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

JOSE LUIS MADRIGAL, an individual and
class representative on behalf of himself and all
other similarly situated non-exempt former and
current employees,

Plaintiff,

vs.

TFT FARMS, LLC a California Limited
Liability Company; SIDNEY M. TANAKA, an
individual; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: ECU002144
[Unlimited Jurisdiction]
[Assigned for all purposes to the
Honorable Jeffrey B. Jones, Dept. 5]

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT, ATTORNEYS' FEES
AND COSTS, AND ENHANCEMENT
AWARD; MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: August 13, 2024
Time: 8:30 AM
Dept: 5

Action Filed: November 9, 2021

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

2 PLEASE TAKE NOTICE that, on August 13, 2024, at 8:30AM, or as soon thereafter as this
3 matter may be heard, in Department 5 of the above-captioned courthouse, located at 939 Main St. El
4 Centro, CA 92243, Plaintiff JOSE LUIS MADRIGAL (“Madrigal” or “Plaintiff”), will, and hereby does,
5 move this Court for final approval of the Joint Stipulation and Settlement of Class Action and PAGA
6 Settlement (“Settlement” and/or “Agreement”) reached by the parties in the above-captioned litigation.
7 Plaintiff moves the Court for entry of an order and judgment providing for the following:

- 8 1. Granting final approval of the terms of the Settlement as fair, adequate, and reasonable to all parties
9 and to all Participating Class Members;
- 10 2. Certifying the Class for settlement purposes only;
- 11 3. Finding that the notice distributed to Class Members, pursuant to the Court’s Order Granting Plaintiff’s
12 Motion for Preliminary Approval of Class Action Settlement, dated May 13, 2024, constituted the best
13 notice practicable under the circumstances;
- 14 4. Approving payment of Individual Settlement Payments to Participating Class Members pursuant to the
15 terms of the Settlement;
- 16 6. Approving payment of a Class Representative Service Award to the named Plaintiff in the amount of
17 \$1,500.00;
- 18 7. Awarding Class Counsel attorney’s fees in the amount of one-third of the Maximum Settlement
19 Amount, or \$30,000.00, plus an award of costs and reimbursement of reasonable litigation costs in the
20 amount of \$10,000.00, pursuant to the Agreement;
- 21 8. Approving payment of Settlement Administration Costs to Phoenix Settlement Administrators, Class
22 Action Settlement Administrators in the amount of \$5,750.00.

23 The motion will be based upon this Notice, the attached Memorandum of Points and Authorities,
24 the accompanying Declaration of Grant Joseph Savoy, Declaration of Plaintiff Jose Luis Madrigal,
25 Declaration and Supplemental Declaration of Jarrod Salinas Regarding Notice and Settlement
26 Administration (Phoenix Settlement Administrators), the Class Action Settlement Agreement, the
27 complete files and records of this case, and any other evidence or oral argument which may be considered
28 by the Court at the time of the hearing.

1 Dated: July 31, 2024

SOLOUKI | SAVOY, LLP

2
3 /s/ Grant Joseph Savoy
SHOHAM J. SOLOUKI, ESQ.
GRANT JOSEPH SAVOY, ESQ.
4 *Attorneys for Plaintiff Jose Luis Madrigal and*
5 *Those Similarly Situated*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This motion is brought by Plaintiff Jose Luis Madrigal (“Plaintiff” and/or “Madrigal”), in the
4 instant matter of *Jose Luis Madrigal, et al. v. TFT Farms, LLC et al.* (Case No. ECU002144) (the
5 “Action”) in this wage and hour class action brought on behalf of all current and former non-exempt
6 California employees who worked for Defendants TFT FARMS, LLC (“TFT”) and SIDNEY M.
7 TANAKA (“Tanaka”)(collectively TFT and Tanaka referred to as “Defendant(s)”), at any time from
8 November 9, 2017 until May 13, 2024. The Action primarily alleges that Defendant failed to provide
9 Plaintiff and the class he seeks to represent with legally required meal and rest periods, failed to pay their
10 overtime and off-the-clock wages, failed to maintain required employment records, provided inaccurate
11 wage statements, and failed to timely compensate former employees for all wages owed upon section of
12 employment. Plaintiff and Defendants (collectively referred to as the “Parties”) entered into a JOINT
13 STIPULATION AND SETTLEMENT OF CLASS ACTION AND PAGA SETTLEMENT (“Settlement”
14 and/or “Agreement”), which provides for a non-reversionary, Gross Settlement Amount (“GSA”) of
15 Ninety Thousand Dollars (\$90,000.00). On May 5, 2024, the Court granted preliminary approval of the
16 Settlement. Plaintiff now seeks an order granting final approval of the Settlement, including an award of
17 attorney’s fees and costs.

18 The Settlement Class is composed of 61 (61) current and former employees of Defendant working
19 as hourly non-exempt employees, in the State of California at any time from November 9, 2017 through
20 May 13, 2024, inclusive (the “Class Period”). A presumption of fairness exists because the Settlement was
21 reached through extensive, arm’s-length negotiations. Sufficient investigation and discovery allowed
22 Class Counsel to act intelligently. Class Counsel is experienced in similar wage and hour class litigation,
23 and there are no objections to the Settlement at the time of filing these papers.

24 The Settlement provides substantial benefits to Class Members. The estimated average Individual
25 Settlement Payment will be approximately \$645.83, with the highest estimated Individual Settlement
26 Payment amounting to approximately \$7,131.00. The lowest Individual Settlement Payment is
27 approximately \$20.91. Furthermore, the Settlement has been favorably received by Class Members. Of
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the 61 Class Members, not a single individual objected to the terms of the Settlement and only one Class Member opted out of the settlement, at the time of filing these papers.

Plaintiff's request in the amount of \$30,000.00 in attorney's fees and reimbursement of litigation costs in the amount of \$10,000.00 is reasonable. The amount of attorney's fees, which amounts to one third of the common fund, is well within the range generally sought and approved in class actions. The amount of fees requested is also reasonable given Class Counsel's lodestar of \$28,250.00, based upon 171 billable hours at hourly rates recently approved by the California federal District Court, with no multiplier. In fact, the amount of attorney's fees requested is only 23% of Plaintiff's Counsel's actual lodestar.

Because the Settlement is fair, adequate, and reasonable, and it is in the best interests of Class Members, Plaintiff respectfully requests that the Court grant final approval and enter judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties

Defendants engage in the agricultural industry. There are 61 current and former employees of Defendant who are eligible to participate in the Settlement, with one (1) member choosing to opt-out of the settlement. Plaintiff is a former non-exempt employee of Defendants, who worked for Defendants as a non-exempt hourly warehouse employee assigned to work as a mechanic. Plaintiff's job duties however, extended beyond that of a mechanic and he worked in various capacities while employed by Defendants. (*Grant Savoy Declaration* ("Savoy Decl."), at ¶ 6.)

B. The Complaints

On or about November 9, 2021, Plaintiff Madrigal filed the instant Action. On or about December 13, 2023, Plaintiff filed a First Amended Complaint. The operative First Amended Complaint asserts Eleven (11) causes of action for: (1) failure to provide required meal periods; (2) failure to provide required rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wage; (5) failure to timely pay wages; (6) failure to pay all wages due to discharged and quitting employees; (7) failure to maintain required records; (8) failure to furnish accurate itemized statements; (9) failure to indemnify employees for necessary expenditures incurred in discharge of duties; (10) all claims for unfair business practices; and (11) penalties pursuant to the Private Attorneys General Act. ("FAC," "Complaint," or "Operative Complaint".) (*Savoy Decl.*, at ¶ 4, 5.)

