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and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

RENE GARCIA CRUZ and ROBERTO M.
PEREZ, individually and on behalf of all
others similarly situated,
Plaintiffs,
v.

ALLIED POTATO, INC., a California
Corporation; ARRIOLA FARM LABOR,
INC., a California Corporation; and DOES 1
to 50, inclusive,
Defendant.

Case No.: BCV-22-100238
(Consolidated with Case No. BCV-22-100990)

CLASS ACTION

Assigned for All Purposes To:
Hon. Thomas S. Clark
Dept.: 17

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
STIPULATION OF SETTLEMENT AND
RELEASE OF CLASS ACTION**

*[Filed concurrently with Notice of Motion and
Motion; Declarations of David Yeremian, Alvin
B. Lindsay, Rene Garcia and Roberto Perez; and
[Proposed] Order]*

Date: November 20, 2023
Time: 8:30 a.m.
Dept.: 17

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs RENE GARCIA CRUZ AND ROBERTO M. PEREZ (“Plaintiffs”), on behalf of
3 themselves and all other similarly situated employees of Defendants ALLIED POTATO, INC. and
4 ARRIOLA FARM LABOR, INC (“Defendants”) (collectively, “the parties”), without opposition
5 from Defendants, respectfully request preliminary approval of the parties’ Stipulation of Settlement
6 and Release of Class Action (“Settlement Agreement”) pursuant to California Code of Civil
7 Procedure § 382 and Rule 3.769 of the California Rule of Court. A copy of the Settlement
8 Agreement is provided at Exhibit A to the concurrently filed Declaration of David Yeremian in
9 support of preliminary approval (“Yeremian Decl.”), with the Class Notice also at Exhibit 1 thereto.

10 **1. INTRODUCTION**

11 This is a Class and PAGA action against Defendants. Allied Potato grows, harvests,
12 packages, and ships potatoes and other produce and operates and employs Class members to work
13 in field locations and other facilities in Kern County and throughout California. Defendant Arriola
14 is a California corporation and provides staffing services to employers throughout California and
15 Kern County. Plaintiffs and the Class members were employed by Defendant Allied either directly
16 or through staffing agencies, such as named Defendant Arriola Farm Labor Inc. (*See* Declaration of
17 Alvin B. Lindsay in support of Motion for Preliminary Approval (“Lindsay Decl.”), ¶ 4). On January
18 27, 2022, Plaintiffs filed this putative Class Action Complaint against Defendant, alleging the
19 following eleven causes of action against Defendant: (1) Failure to Pay Minimum Wages for all
20 hours worked; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period
21 Liability Under Labor Code § 226.7; (4) Rest-Break Liability Under Labor Code § 226.7; (5)
22 Violation of Labor Code § 226(a); (6) Violation of Labor Code § 221; (7) Violation of Labor Code
23 § 204; (8) Violation of Labor Code § 203; (9) Failure to Reimburse Necessary Business Expenses
24 under Labor Code § 2802, and (10) Violation of Business & Professions Code § 17200 *et seq.*
25 (Lindsay Decl., ¶ 5).

26 On August 19, 2022, Plaintiffs filed the First Amended Complaint adding a claim under the
27 Private Attorneys General Act (“PAGA”), Labor Code § 2698, *et seq.* (Lindsay Decl., ¶ 6). Class
28 counsel provides further detail regarding the claims, procedure and background that have led to the

1 present settlement. (Lindsay Decl., ¶ 7-16). Without opposition from Defendants, Plaintiffs request
2 that the Court grant preliminary approval of the parties' Settlement Agreement, at **Exhibit A** to the
3 concurrently filed Yeremian Declaration, and the parties' proposed Notice of Proposed Class Action
4 Settlement ("Class Notice") provided at **Exhibit 1** to the Settlement. Defendant's records
5 established at mediation there were approximately 367 total Class Members satisfying the following
6 Class definition: all current and former nonexempt employees who were employed by Allied Potato,
7 Inc. as non-exempt, hourly agricultural workers and in similar and related positions in California
8 during the Class Period; and all current and former non-exempt employees who were employed by
9 Arriola Farm Labor, Inc. and assigned to work for Allied Potato, Inc. as non-exempt, hourly
10 agricultural workers and in similar and related positions in California during the Class Period; which
11 is identified as the period from October 1, 2020 through the date Plaintiffs file a motion for
12 preliminary approval of this Settlement ("Class Period"). (Lindsay Decl., ¶ 22; Yeremian Decl.,
13 Exhibit A, Settlement, ¶¶ I.4; I.8; I.9).

