlements below \$10 million:

9 More particularly, courts may award attorneys fees in the 30-40% range in wage and hour
10 class actions that result in recovery of a common fund under \$10 million. *See Vasquez v.*
11 *Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-492 (E.D. Ca. 2010) (citing to five
12 recent wage and hour class actions where federal district courts approved attorney fee
13 awards ranging from 30 to 33%); *Singer v. Becton Dickinson and Co.*, 2010 U.S. Dist.
14 LEXIS 53416, 2010 WL 2196104, *8 (S.D. Ca. June 1, 2010) (approving attorney fee
award of 33.33% of the common fund and holding that award was similar to awards in
three other wage and hour class action cases where fees ranged from 33% to 40%);
Romero v. Producers Dairy Foods, Inc., 2007 U.S. Dist. LEXIS 86270, 2007 WL
3492841 (E.D. Ca. Nov. 14, 2007).

15 *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011). Plaintiffs'
16 request of thirty-five percent (35%) of the settlement sum for attorneys' fees is within established rates
17 for fee awards in class settlements pursuant to the common fund doctrine, especially in light of the
18 excellent results achieved in this case. *See id.*; *Birch v. Office Depot, Inc.*, USDC Southern District,
19 Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a \$16 million wage and hour class action
20 settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA)
21 (awarding a 40% fee on a \$3.75 million wage and hour class action settlement). To determine whether
22 a percentage is reasonable, a court should consider: (1) the percentage that would likely be negotiated
23 between parties in a similar case; (2) the percentage applied in other class actions; (3) the quality of
24 class counsel; (4) the size of the award; and (5) whether there are any objections by class members. *See*
25 *In re Ikon Office Solutions, Inc. Secur. Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000); *In re Heritage Bond*
26 *Litig.*, 2005 WL 1594403, at *21 (C.D. Cal. June 10, 2005) ("the absence of objections or disapproval
27 by class members to class counsel's fee request further supports finding the fee request reasonable").

28 These factors support Plaintiffs' request for reasonable attorneys' fees. The typical percentage

1 negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation
2 depending on the complexity of the case. In class action litigation, the typical percentage negotiated
3 between parties ranges from thirty to forty percent (30% to 40%) based on the same factors. Plaintiffs'
4 request of 35% falls within these typical fee arrangements. See Decl. Rodriguez, ¶ 20. The quality of
5 counsel and the average size of settlement payments to Class Members and Aggrieved Employees
6 (\$203.16) also support the fee request when compared to other settlements courts have considered as
7 good results. See *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal.
8 2012) ("Class Members will receive an average of approximately \$198.70, with the highest payment to
9 a Class Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is
10 highlighted by the fact that there was no objection to the settlement amount or the attorneys' fees
11 requested."); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) ("the
12 results achieved in this case were very favorable. Class members are provided with immediate
13 monetary relief, with an average award of around several hundred dollars and a minimum award of
14 \$50").

15 **d. Provisional Certification of the Class is Appropriate**

16 Class certification is appropriate when (1) the class is ascertainable and (2) there is "a well-
17 defined community of interest in the questions of law and fact involved affecting the parties to be
18 represented." *Dunk*, 48 Cal. App. 4th at 1806. The "community of interest" element "embodies three
19 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
20 defenses typical of the class; and (3) class representatives who can adequately represent the class." *Id.*
21 Here, the Parties agree that, for the purposes of settlement, these prerequisites are met. See Exhibit A.

22 **i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous**

23 The proposed settlement class is ascertainable because all putative Settlement Class Members
24 can be readily identified through employee personnel and payroll files. See *Noel v. Thrifty Payless,*
25 *Inc.*, 7 Cal.5th 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v.*
26 *Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there
27 are 5,658 individuals who fall within the definition of Class Member, which makes joinder of all
28 members impracticable. See *Gay v. Waiters' & Dairy Lunchmen's Union*, 489 F.Supp. 282 (N.D. Cal.

1 1980), *aff'd* 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972)
2 (noting no set minimum to meet the numerosity prerequisite, but a class as few as twenty-eight (28)
3 members is acceptable). Thus, these requirements are satisfied.