1 **C. Discovery and Investigation**

2 Prior to the Settlement, Plaintiff's counsel conducted an investigation into the claims alleged by
3 Plaintiff, conducted legal research, and engaged in extensive formal and informal discovery. Prior to
4 mediation, the Parties met and conferred regarding the scope of discovery necessary for the Parties to
5 engage in a productive mediation. It was agreed that the Parties would exchange agreed upon documents
6 and class records/data prior to mediation. (*Savoy Decl.*, at ¶ 8.)

7 Pursuant to the Parties' pre-mediation agreement, Defendant produced all of Plaintiff's personnel
8 file, payroll and timekeeping records; all policies regarding timekeeping, meal and rest breaks, and other
9 written policies related to the claim asserted by Plaintiff, as well as a 20% sampling of time keeping and
10 payroll records of the class period. (*Savoy Decl.*, at ¶ 9.)

11 Through discovery and investigation, my office was able to identify multiple current and former
12 employees of Defendant that provided valuable information that allowed my office and our expert to
13 clarify any apparent discrepancies in the data provided by Defendant. (*Savoy Decl.*, at ¶ 10.)

14 For example, Defendants' records, by their face, could not provide us with information regarding
15 off-the clock work or whether meal and/or rest breaks were given in compliance with the applicable laws.
16 Through the interviews conducted by Plaintiff's Counsel, it appeared that Plaintiff and Class Members
17 were instructed to arrive at work approximately 10-15 minutes prior to their scheduled shift start time to
18 prepare the equipment for that day's use. Likewise at end of their shift, Plaintiff and Class Members were
19 required to clean machinery and pick up boxes or trays once their shift ended at 4:00 PM. When Plaintiff
20 and Class Members complained about not being compensated for the off-the-clock work they completed
21 they were instructed by their foreman to stop complaining and told, "We don't pay you to prepare for
22 work, we pay you to work" and "We don't stop work until 4:00 PM, so keep working until 4:00 PM."
23 Accordingly, Plaintiff and Class Members were never paid for this off-the-clock work of prepping and
24 cleaning machinery. Moreover, these interviews revealed that Defendant did not utilize timekeeping
25 software, paper timecard punches, or any other form of timekeeping where the individual employee was
26 allowed to keep track of time worked and meal breaks taken. Instead Defendant had its supervisors, not
27 the actual employee, record the start and end times of each shift worked. Further, since Defendant did not
28 utilize a clock or bell system for informing employees of the start or end of their meal periods,

1 Defendant's foreman made the sole determination of when meal breaks started and when they were
2 complete. Accordingly, employees were regularly told that their meal breaks were over at the 25 minute
3 mark. When employees complained about not receiving their full 30 minute meal break they were told that
4 they needed at least 5 minutes to get back to their workstation. Thus, Plaintiff and Class Members did not
5 receive full 30 minute meal breaks even when their time cards said they took a full 30 minute meal break.
6 These meal break violations happened a daily basis. Further, Plaintiff and Class Members revealed that
7 they were not permitted to take water or restroom breaks unless done during a meal or rest break. Since
8 only one restroom was available and multiple employees needed to use the restroom during their rest
9 breaks, Plaintiff and Class Members often spent their entire 15 minute rest break waiting in line for the
10 restroom. Admittedly, the 15 minutes allotted to the first rest break is/was more than compliant, and
11 without admitting said compliance, provided a 5 minute grace period to get to and from one's
12 workstation/work area to the designated break area. However, as for the alleged second rest break,
13 Plaintiff asserts that in the afternoon he and Class Members were never provided with this second legally
14 mandated rest break. Plaintiff and Class Members also revealed that they were required to purchase items
15 such as protective gloves and respiratory masks. This information simply could not have been known by
16 the fact of the records and standard written discovery. (*Savoy Decl.*, at ¶ 11.) This information could not
17 have been gleaned from the face of the payroll and timekeeping records themselves.

18 Plaintiff's counsel analyzed this information, including data for approximately 1,700 pay periods
19 and approximately 1,700 workweeks, and Plaintiff's counsel evaluated the potential liability and damages
20 for the Class Members. Based upon this information, Plaintiff's counsel was able to act intelligently and
21 effectively in negotiating the proposed Settlement. Further, based on my office's, Plaintiff's expert, and
22 Defendants' analysis, the Parties were able to establish the existence of an ascertainable class and
23 aggrieved employee contingency, all of which allowed the third-party settlement administrator to provide
24 sufficient notice to the class members and aggrieved employee contingency. (*Savoy Decl.*, at ¶ 12.)

25 **D. Settlement Negotiations**

26 The Settlement was reached following extensive negotiations during and after a private mediation
27 with professional mediator Steven Kruis, Esq. The settlement negotiations were at arm's length and,
28 although conducted in a professional manner, were adversarial. The parties went into the mediation

1 session willing to explore the potential for a settlement of the dispute, but each side was also prepared to
2 litigate its position through trial and appeal if a settlement had not been reached. (*Savoy Decl.* ¶¶ 13 - 14.)

3 During mediation, Plaintiff strongly asserted the validity of his arguments and his assessment that
4 this case could be worth a substantial amount of money. However, as the mediation progressed,
5 Defendant presented their arguments as to various issues, and it became apparent that many issues would
6 be highly disputed and could pose a risk to both parties in going forward with litigation. As a result, the
7 parties agreed to resolve this matter. (*Savoy Decl.* ¶ 22.)

8 Moreover, Mr. Kruis presided over the back and forth exchange of information, and helped guide
9 the parties towards what he believed, based on his experience, was a reasonable resolution given the
10 disputed issues of liability. (*Savoy Decl.* ¶ 23.)

11 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence
12 to the contrary is offered. (*Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars Steel Corp. v.*
13 *Continental Illinois Nat’l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re Chicken Antitrust*
14 *Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962.) Courts do not substitute their judgment for that of the
15 proponents, particularly where, as here, settlement has been reached with the participation of experienced
16 counsel familiar with the litigation. (*Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004)
17 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087, 1093; *Steinberg v. Carey*
18 (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp.
19 1357, 1368; *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n* (E.D. Pa. 1978) 79 F.R.D. 571,
20 580.)

21 **E. The Settlement Class**

22 “Settlement Class” or “Class” or “Class Members” means all individuals who are or previously
23 were employed by Defendants in California who were classified as hourly non-exempt employees during
24 the period of November 9, 2027 through May 13, 2024, inclusive. The Class consist of 61 persons with an
25 estimated 1,853 workweeks, and includes 6 “PAGA Aggrieved Employees,” who were employed from
26 July 10, 2022 through May 13, 2024 and worked an estimated 302 PAGA pay periods. It must be noted
27 that of the 61 eligible class members, one class member opted-out of the settlement, leaving 60
28

1 participating class members. (*Settlement*, sections 4, 23; *Declaration of Settlement Administrator Jarrod*
2 *Salinas* (“*Salinas Decl.*”, at paras. 11, 14.)