14 The parties agreed to schedule a mediation for January 10, 2023, and after engaging in
15 substantial investigation and extensive negotiations with the assistance of a respected third-party
16 neutral, Hon. Howard Broadman (Ret.), the parties reached an agreement on the general terms for
17 settling Plaintiffs class-wide claims against Defendant. The parties entered into a Memorandum of
18 Understanding detailing the general terms of their proposed Settlement. (Lindsay Decl., ¶¶ 9, 24).
19 The terms of the Settlement were then memorialized in the Settlement Agreement before the Court
20 for preliminary approval. (*Id.*).

21 The agreed upon non-reversionary "Gross Settlement Amount" is **\$275,000.00**, inclusive of
22 all fees and costs. (Lindsay Decl., ¶ 26). All 367 Class Members will automatically receive a
23 settlement share unless they opt out and will divide, on a *pro-rata* basis, a Net Settlement Amount
24 of approximately **\$118,333.33**. if all allocations are approved. The estimated average gross
25 individual settlement payment to the Class Members, using a straight average, is **\$322.43** (Lindsay
26 Decl., ¶¶ 22, 31, 58). The Total Settlement Amount of \$275,000.00 represents a recovery for the
27 Class Members of approximately **22.67%** of the total maximum liability exposure Plaintiffs
28 estimated Defendants could face on the class claims. (*Id.* at ¶ 59).

1 The proposed Settlement is fair, reasonable, and adequate, and in the best interests of the
2 Class. Plaintiffs, with the consent of Defendant, respectfully requests that this Court issue an Order
3 in the form provided herewith: (1) preliminarily approving the proposed class-wide settlement of
4 this action; (2) approving the form and method for providing class-wide notice; (3) directing that
5 notice of the proposed settlement be given to the class by mailing the Class Notice Packet to the
6 Class members; (4) appointing Plaintiffs Rene Garcia and Roberto M. Perez as Class Representative
7 for settlement purposes only; (5) appointing David Yeremian of David Yeremian and Associates,
8 Inc., Alvin B. Lindsay of D.Law, Inc., and Scott Ernest Wheeler of the Law Offices of Scott Wheeler
9 as Class Counsel for settlement purposes only; and (6) scheduling a hearing date for Final Approval
10 of the Settlement and Fees and Costs.

11 **2. FACTUAL BACKGROUND, DISCOVERY, AND MEDIATION**

12 **A. Plaintiff's Claims and Defendant's Denials**

13 Plaintiffs' job duties included watering areas and cleaning and spraying chemicals onto
14 carrots and potatoes to facilitate further machine processing in accordance with Defendants'
15 scheduling; Plaintiff Garcia would also travel from and to and between three or four different fields
16 during his work shift at an assigned ranch. Plaintiffs allege Defendant required work hours off the
17 clock for which employees were not compensated, including by being required to work off the clock
18 before they clocked in for a work shift or to complete work-related requirements after they clocked
19 out for the end of their shifts. Plaintiffs were scheduled and expected to work at least six shifts per
20 week. Despite all these scheduled hours, Plaintiffs asserted that Defendants failed to record or to
21 accurately record all time punch entries for shifts and meal periods. Plaintiffs also asserted that
22 Defendant unlawfully rounded time away from hours worked by the Class members, and failed to
23 pay them for all overtime hours worked. (Lindsay Decl., ¶ 12).

24 Plaintiffs have also asserted they and the Class members were required to work continuously
25 through their entire shift and were not afforded the opportunity to take meal periods or rest breaks,
26 given the production requirements and work demands Defendants' managers and supervisors placed
27 upon them. Plaintiffs and the Class members allege they were told to take breaks when they could,
28 while also being pressured by managers to work through those breaks to ensure that all work tasks

1 were completed. Defendants also imposed strict production and task completion requirements on
2 Plaintiffs and the Class members, who were expected to prioritize complying with these demands
3 by working through breaks or skipping them all together. Plaintiffs further alleged related claims
4 deriving from failure to pay wages and provide meal and rest breaks, including for unlawful
5 deductions, failure to pay all wages at termination, and failure to provide accurate itemized wage
6 statements, pay wages twice monthly, and maintain accurate records. Plaintiffs also asserted that
7 Defendants failed to reimburse employees for necessary business expenses. (Lindsay Decl., ¶ 13).