4 **ii. The Commonality, Predominance, and Typicality Requirements are Met**

5 The commonality requirement is met when there are questions of law or fact regarding the class
6 as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or
7 factual questions exist; Plaintiffs need not show that all issues in the litigation are identical. *See*
8 *Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d
9 447, 460 (1974). Common questions of law or fact must also predominate over individual questions
10 and class-wide treatment of a dispute must be superior to individual litigation.² *See Richmond*, 29
11 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication
12 by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the
13 named representative are typical of those of the class, though “they need not be substantially identical.”
14 *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

15 The common questions of law and fact in this case stem from Plaintiffs’ contention that
16 Defendant violated California law by 1) failing to properly incorporate the value of nondiscretionary
17 bonuses into Plaintiff’s and Settlement Class Members’ regular rates of pay for the purpose of
18 calculating overtime wages, meal and rest period premiums, and paid sick time, 2) failing to provide
19 meal periods in compliance with California law due to rounding and/or failing to relieve employees of
20 all duties, 3) failing to provide rest periods in compliance with California law, 4) failing to pay
21 employees for all hours worked due to rounding and clock in procedures, 5) failing to maintain
22 accurate records of Plaintiff and Settlement Class Members’ hours worked, 6) failing to pay
23 reimbursements for work-related cell phone use, 7) imposing systematic quota and production demands
24 on Plaintiffs and Settlement Class Members which violated the rights of employees pursuant to Labor
25 Code sections 2100 et seq., such as Plaintiffs’ and Settlement Class Members’ rights to lawful meal
26 periods, rest periods, bathroom breaks, and exposing them to safety hazards, 8) failing to pay putative
27

28 ²When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 Settlement Class Members for the time waiting before being able to clock in for their shifts, 9)
2 unlawfully deducting wages from Plaintiffs and Settlement Class Members by regularly directing them
3 to return to work during their meal periods while clocked out for their meal periods, and 10) failing to
4 accurately itemize the hours and wages earned on paystubs issued to Settlement Class Members. *See*
5 Exhibit B. The waiting time penalties, unfair competition, and PAGA claims are derivative of these
6 violations. *See id.* Plaintiffs and the Settlement Class Members seek the same remedies under state
7 law. Under these specific circumstances, the commonality and predominance requirements are
8 satisfied. Regarding the typicality requirement, Plaintiffs contends they suffered from the same
9 unlawful policies, treatment, and circumstances as Settlement Class Members did, will request the same
10 remedies, and will rely on the same methods of proof to establish liability and damages. *See id.* Thus,
11 the typicality requirement is also satisfied for settlement purposes.

12 **iii. The Adequacy Requirement is Met**

13 The adequacy of representation requirement is met if the named representative and counsel have
14 no interests adverse to those of the putative Settlement Class Members and are committed to vigorously
15 prosecuting the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*,
16 60 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the proposed Agreement,
17 Plaintiffs and the putative Settlement Class Members will receive a pro rata share of the settlement
18 based on the number of workweeks they worked for Defendant. *See Exhibit A.* Finally, any settlement
19 class member who wishes to opt-out of the settlement may do so, and he or she may also dispute the
20 number of workweeks stated in the Notice of Settlement (Exhibit F).

21 There is no conflict of interest between Plaintiffs and Settlement Class Members. Plaintiffs and
22 Plaintiffs' counsel have pursued the claims made in the operative Complaint vigorously on behalf of the
23 class. Plaintiffs' counsel, with Plaintiffs' assistance, thoroughly investigated the claims made in this
24 case by speaking with Plaintiffs and reviewing substantial amounts of documents. Plaintiffs' counsel
25 thereafter engaged Defendant's counsel in settlement discussions over the course of over two (2) years
26 of litigation. Moreover, Plaintiffs' counsel have experience defending and bringing wage and hour
27 claims. Because Plaintiffs' counsel has vigorously pursued Plaintiffs' and the Settlement Class
28 Members' claims, the adequacy requirement is met. *See generally* Decl. Rodriguez.

VII. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that this Court preliminarily and conditionally certify the class for settlement purposes; grant preliminary and conditional approval of the proposed settlement; approve the proposed notification procedures, including the Notice of Settlement and proposed deadlines relating thereto; and schedule the final approval hearing. A copy of Plaintiffs' proposed order is being filed concurrently herewith.

Shimoda & Rodriguez Law, PC

Dated: January 23, 2024

By: 
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