3 **F. Preliminary Approval**

4 On May 13, 2024, the Court granted preliminary approval of the Settlement.

5 **III. SETTLEMENT TERMS**

6 In exchange for a release of claims against Defendant, as set forth in the Settlement, the payment terms
7 of the Settlement are as follows:

8 “Gross Settlement Amount” or “GSA” means a fixed total payment of Ninety Thousand Dollars
9 and Zero Cents (\$90,000.00), payable by Defendants under the Agreement, which shall satisfy all
10 outstanding and awarded Settlement Payments, PAGA Payments, attorneys’ fees and costs awarded to
11 Class Counsel, the Named Plaintiff’s enhancement awards as awarded by the Court, outstanding payments
12 to the SA as approved by the Court for settlement administration costs, and the payment to the LWDA.
13 (*Settlement*, section 16.) Subject to Court approval, this amount shall be allocated as follows:

14 The “Net Settlement Amount” or “NSA” means the Gross Settlement Amount less the amounts
15 deducted pursuant to Paragraphs 51a through 510 of the Settlement Agreement, including deductions of
16 the amounts awarded to Class Counsel, the enhancement award to the Named Plaintiff, the payment to the
17 LWDA to resolve claims under the PAGA, and the costs awarded for settlement administration owed
18 pursuant to the Agreement. (*Settlement*, section 19.) Subject to the Final Approval of the Settlement and
19 the conditions specified in the Settlement Agreement, and in consideration of the mutual covenants and
20 promises set forth therein, Defendant agrees to make a payment or payments as set forth in the Settlement
21 Agreement totaling the fixed amount of Ninety Thousand Dollars and Zero Cents (\$90,000.00). The GSA
22 shall fully satisfy Defendant’s obligations for any and all payments, fees and costs identified in the
23 Settlement Agreement, including, but not limited to, any payments to be made to the Named Plaintiff,
24 Settlement Class Members, PAGA Members, the LWDA, Class Counsel’s attorneys’ fees and out-of-
25 pocket litigation expenses and costs, and settlement administration costs. Other than employer-side
26 payroll taxes, in no event shall Defendant be required to pay any amounts above the GSA under the
27 Settlement Agreement except as set for in Paragraph 51g thereof. The Parties agree, subject to Court
28 approval, that the GSA shall be apportioned as follows (*Settlement*, section 51.):

1 i. Attorneys' Fees. Class Counsel will apply to the Court for an award of attorneys' fees of
2 no more than one third (1/3) or thirty-three point three, three, four percent (33.334%) of the GSA or Thirty
3 Thousand Dollars and Zero Cents (\$30,000.00). The attorneys' fees shall come from and be deducted
4 from the GSA and paid out as set forth herein. Defendant will not oppose such application. (*Settlement*,
5 section 51a.)

6 ii. Attorneys' Costs. Named Plaintiff and Class Counsel shall request approval of payment
7 of up to but not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00) in attorneys' costs,
8 including any litigation costs, which will be deducted from the GSA and paid out as set forth herein.
9 Defendant will not oppose such application. Attorneys' fees as specified above and in the Settlement
10 Agreement, and costs as specified in this Paragraph and the Settlement Agreement, shall cover all claimed
11 and unclaimed attorneys' fees, attorneys' costs and other amounts payable or awardable against
12 Defendants for Class Counsel's work, effort or involvement in the Action and in carrying out the
13 Agreement and includes any and all work, effort or involvement to carry out the terms of the Agreement
14 and as may be potentially or actually necessary or advisable to defend the Settlement Agreement through
15 appeal, or collateral attack or in any other forum or proceeding. These specified Attorneys' Fees and Costs
16 shall be the sole payment for attorneys' fees and costs and, otherwise, the Parties and Class Members and
17 their counsel shall bear their own fees and costs in connection with the Action. Should the Court approve
18 lesser amounts for Attorneys' Fees and Costs, the difference shall be added to the NSA. (*Settlement*,
19 section 51b.)

20 iii. Administration Fees and Costs. Class Counsel will also apply to the Court for approval
21 of SA costs in the amount not to exceed Five Thousand, Seven Hundred Fifty and Zero Cents (\$5,750.00),
22 which will be deducted from the GSA. Defendant will not oppose such application. Class Counsel will
23 specify the amount sought for such costs, up to the foregoing maximum, in Named Plaintiff' motions for
24 preliminary and Final Approval of the Settlement. (*Settlement*, section 51c.)

25 iv. Named Plaintiff's Enhancement and General Release Payment. Class Counsel will
26 apply to the Court for approval of an enhancement award in an amount not to exceed One Thousand, Five
27 Hundred Dollars and Zero Cents (\$1,500.00) to be paid to Named Plaintiff. Defendant will not oppose
28

1 such application. The enhancement award is included in, and shall be deducted from, the GSA. Should
2 the Court approve a lesser amount, the difference shall be added to the NSA. (*Settlement*, section 51d.)

3 v. PAGA Allocation and Payments. Pursuant to California Labor Code Section 2698, *et*
4 *seq.*, the Parties designate Four Thousand Dollars and Zero Cents (\$4,000.00) of the GSA to resolve any
5 PAGA claims (including penalties sought for Named Plaintiff' employment and penalties sought under the
6 PAGA for all other PAGA Members' employment and payment to the LWDA). Defendant shall pay
7 seventy five percent (75%) of that amount, or Three Thousand Dollars and Zero Cents (\$3,000.00), to the
8 LWDA and the remainder to PAGA Members. In the event the LWDA refuses to accept the above
9 amount in full for all civil penalties to PAGA Members in connection with the civil penalty claims alleged
10 in this Action, or in the event the LWDA or anyone on its behalf otherwise challenges the above allocation
11 or the Settlement, the Parties shall work in good faith to revise the allocation so that it is accepted. The
12 remaining One Thousand Dollars and Zero Cents (\$1,000.00) shall be paid to PAGA Members by
13 multiplying the PAGA Workweek Rate by each individual PAGA Member's PAGA Workweeks Worked.
14 (*Settlement*, section 51e.)

15 vi. Settlement Payments to Settlement Class Members. Only the following individuals will
16 receive Settlement Payments under the Settlement Agreement: (1) the Named Plaintiff, (2) Settlement
17 Class Members, and (3) PAGA Members. Settlements will be calculated as follows:

18 The NSA will be divided by the total Workweeks Worked by all Settlement Class Members
19 during the Class Period as reflected in Defendant's records and estimates based on existing records. All
20 Settlement Class Members shall be paid an amount equal to their individual Workweeks Worked during
21 the Class Period, multiplied by the Workweek Rate. Workweeks Worked shall be determined by the SA
22 based on data to be provided by Defendant, as may be modified by the resolution of any challenges.

23 The Parties agree that under no circumstances shall Defendant be obligated to pay any
24 amount under the Agreement to any Class Member other than Settlement Class Members and PAGA
25 Members. In addition, the Parties agree that in no event shall Defendant be obligated to pay more than the
26 GSA, except for the separate payment of employer-side payroll taxes, as provided in paragraph 53,61 of
27 the Settlement Agreement.
28

1 The Parties acknowledge and agree that the formula used to calculate Workweeks Worked,
2 individual Settlement Payments, PAGA Workweeks Worked, and PAGA Payments does not imply that all
3 of the elements of damages covered by the release are not being taken into account. The above formulas
4 were devised as practical and logistical tools to simplify the payment process.

5 (*Settlement*, section 51h.)

6 PAGA Payments will be calculated as follows: the amount remaining from the \$4,000.00
7 (after subtracting the \$3,000 allocated to the LWDA) divided by the total number of PAGA Workweeks
8 Worked credited to all PAGA Members. Each PAGA Member's PAGA Payment is equal to the PAGA
9 Workweek Rate multiplied by his or her individual PAGA Workweeks Worked pursuant to the records of
10 Defendant, and will be paid to the PAGA Member even if they opt-out of the Class Settlement.

11 (*Settlement*, section 25, 51h.)