8 Defendants contended that a trial would not be manageable given the individualized
9 questions regarding alleged off-the-clock work, overtime and meal and rest periods, and denied
10 liability and the merits as to all of Plaintiffs' class claims. Defendants specifically and generally
11 denied any and all liability or wrongdoing of any sort with regard to the claims alleged. Defendants
12 also made no concessions or admissions of liability of any sort, and contended that for any purpose
13 other than Settlement, the Action is not appropriate for class treatment. Defendants have also taken
14 into account the uncertainty and risks inherent in any litigation and determined it was desirable and
15 beneficial to settle. (Lindsay Decl., ¶¶ 14-15; Yeremian Decl., Exhibit A, Settlement, ¶¶ II.4).

16 After extensive investigation and discovery, including exchange of comprehensive formal
17 and informal discovery and analysis of relevant documents and data, Class Counsel believed that
18 this case was appropriate for resolution through mediation. Given the high level of risk present for
19 both sides, and the substantial uncertainty and expense of protracted litigation, the parties elected to
20 explore settlement, and believe their proposed Settlement Agreement is fair, reasonable, and
21 adequate in light of all known facts and circumstances, and is in the best interests of the Class.
22 (Lindsay Decl., ¶¶ 16, 17, 25; Yeremian Decl., Exhibit A, Settlement, ¶¶ II.2-4).

23 **B. Investigation and Discovery**

24 Before filing, Class Counsel investigated and researched the circumstances and facts
25 underlying the pertinent issues and the law applicable thereto. (Lindsay Decl., ¶¶ 17-25, 36-60). This
26 required thorough discussions and interviews between Class Counsel and Plaintiffs, in addition to the
27 above described research into the various legal issues involved in the case. After filing the lawsuit,
28 Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action,

1 including: (1) conducting formal and informal discovery and meeting and conferring with defense
2 counsel about same; (2) reviewing and analyzing records and data and numbers, as well as
3 employment related policies; (3) reviewing Plaintiff's personnel file and other documentation; (4)
4 interviewing Plaintiffs and regarding potential Class Members; (5) researching the applicable law and
5 potential defenses; (6) constructing damage models based on interpretations of California law and the
6 facts and numbers provided by Defendants; and (7) reviewing information provided by Defendants
7 in response to formal and informal discovery in advance of the mediation. (Lindsay Decl., ¶¶ 17-25).

8 Upon agreeing to schedule mediation, and leading up to their agreement, the parties conducted
9 informal discovery regarding the claims and defenses and the items Plaintiff believed were required
10 to file a motion for class certification and complete a constructive and meaningful mediation.
11 (Lindsay Decl., ¶¶ 23-25, Yeremian Decl., Exhibit A, Settlement, ¶ II.3-4). Through substantial
12 informal discovery, Defendant provided Plaintiff's counsel with necessary information and numbers
13 for the Class members during the Class Period, and the parties had numerous discussions and
14 negotiations through counsel. (Lindsay Decl., ¶ 23). After conducting the initial investigation, Class
15 Counsel determined Plaintiff's claims were suited for class action adjudication based on what they
16 believed was a common course of conduct affecting similarly situated employees. (Lindsay Decl., ¶¶
17 17, 23-25, 38-60, 67-72; Yeremian Decl., Exhibit A, Settlement, ¶¶ II.2-4; XII.8).

18 **C. Mediation and Settlement Efforts**

19 The parties participated in a private mediation session with a respected class action mediator
20 Hon. Howard Broadman (Ret). on January 10, 2023, and with his assistance entered into a
21 Memorandum of Understanding detailing the general terms of their proposed Settlement. (Lindsay
22 Decl., ¶¶ 9, 24). The mediation took place only after the parties exchanged extensive informal
23 information, documents, and data. During the mediation, the parties discussed all aspects of the case,
24 including the risks of litigation and the risks to both parties as well as the law and how it applied to
25 the facts of this case. (Lindsay Decl., ¶¶ 17-24; Yeremian Decl., Exhibit A, Settlement, ¶ II.3-4).
26 Upon completion of the mediation the parties agreed to the general details of their class-wide
27 settlement in a Memorandum of Understanding setting forth material Settlement terms, which were
28 later memorialized in the Agreement now before the Court for preliminary approval. (*Id.*).

1 From Class Counsel’s review of the facts, strengths, and weaknesses of the case, the risks and
2 delays posed by further litigation, and Class Counsel’s own prior litigation experience, Counsel
3 believes that the recovery for each Class Member is fair and reasonable taking into consideration the
4 amounts received in other wage and hour class actions, the risks inherent in litigation of this genre,
5 and the reasonable tailoring of each Class Member’s claim to the settlement award he or she will
6 receive. (Lindsay Decl., ¶ 25). Based on the settlement negotiations, which were extensive and
7 conducted in good faith and at arm’s length between attorneys with substantial experience litigating
8 wage and hour cases and given the contested motion practice and appeal and informal discovery
9 completed, the Settlement was the product of a non-collusive settlement process and compromises in
10 the interest of reaching a full and complete settlement. (Lindsay Decl., ¶¶ 23-25, 35, 36-60, 62-64,
11 67, 77-79; Yeremian Decl., Exhibit A, Settlement, ¶¶ II.3-4; XII.8).

12 **3. THE PROPOSED SETTLEMENT, TERMS, AND NOTICE**

13 Defendant have agreed to settlement on a non-reversionary basis for the Settlement Amount
14 of \$275,000.00. (Lindsay Decl., ¶ 26; Yeremian Decl., Exhibit A, Settlement, ¶¶ I.20). The
15 Settlement Agreement defines “Class” or “Class Members” as all current and former nonexempt
16 employees who were employed by Allied Potato, Inc. as non-exempt, hourly agricultural workers
17 and in similar and related positions in California during the Class Period; and all current and former
18 non-exempt employees who were employed by Arriola Farm Labor, Inc. and assigned to work for
19 Allied Potato, Inc. as non-exempt, hourly agricultural workers and in similar and related positions
20 in California during the Class Period. The “Class Period” is defined as the period from October 1,
21 2020 (the “Class Period”). “Participating Class Member” is defined as a Class Members who do not
22 timely Opt-Out of the Class Settlement. (Lindsay Decl., ¶¶ 4, 28; Yeremian Decl., Exhibit A,
23 Settlement, ¶¶ I.4; I.8-9).

24 An “Individual Settlement Amount” means the share of the Net Settlement Amount based
25 on the *pro rata* number of weeks worked by the Settlement Class Members during the Class Period
26 as a proportion of all weeks worked by all Settlement Class Members. (Lindsay Decl., ¶¶ 29, 31;
27 Yeremian Decl., Exhibit A, Settlement, ¶¶ I.8; IV.3). The Settlement Share for each Participating
28 Class Member will be calculated by (a) dividing the Net Settlement Amount by the total number of

work weeks for all Participating Class Members that occurred during the Class Period and (b) multiplying the result by each individual Participating Class Member's work weeks that occurred during the Class Period. (*Id.* at Settlement, ¶ VII.2). 25% of the \$20,000.00 allocated to the PAGA Payment (i.e., \$5,000.00) will remain in the Net Settlement Fund to be distributed on a pro rata basis in accordance with the terms of the Settlement Agreement to the Participating Class Members in connection with their Settlement Share payment. (*Id.* at Settlement, ¶¶ IV.4; VII.3). All Individual Settlement Share Payments to Participating Class Members will be allocated as follows for tax purposes: 20% of each Individual Settlement Payment reflects compromise of a claim for alleged unpaid wages; 80% of each Individual Settlement Payment reflects compromise of a claim for alleged interest and penalties. (*Id.* at Settlement, ¶¶ IV.5).

The "Net Settlement Amount" is the portion of the Maximum Settlement Amount available for distribution to the Participating Class Members, which is the Gross Settlement Amount less PAGA Payment portion to the LWDA (\$15,000.00), Court-approved attorneys' fees (up to 33.33% of the Gross Settlement, i.e. \$91,666.67) and costs (up to \$20,000.00), Settlement Administration Costs (\$10,000.00), and the Court-approved Class Representative Service Payment (\$10,000.00 per Plaintiff). (Lindsay Decl., ¶¶ 27, 31, 58; Yeremian Decl., Exhibit A, Settlement, ¶¶ .2; I.24; I.26; IV.2; IV.4; IV.7; V.1-2; VII.1).