12 Each Settlement Class Member's Individual Payment Amount (including Individual PAGA
13 Payment Amounts) shall be distributed as follows:

14 (a) Ten percent (10%) of the Individual Payment Amounts shall be allocated for alleged unpaid
15 wages, for which an IRS Form W-2 shall be issued.

16 (b) Ninety percent (90%) of the Individual Payment Amounts shall be allocated for alleged
17 penalties and interest.

18 (c) The PAGA Payments to PAGA Members will be designated as payments for alleged
19 penalties and other non-wage amounts.

20 (d) The portions of the Settlement Payments allocated to penalties, interest or other non-wage
21 amounts and the PAGA Payments will be paid without tax withholdings and will be reported as
22 such to each Settlement Class Member and/or PAGA Member on an IRS Form 1099.

23 (*Settlement*, section 53a.)

24 vii. Funding of Settlement Fund/QSF.

25 Defendant will deposit the Funding Payment into an account established by the SA within
26 30 days of the Effective Date. The GSA (including all employer-side payroll taxes) shall be payable in two
27 equal installments, the first due 30 days from the Effective Date, and the second due 6 months thereafter.
28 The full remittance of the Funding Payment to the SA shall constitute full and complete discharge of the

1 entire monetary obligation of Defendant under the Agreement. No Released Party shall have any further
2 monetary obligation or liability to Class Counsel, Named Plaintiff, Settlement Class Members and/or
3 PAGA Members under the Agreement after receipt by the SA of the Funding Payment. (*Settlement*,
4 section 61.)

5 The Parties agree that the Funding Payment will qualify as a settlement fund pursuant to the
6 requirements of Section 468(B)(g) of the Internal Revenue Code of 1986, as amended, and Section
7 1.468B-1 et seq. of the income tax regulations. Furthermore, the SA is hereby designated as the
8 “Administrator” of the qualified Settlement funds for purposes of Section 1.468B-2(k) of the income tax
9 regulations. As such, all employee taxes imposed on the gross income of that settlement fund and any tax-
10 related expenses arising from any income tax returns or other reporting documents that may be required by
11 the Internal Revenue Service or any state or local taxing body will be paid from the Funding Payment by
12 the SA. (*Settlement*, section 61.)

13 The distribution of Settlement Payments to Settlement Class Members shall occur no later
14 than the Settlement Proceeds Distribution Deadline, as defined in the Settlement Agreement. The SA shall
15 be deemed to have timely distributed Settlement Payments if it places said payment in the mail (First-
16 Class U.S.). When the SA receives notice from Settlement Class Members that they have not received
17 such Settlement Payments due to changes of address or other circumstances, the SA shall be deemed to
18 have timely distributed those Settlement Payments if (after satisfying itself that the amounts have not been
19 received or negotiated) it re-mails the payments to the updated addresses or provides for delivery by other
20 reasonable methods requested by such Settlement Class Members, provided that any and all requests for
21 re-mailing shall be actually received and acknowledged by the SA before the 180-day deadline referenced
22 in Paragraphs 62, 63, and 64 of the Agreement, or will be deemed ineffective, and have no effect and the
23 original mailed amount shall be deemed timely distribution of the Settlement Payment. If any checks are
24 returned to the SA without a forwarding address the SA shall conduct a skip-trace and re-mail the checks.
25 The SA shall mail all Settlement Payments by the Settlement Proceeds Distribution Deadline. To comply
26 with California Rule of Court 3.771, settlement checks shall include the following language on the check:
27 **“A Court has approved settlement of the class action and PAGA representative actions and entered**
28 **judgment for claims asserted Jose Luis Madrigal, et al v. TFT Farms LLC, et al., Imperial County**

1 **Superior Court Case No. ECU002144.**” No person shall have any claim against the SA, Defendants or
2 other Released Parties, Class Counsel, Defendants’ counsel, or any other agent designated by Named
3 Plaintiff or Defendants based upon the distribution of Settlement Payments made substantially in
4 accordance with the Agreement or further orders of the Court. (*Settlement*, section 61.)

5 Defendants shall not be obligated to make any payments contemplated by the Agreement
6 unless and until the Court enters the Final Approval Order and Final Judgment, and after the Effective
7 Date of the Agreement, and no amounts will be owed or payable until all appeals if taken or other
8 collateral attacks have lapsed or have been favorably resolved in favor of the Settlement and no further
9 challenge to the Settlement is possible. (*Settlement*, section 61.)

10 **IV. CLASS NOTICE HAS BEEN EFFECTUATED AND COMPORTS WITH CALIFORNIA**
11 **LAW AND DUE PROCESS**

12 To protect the rights of absent class members, the trial court must provide the best notice
13 practicable to class members. (*See Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12; *Eisen v.*
14 *Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-175.) There is no requirement that all class members
15 receive actual notice, whether by mail or some other means; rather, “individual notice must be provided to
16 those class members who are identifiable through reasonable effort.” (*Eisen*, 417 U.S. at 175.)

17 The notice plan, as approved by the Court, has been fully implemented by the Settlement
18 Administrator, Phoenix. On or about May 24, 2024, Phoenix received from Defendant’s counsel data for
19 15 Class Members, including their contact and the workweek information. (*Salinas Decl.*”), at ¶ 3.)
20 Phoenix updated the mailing addresses utilizing the National Change of Address Database maintained by
21 the U.S. Postal Service. (*Id.* at ¶ 4.) On or about June 3, 2024, Phoenix mailed Notice Packets containing
22 the Notice of Class Action Settlement, in both English and Spanish, to all 61 Class Members. (*Id.* at ¶ 5.)

23 As of As of the response deadline of July 18, 2024, two (2) Notice Packets have been returned to
24 Phoenix and remain undeliverable. (*Id.* at ¶ 7.) As of the response deadline, Phoenix has received one (1)
25 valid Request for Exclusion from a Class Member opting out of the Settlement. (*Id.* at ¶ 1.) As of July 18,
26 2024, Phoenix has received zero (0) objections to the Settlement and zero (0) disputes regarding the
27 payment information. (*Id.* at 9 and 10.) If the Court approves Class Counsel’s requested award of
28 attorney’s fees and costs, the Class Representative Service Awards, and the Settlement Administration

Costs, then the average estimated Individual Settlement Payment will be approximately \$645.83, and the highest estimated Individual Settlement Payment will be approximately \$7,131.00. (*Salinas Decl.*, at ¶ 12; *Savoy Decl.*, at ¶ 26.) Since there will be no residue from the fund, there will necessarily be no Reapportioned Settlement Payments to Class Members.

V. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE

The trial court has broad discretion to determine whether a proposed class action settlement is fair. (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138.) There is a presumption of fairness of a class action settlement when: (1) the settlement is reached as a result of arm's length negotiations; (2) there has been sufficient investigation and discovery; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) Before approving a class action settlement, a trial court must develop an understanding "of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 120.) However, the parties need not provide an explicit statement of the maximum amount plaintiffs could have potentially recovered. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

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

The Settlement was reached following extensive negotiations during and after a private mediation with professional mediator Steven Kruis, Esq. The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. The parties went into the mediation session willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate its position through trial and appeal if a settlement had not been reached. (*Savoy Decl.* ¶¶ 13 - 26.)

During mediation, Plaintiff strongly asserted the validity of his arguments and his assessment that this case could be worth a substantial amount of money. However, as the mediation progressed, Defendant presented their arguments as to various issues, and it became apparent that many issues would be highly disputed and could pose a risk to both parties in going forward with litigation. As a result, the parties agreed to resolve this matter. (*Savoy Decl.* ¶ 22.)

Moreover, Mr. Kruis presided over the back and forth exchange of information, and helped guide the parties towards what he believed, based on his experience, was a reasonable resolution given the disputed issues of liability. (*Savoy Decl.* ¶ 23.)

Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. (*Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re Chicken Antitrust Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962.) Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. (*Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087, 1093; *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp. 1357, 1368; *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.)

B. Settlement Negotiations Were Conducted Based on Sufficient Investigation and Discovery

Prior to the Settlement, Plaintiff's counsel conducted an investigation into the claims alleged by Plaintiff, conducted legal research, and engaged in extensive formal and informal discovery. Prior to mediation, the Parties met and conferred regarding the scope of discovery necessary for the Parties to engage in a productive mediation. It was agreed that the Parties would exchange agreed upon documents and class records/data prior to mediation. (*Savoy Decl.*, at ¶ 8.)

Pursuant to the Parties' pre-mediation agreement, Defendant produced all of Plaintiff's personnel file, payroll and timekeeping records; all policies regarding timekeeping, meal and rest breaks, and other written policies related to the claim asserted by Plaintiff, as well as a 20% sampling of time keeping and payroll records of the class period. (*Savoy Decl.*, at ¶ 9.)

Through discovery and investigation, my office was able to identify multiple current and former employees of Defendant that provided valuable information that allowed my office and our expert to clarify any apparent discrepancies in the data provided by Defendant. (*Savoy Decl.*, at ¶ 10.)

For example, Defendants' records, by their face, could not provide us with information regarding off-the clock work or whether meal and/or rest breaks were given in compliance with the applicable laws.

1 Through the interviews conducted by Plaintiff's Counsel, it appeared that Plaintiff and Class Members
2 were instructed to arrive at work approximately 10-15 minutes prior to their scheduled shift start time to
3 prepare the equipment for that day's use. Likewise at end of their shift, Plaintiff and Class Members were
4 required to clean machinery and pick up boxes or trays once their shift ended at 4:00 PM. When Plaintiff
5 and Class Members complained about not being compensated for the off-the-clock work they completed
6 they were instructed by their foreman to stop complaining and told, "We don't pay you to prepare for
7 work, we pay you to work" and "We don't stop work until 4:00 PM, so keep working until 4:00 PM."
8 Accordingly, Plaintiff and Class Members were never paid for this off-the-clock work of prepping and
9 cleaning machinery. Moreover, these interviews revealed that Defendant did not utilize timekeeping
10 software, paper timecard punches, or any other form of timekeeping where the individual employee was
11 allowed to keep track of time worked and meal breaks taken. Instead Defendant had its supervisors, not
12 the actual employee, record the start and end times of each shift worked. Further, since Defendant did not
13 utilize a clock or bell system for informing employees of the start or end of their meal periods,
14 Defendant's foreman made the sole determination of when meal breaks started and when they were
15 complete. Accordingly, employees were regularly told that their meal breaks were over at the 25 minute
16 mark. When employees complained about not receiving their full 30 minute meal break they were told that
17 they needed at least 5 minutes to get back to their workstation. Thus, Plaintiff and Class Members did not
18 receive full 30 minute meal breaks even when their time cards said they took a full 30 minute meal break.
19 These meal break violations happened a daily basis. Further, Plaintiff and Class Members revealed that
20 they were not permitted to take water or restroom breaks unless done during a meal or rest break. Since
21 only one restroom was available and multiple employees needed to use the restroom during their rest
22 breaks, Plaintiff and Class Members often spent their entire 15 minute rest break waiting in line for the
23 restroom. Admittedly, the 15 minutes allotted to the first rest break is/was more than compliant, and
24 without admitting said compliance, provided a 5 minute grace period to get to and from one's
25 workstation/work area to the designated break area. However, as for the alleged second rest break,
26 Plaintiff asserts that in the afternoon he and Class Members were never provided with this second legally
27 mandated rest break. Plaintiff and Class Members also revealed that they were required to purchase items
28

1 such as protective gloves and respiratory masks. This information simply could not have been known by
2 the fact of the records and standard written discovery.

3 Plaintiff's counsel and statistical expert analyzed this information, including data for
4 approximately 1,700 pay periods and approximately 1,700 workweeks, and Plaintiff's counsel evaluated
5 the potential liability and damages for the Class Members. Based upon this information, Plaintiff's
6 counsel was able to act intelligently and effectively in negotiating the proposed Settlement. Further, based
7 on my office's, Plaintiff's expert, and Defendants' analysis, the Parties were able to establish the existence
8 of an ascertainable class and aggrieved employee contingency, all of which allowed the third-party
9 settlement administrator to provide sufficient notice to the class members and aggrieved employee
10 contingency. (*Savoy Decl.*, at ¶ 12.)

11 **C. None of the Class Members Have Objected to the Settlement**

12 The Class Members' positive response is indicative of the fairness of the Settlement. To date, zero
13 objections have been submitted to the Settlement Administrator, and 98.36% of the Class Members are
14 participating in the Settlement. (*Lee Decl.*, ¶ 9, 11.)

15 **D. Assessment of Amount in Controversy and Risks Associated with Proceeding**

16 **Class Action Settlement Amount is Fair, Just, and Reasonable**

17 Plaintiff and Plaintiff's counsel remain confident of the merits of Plaintiff's claims. Plaintiff and
18 Plaintiff's counsel considered several factors in reaching the decision to settle at this point in the litigation.
19 Plaintiff's counsel and statistical expert have calculated the maximum damages of the Class Members,
20 excluding solely derivative claims, to be approximately Three Hundred Seventy-Nine Thousand, One
21 Hundred Forty-Two Dollars and Fifty Cents (\$379,142.50) and believes this amount would be the
22 maximum damage potential should the case proceed to trial. (*Savoy Decl.*, at ¶ 16.)

23 Given the maximum potential damages, the settlement sum of Ninety Thousand Dollars
24 (\$90,000.00) is reasonable considering the substantial risks entailed by this case. Based on mine and my
25 partner Shoham J. Solouki, Esq.'s extensive experience litigating wage and hour class actions, Plaintiff's
26 Counsel estimates a Sixty Percent (60%) likelihood of obtaining and maintaining certification of
27 Plaintiff's claims, which reduces the value of these claims. Further, my office further estimates that there
28 is a Sixty Percent (60%) chance that Plaintiff will prevail at trial on his individual and class claims, further

1 reducing the value of the claims. Taking these two risk factors into account, a more realistic damages
2 recovery analysis brings values the instant action at approximately One Hundred Thirty-Six Thousand,
3 Four Hundred Ninety-One Dollars and Thirty Cents (\$136,491.30). The GSA is approximately 66% of the
4 revised and reduced total damages exposure. The significant risk that this Court may deny class
5 certification is obviated by the Settlement. Moreover, continued litigation would very likely reduce and
6 substantially delay recovery by Class Members. In contrast, because of the proposed Settlement, Class
7 Members will receive timely relief and avoid the risk of an unfavorable judgment and avoids the
8 possibility of having all, or a portion, of the class and representative claims lost to dispositive motion,
9 which was not included as a factor in reaching the above reduced damages amount. (*Savoy Decl.*, at ¶
10 18.)

11 Defendant, on the other hand, strongly contends that its policies and practices do not violate any
12 laws and that it complied with all applicable laws. Specifically, Defendant maintains that Plaintiff's claims
13 that he and class members were not paid for all hours worked is factually incorrect. It is Defendant's
14 position that there would be no liability for unpaid wages and overtime, and therefore, the derivative
15 claims of waiting time penalties, untimely wage payments and inaccurate wage statements therefore also
16 fail. Defendant further contends that it provided meal and rest breaks as required by law and is not
17 required to ensure that employees took every meal and rest period made available to them. (*Brinker*
18 *Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012).) Even if the data were to show that meal
19 periods were not taken, time records alone cannot establish a meal break violation under California law.
20 (*See Donohue v. AMN Servs., LLC*, 29 Cal. App. 5th 1068, 1088 n. 25, as modified (Dec. 28, 2018),
21 review granted, 2019 WL 1388808, at *1 (Cal. Mar. 27, 2019) (finding that "an employer's time records
22 may . . . [only] reflect a section 226.7 violation" in the class certification context, and not on the merits
23 either at trial or on summary judgment); *Brown v. Federal Express Corp.*, 249 F.R.D. 580, 587 (C.D. Cal.
24 2008) (time records could not prove break claims as they would not provide reason for missed breaks).)

25 Additionally, Defendant contends that Plaintiff would not obtain class certification on his claims,
26 particularly because the claims would require an individualized inquiry. (*See Koval v. Pacific Bell*
27 *Telephone Co.*, 232 Cal. App. 4th 1050, 1062 (2014) (denying certification and holding that plaintiff's
28 failure to demonstrate that allegedly unlawful policies were consistently applied "create[d] a shifting

kaleidoscope of liability determinations that render this case unsuitable for class action treatment”); *Dailey v. Sears, Roebuck & Co.*, 214 Cal. App. 4th 974, 1002 (2013) (denying class certification of meal period and rest break claims of employees alleging that they did not regularly take uninterrupted meal and rest breaks where there was no evidence of a uniform policy showing that the Company required the employees to forego breaks.) In such an event, there would be no recovery for Class Members at all. A discount was required at this stage of the litigation for settlement purposes based on these risk factors. The significant risks that this Court may deny class certification or rule against Plaintiff on the merits are obviated by the Settlement, as is any risk associated with trial. Moreover, continued litigation would very likely reduce and substantially delay recovery by Class Members. In contrast, because of the proposed Settlement, Class Members will receive timely relief and avoid the risk of an unfavorable judgment.

Furthermore, while Plaintiff is confident in the merits of the case, a legitimate controversy exists as to each cause of action. It must be noted that the lion share of the non-derivative and non-penalty class damages are attributable to meal and rest period violations (approximately 82% of all non-derivative, non-penalty damages). Further, the Unpaid Off-The-Clock claim and Business expenditure claim (approximately 18% of all non-derivative damages) are both based solely on subjective information, such as statements given by Plaintiff and Class Members, in opposition to valid written timekeeping and rest break policies, making them hard to certify, and even harder to prove to the tier of fact. This substantial factor was taken into consideration when valuing the reasonableness of the Settlement. (*Savoy Decl.*, at ¶ 19.)

Plaintiff also recognizes that proving the amount of wages due to each individual Class Member, while feasible, would be an expensive, time-consuming, and extremely uncertain proposition. (*Savoy Decl.*, at ¶ 20.)

With full participation of 60 of the 61 eligible employees in the settlement, we estimate that each class member will recover on average \$645.83. The average workweek recovery from the NSA is \$20.91. The maximum recovery for a class member is approximately \$7,131.00. The minimum recovery for a class member is approximately \$20.91. (*Salinas Decl.*, at ¶ 12.) On average, this amount is far from insignificant, especially because most class members will never pursue their individual claims. (*Savoy Decl.*, at ¶ 26.)

1 In sum, when the risks of litigation, the uncertainties involved in achieving class certification, the
2 burdens of proof necessary to establish liability, and the probability of appeal of a favorable judgment are
3 balanced against the merits of Plaintiff's claims, it is clear that the Gross Settlement Amount is fair,
4 adequate, and reasonable. (*Savoy Decl.*, at ¶ 21.)

5 **Settlement Amount Allocated to PAGA Claim Is Fair, Just, and Reasonable**

6 Plaintiff's expert statistician has calculated the number of unique PAGA pay periods to be 504.
7 When focusing on the non-derivative, non-subjective claims (meal break violations, rest break violations,
8 off the clock work), Plaintiff's expert found Defendants' maximum PAGA penalty exposure to be
9 approximately One-Hundred Ninety-Thousand, Five-Hundred Dollars and Zero Cents (\$190,500.00). As
10 noted, based on Plaintiff's Counsel's experience, Plaintiff estimates a sixty percent (60%) chance of
11 beating a motion for summary judgment/adjudication on the underlying Labor Code causes of action, as
12 well as a 60% chance of a favorable outcome at trial. This reduces Defendant's potential PAGA penalty
13 exposure to approximately Sixty-Eight Thousand, Five-Hundred Eighty Dollars and Zero Cents
14 (\$68,580.00). However, as explained below, this number must be greatly reduced when the facts and
15 evidence presented during litigation and mediation are taken into account. At mediation, the Parties jointly
16 agreed to attribute a total of Four Thousand Dollars (\$4,000.00) to PAGA penalties, which amounts to
17 4.4% of the GSA. For the reasons below, Plaintiff's Counsel believes that the PAGA allocation is more
18 than fair, just, and reasonable for the Class Members. (*Savoy Decl.*, 28.)

19 Through discovery and investigation, as well as further evidence presented at mediation, it became
20 abundantly clear that the majority of all Labor Code violations occurred within the first three (3) years of
21 the alleged class period. Defendants' timekeeping, meal and rest break, and reimbursement policies for
22 the entire class period appear facially valid. Based on timekeeping records and interviews with Plaintiff
23 and aggrieved employees, Defendants' apparent practice and enforcement of said policies appears to have
24 changed during the class period. Plaintiff's PAGA penalty claims are based primarily on meal and rest
25 break violations. (*Savoy Decl.*, 29.)

26 More importantly, by allocating a majority of the GSA to class action claims, the Class Members
27 will actually receive a majority of the GSA. As such, the low PAGA allocation is in the best interest of
28 Class Members, and therefore should be deemed reasonable and fair. As such, Plaintiff believes it is

proper to attribute approximately Four and Four Tenths Percent (4.4%) of the Gross Settlement Amount to PAGA penalties. (*Savoy Decl.*, at ¶ 30.)

Additionally, \$4,000.00 of the Gross Settlement Amount has been allocated toward penalties under the Private Attorneys General Act (“PAGA Amount”), of which 75%, or \$3,000.00, shall be paid to the Labor and Workforce Development Agency (“LWDA”), and 25%, or \$1,000.00, of which shall be paid to all current and former hourly non-exempt individuals who are or were employed by Defendant during the PAGA Period. There are 6 Aggrieved Employees who worked a total of 302 Workweeks during the PAGA Period. The highest Individual PAGA Payment to be paid is approximately \$321.19, and the average Individual PAGA Payment to be paid is approximately \$166.67. (*Salinas Decl.*, at ¶ 14; *Savoy Decl.*, at ¶ 31.)

VI. THE CLASS REPRESENTATIVE SERVICE AWARD IS REASONABLE

Plaintiffs in class action lawsuits are eligible for reasonable service payments as compensation “for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz v. BCI Coca-Cola Bottling Company of Los Angeles* (2010) 186 Cal.App.4th 399, 412.) The Settlement provides for a Class Representative Service Award not to exceed \$1,500.00 for Plaintiff. The requested service payment is reasonable according to controlling and persuasive case law. (*See Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 805-6.) The payment is intended to recognize the substantial time and effort that Plaintiff expended on behalf of the Class. (*Savoy Decl.* ¶¶ 32.)

Throughout this litigation, Plaintiff cooperated with counsel and took actions to protect the interests of the Class. (*Savoy Decl.* ¶ 33; *Declaration of Jose Luis Madrigal* (“*Madrigal Decl.*”), ¶¶ 5-8.) Plaintiff provided valuable information regarding potential witnesses, Defendant’s meal period and rest period practices, Defendant’s reimbursement practices, and Defendant’s failure to properly compensate for overtime hours. (*Id.*) Plaintiff kept informed of the developments in the Action, informed counsel of information relevant to the Action, participated in decisions concerning the Action, provided counsel with the names and contact information of potential witnesses, and was engaged and present during all mediation proceedings. (*Id.*) The information and documentation provided by Plaintiff was instrumental in establishing the wage and hour violations alleged in the Action, and the recovery provided for in the Settlement Agreement would have been impossible to obtain without Plaintiff’s active participation. (*Id.*)

1 Plaintiff faced many risks in bringing the lawsuits as class actions. (*Savoy Decl.* ¶ 34; *Garcia*
2 *Juarez Decl.*, ¶¶ 5-8.) Because of Plaintiff's efforts, 60 Class Members will now have the opportunity to
3 participate in a settlement and to recover payment for wage violations they may have never known about
4 on their own or been willing to pursue on their own. (*Id.*) If each Class Member attempted to pursue his
5 or her legal remedies individually, each person would have been required to expend a significant amount
6 of his or her own monetary resources and time. (*Id.*) In sum, the Action would not have been possible
7 without the aid of Plaintiff, who put his own time and effort into the litigation, sacrificed the value of his
8 own individual claims, and placed himself at risk for the sake of the other Class Members (*Id.*) The
9 requested Class Representative Service Award of \$7,500.00 to Plaintiff is therefore reasonable to
10 compensate Plaintiff for his active participation in the Action. (*Id.*)

11 **VII. CLASS COUNSEL IS ENTITLED TO AN AWARD OF REASONABLE ATTORNEY'S**
12 **FEES AND COSTS**

13 The Settlement provides for attorney's fees and costs to Class Counsel in an amount up to one-
14 third (33 & 1/3%) of the Maximum Settlement Amount, for a maximum fee award of \$30,000.00, plus
15 actual litigation expenses not to exceed \$10,000.00. (*Settlement*, section 51.) Plaintiff requests attorney's
16 fees pursuant to the "common fund theory" with a lodestar cross-check. The requested fees are far below
17 the range of fees generally sought and approved in common fund class action cases and the fees are also
18 reasonable based on Class Counsel's total lodestar. (*Savoy Decl.*, ¶¶ 35.)

19 **A. The Requested Attorney's Fees Are Reasonable Under the Common Fund Theory**

20 The request for attorney's fees as a percentage of the Maximum Settlement Amount is supported
21 by the "common fund theory," where "one who expends attorney's fees in winning a suit which creates a
22 fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the
23 litigation costs." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 35.) The percentage is properly based upon the
24 gross settlement, rather than on the amount of claims made. (*Williams v. MGM-Pathe Communications*
25 *Co.* (9th Cir. 1997) 129 F.3d 1026, 1027.) The lodestar may be cross-checked against the percentage-of-
26 recovery method. (See *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal. 5th 480, 506 (2016); *In re Consumer*
27 *Privacy Cases* (2009) 175 Cal.App.4th 545, 556-558.)

1 The purpose of the common fund/percentage approach is to “spread litigation costs proportionally
2 among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.” (*Vincent*
3 *v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *City and County of San Francisco v.*
4 *Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has
5 been applied “consistently in California when an action brought by one party creates a fund in which other
6 persons are entitled to share.” (*Id.* at 110.)

7 Several courts have expressed frustration with the alternative “lodestar” approach for deciding
8 fees, which usually involves wading through voluminous and often indecipherable time records. (*See, e.g.,*
9 *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F. Supp. 1373, 1375.) The recognized
10 advantages of the percentage of the fund method include “relative ease of calculation, alignment of
11 incentives between class counsel and the class, a better approximation of market conditions in a
12 contingency case, and the encouragement it provides counsel to seek an early settlement and avoid
13 unnecessarily prolonging the litigation.” (*Laffitte*, 1 Cal.5th at 503.) Since *Serrano*, California appellate
14 courts routinely apply the percentage method to award attorney’s fees in common fund cases. (*See, e.g.,*
15 *Lafitte*, 1 Cal. 5th at 506; *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 (“It is not an
16 abuse of discretion to choose [the percentage] method over [the lodestar method] as long as the method
17 chosen is applied consistently using percentage figures that accurately reflect the marketplace.”); *Chavez*
18 *v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 63 (“[F]ees based on a percentage of the benefits are ...
19 appropriate in large class actions when the benefit per class member is relatively low”); *Annie Computer*
20 *Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253, 1271 (“[A]ttorneys’ fees awarded under the common
21 fund doctrine are based on a ‘percentage-of-the-benefit’ analysis”); *Lealao v. Beneficial California, Inc.*
22 (2000) 82 Cal.App.4th 19, 27 (“Percentage fees have traditionally been allowed in ... common fund
23 cases”).)

24 The percentage of attorney’s fees set forth in the Settlement Agreement, i.e. 33 1/3% of the
25 Maximum Settlement Amount, is reasonable. Historically, courts have awarded percentage fees in the
26 range of 20% to 50%, depending on the circumstances of the case. (*Newberg on Class Actions*, 4th Ed.
27 2002, § 14: 6.) Furthermore, California and federal courts have long recognized that a percentage of
28 recovery for attorney’s fees is properly awarded on the basis of the total settlement fund. (*Boeing v. Van*

1 *Gemert* (1980) 444 U.S. 472, 480-481; see also *In re Consumer Privacy Cases*, 175 Cal.App.4th at 558
2 n.13 (“Empirical studies show that, regardless whether the percentage method or the lodestar method is
3 used, fee awards in class actions average around one-third of the recovery”) (emphasis added).)

4 Here, the Maximum Settlement Amount is \$90,000.00. The requested attorney’s fees are one-third
5 (1/3) of that total, or \$30,000.00, which is the standard attorney fee requested per the common fund
6 theory. The requested fee percentage is less than that charged by Class Counsel for other employment
7 cases, which is 40%. Moreover, Class Counsel invested significant time and resources into this case, with
8 payment deferred to the end of the case and entirely contingent on the outcome. (*Savoy Decl.*, generally.)
9 It has been a long-recognized principle that an attorney merits a significantly larger fee when the
10 compensation is contingent, rather than being fixed on a time or contractual basis. (See *Vizcaino v.*
11 *Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-51.) In the almost three (3) years that this case has
12 been pending, Class Counsel has advanced all expenses and has not received any compensation or
13 reimbursement for efforts in prosecuting the action on behalf of Class Members. The significant outlay of
14 monetary and personnel resources has been completely at risk and wholly dependent upon obtaining a
15 substantial recovery for the Class. (*Id.*) Class Counsel should not be penalized with a lower fee for settling
16 the case prior to filing a motion for class certification, because the percentage of the fund method
17 “encourages early settlement, which avoids protracted litigation.” (*Laffitte*, 1 Cal.5th at 490.) Thus, the
18 requested award of attorney’s fees is reasonable under the percentage of the fund method.

19 **B. The Requested Attorney’s Fees Are Reasonable Under the Lodestar Method**

20 Plaintiff’s fee application is reasonable based on Class Counsel’s lodestar. Under the lodestar
21 method, the court considers a compilation of the time spent and a reasonable hourly compensation of each
22 attorney to evaluate the reasonableness of the fee requested.

23 Here, Class Counsel’s total lodestar is approximately \$128,250.00, which is based upon 171 hours
24 of attorney time at customary hourly rates recently approved by the United States District Court, Central
25 District (\$750.00 per hour). (*Savoy Decl.* ¶¶ 36-39.) Thus, Plaintiffs’ request for \$30,000.00 in attorney’s
26 fees, which is approximately 23% percent of the actual lodestar, is reasonable under the lodestar
27 crosscheck method.

28 ///

1 **1. Class Counsel's Hours Are Reasonable**

2 In determining whether the number of hours expended on the litigation was reasonable, the court
3 must determine that “the time spent was reasonably necessary and that [] counsel made ‘a good faith effort
4 to exclude from the fee request hours that are excessive, redundant, or otherwise unnecessary.” (*Jordan v.*
5 *Multnomah County* (9th Cir. 1987) 815 F.2d 1258, 1263 n.8.) The court “should defer to the winning
6 lawyer’s professional judgment as to how much time he was required to spend on the case.” (*Moreno v.*
7 *City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112 (noting that “[l]awyers are not likely to spend
8 unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain,
9 as to both the result and the amount of the fee.”). “Testimony of an attorney as to the number of hours
10 worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence
11 of detailed time records” (citations omitted). *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559; see also
12 *Wershba*, 91 Cal.App.4th at 255 (“California permits fee awards in the absence of detailed time sheets”);
13 *Laffitte*, 1 Cal.5th at 505 (trial court properly exercised its discretion to perform the lodestar cross-check
14 “using counsel declarations summarizing overall time spent rather than demanding and scrutinizing daily
15 time sheets in which the work performed was broken down by individual task”).)

16 Here, Class Counsel has spent **171.0** hours litigating this case to bring it to resolution, not including the
17 estimated dozens of hours preparing for and attending the final approval hearing and monitoring the
18 administration of the settlement and distribution of funds to Participating Class Members. The efforts
19 expended by Class Counsel to achieve this excellent result include, but are not limited to, the following:
20 interviews with Plaintiff and class members/witnesses and review of documents provided by Plaintiff and
21 class members/witnesses; preparation of class action complaint; filing of the class action complaint;
22 meeting and conferring with Defendants’ counsel to obtain relevant documents and information; preparing
23 and filing an amended complaint to comport with the agreed upon terms of the settlement; communicating
24 with Plaintiff and witnesses regularly regarding the status of the case; engaging in informal discovery
25 exchanges with Defendants; meeting and conferring with Defendants’ counsel about Defendants’
26 production of sample class data; review and analysis of a substantial sampling of time records, payroll
27 records, and other employment records; working with an expert statistician to analyze the data sample;
28 legal research regarding Defendants’ wage and hour practices; preparing for and attending a full-day

1 mediation; engaging in month's long settlement negotiations; appearing at multiple status conferences;
2 drafting, negotiation, and revision of the Settlement, the Notice Packet, and Motion for Preliminary
3 Approval; communicating with the Settlement Administrator and monitoring the notice and objection
4 process; negotiating the revised notice plan and obtaining Court approval of the process; and drafting the
5 Motion for Final Approval and supporting papers. (*Savoy Decl.*, generally.) Class Counsel also bears the
6 risk of taking whatever actions are necessary if Defendants fail to pay. (*Savoy Decl.*, generally.) Thus, the
7 Court should find that Class Counsel's hours were necessary and reasonable to achieve the excellent result
8 on behalf of the Class.

9 **2. Class Counsel's Hourly Rates Are Reasonable**

10 The reasonable hourly rate is that prevailing in the community for similar work. (*PLCM Group,*
11 *Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) "[I]n assessing a reasonable hourly rate, the trial court is
12 allowed to consider the attorney's skill as reflected in the quality of work, as well as the attorney's
13 reputation and status." (*MBNA American Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th 1, 3.) The trial
14 court may also "find hourly rates reasonable based on evidence of other courts approving similar rates."
15 (*Parkinson v. Hyundai Motor America* (C.D. Cal. 2010) 796 F.Supp.2d 1160, 1172.)

16 The current prevailing billing rates in the Southern California area range from \$275 to \$900 per
17 hour. Class Counsel are experienced litigators specializing in employment law, with a substantial wage
18 and hour class action practice. (*Savoy Decl.*, generally.) Numerous courts, including the United States
19 District Court, have approved Class Counsel's hourly rates in the range of \$650 to \$750 per hour. Given
20 the skill and experience of Class Counsel in this case, and the excellent result achieved for the Class, the
21 requested rates are reasonable, especially when dividing the total amount requested by the total hours
22 worked by Plaintiff's counsel ($\$30,000/171 = \175.44 per hour worked.) (*Savoy Decl.*, 39.)

23 **C. Class Counsel's Costs Are Reasonable**

24 The Settlement Agreement provides for reimbursement of Class Counsel's costs not to exceed
25 \$10,000.00. (*Settlement*, section 51b.) The costs of Class Counsel total \$11,564.82, yet Plaintiff's Counsel
26 only seeks to recover the capped amount under the Settlement Agreement of \$10,000.00. (*Savoy Decl.* ¶¶
27 45-46.) Class Counsel were required to expend the funds prosecuting this case to a successful resolution
28 on, among other things, court filing fees, document service, mediation fees, the services of statistical

experts, postage, and copying. Because these costs are reasonable and actually exceed the “not to exceed” \$10,000.00 bargained for amount, which no Class Member has objected to, Class Counsel respectfully request that the Court approve an award of costs in the amount of \$10,000.00. (*Savoy Decl.*, ¶ 46.)

D. Neither Defendants Nor the Class Members Oppose the Request for Fees and Costs

Significantly, none of the Class Members objected to the requested award of fees and costs. (*Salinas Decl.*, ¶ 9.) Additionally, Defendants do not oppose the requested award of fees and costs. The Court should grant final approval of the attorney’s fees and costs agreed upon by the parties.

VIII. THE REQUESTED SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE

The Settlement Administrator’s costs in the amount of \$5,750.00 are reasonable, given the tasks performed and remaining to be performed. (*Salinas Decl.*, generally.) Plaintiff respectfully requests that the Court approve Settlement Administration Costs in the amount of \$5,750.00.

IX. NOTICE TO LABOR AND WORKFORCE DEVELOPMENT AGENCY

On or about July 31, 2024, my office caused a copy of Plaintiff’s Motion for Final Approval of Joint Stipulation of Class Action and PAGA Settlement and the Joint Stipulation of Class Action and PAGA Settlement to be submitted to the California Department of Industrial Relations, Labor and Workforce Development Agency via the Department’s online portal and received a receipt of submission. A true and accurate copy of the Receipt of Submission is attached to the Declaration of Grant Joseph Savoy as **Exhibit “A.”**

X. CONCLUSION

For the foregoing reasons, the proposed Settlement is fair, adequate, and reasonable, and represents an excellent opportunity for Class Members to recover for allegedly illegal wage and hour practices. Plaintiff respectfully requests that the Court grant final approval of the Settlement and enter the proposed order and judgment.

SOLOUKI | SAVOY, LLP

Dated: July 31, 2024

/s/ Grant Joseph Savoy
SHOHAM J. SOLOUKI, ESQ.
GRANT JOSEPH SAVOY, ESQ.
*Attorneys for Plaintiff Jose Luis Madrigal
and Those Similarly Situated*