If the Court approves all requested allocations and awards from the Gross Settlement Amount of **\$275,000.00** as addressed above, the Net Settlement Amount is estimated to be **\$118,333.33**. For the approximately **367** estimated Class Members (if no exclusions), the average gross individual settlement payment share, using a straight average, is **\$322.43**. Any amounts not approved by the Court as a Class Representative Service Payment, or Class Counsel Fees and Costs, or Settlement Administration costs or for the PAGA claim will be added back to the Net Settlement Amount to be distributed to the Participating Class Members. (Lindsay Decl., ¶ 31).

The Effective Date of the Agreement is defined as the date when the Court approves the Settlement Agreement and enters an Order granting final approval and when Final Judgment is entered and notice is given of it, and the expiration of the period for filing any appeal. (Lindsay Decl., ¶ 32; Yeremian Decl., Exhibit A, Settlement, ¶¶ I.16). A Participating Class Member must

1 cash his or her Settlement Share check within 120 days after it is mailed to him or her, which will
2 be 30 days after the Effective Date. If a check is returned to the Settlement Administrator, the
3 Settlement Administrator will make all reasonable efforts to re-mail it to the Participating Class
4 Member at his or her correct address, as further addressed in the Settlement Agreement. (*Id.* at
5 Settlement, ¶¶ VI.2; VII.7). If the check remains uncashed by the expiration of 120 deadline for
6 doing so, the funds from such uncashed checks will be distributed pursuant to Code of Civil
7 Procedure section 384 (a *cy pres* to be selected by Defendants and approved by the Court, such as
8 the Valley’s Children’s Hospital, Community Action Partnership of Kern), or another mutually
9 agreed-upon beneficiary, a non-profit 501(c)(3) organization, provided that organization is approved
10 by the Court at preliminary and final approval as a *cy pres* beneficiary. (Lindsay Decl., ¶ 32;
11 Yeremian Decl., Exhibit A, Settlement, ¶¶ VII.8).

12 Upon final approval, Participating Class Members will release Allied Potato, Arriola Farm
13 Labor and the Released Parties from the Released Class Claims for the Class Period. (Lindsay Decl.,
14 ¶ 36; Yeremian Decl., Exhibit A, Settlement, ¶¶ X.1-2). The “Released Class Claims” are defined
15 as “all claims, debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs,
16 expenses, attorney’s fees, damages, actions or causes of action of whatever kind or nature, whether
17 known or unknown, contingent or accrued, under any legal theory under state law for any alleged
18 failure to pay all business expense reimbursements, wages due (including minimum wage and
19 overtime wages), failure to pay for all hours worked (including off-the clock and rounded time),
20 failure to provide meal and authorize and permit rest periods, short/late meal and rest periods, failure
21 to relieve of all duties during meal and rest periods, failure to provide recovery periods, failure to
22 timely pay wages and final wages and waiting time penalties, failure to furnish accurate wage
23 statements including claims derivative and/or related to these claims, unlawfully collecting or
24 deducting employees' earned wages, failure to indemnify employees for all losses or reimburse all
25 necessary business expenses that were incurred, failure to provide all required notices to employees,
26 failure to provide one day's rest out of seven consecutive work days; failure to provide all required
27 paid sick days; failure to provide COVID-19 supplemental sick leave and pay, liquidated damages,
28 and conversion of wages”. (Lindsay Decl., ¶ 33; Yeremian Decl., Exhibit A, Settlement, ¶¶ I.32).

1 The Settlement Agreement provides details further defining the Released Class Claims. The
2 “Released Parties” are defined as Defendants Allied Potato, Inc. and Arriola Farm Labor, Inc. and
3 Kirschenmann Farm, Inc., and others as defined in the Settlement (Lindsay Decl., ¶ 34; Yeremian
4 Decl., Exhibit A, Settlement, ¶ I.33).

5 Under the Settlement, the Settlement Administrator (ILYM Group) will mail the Notice
6 Packets, including the Class Notice in English and Spanish translation versions, to the Class
7 members within 28 days of preliminary approval. (Lindsay Decl., ¶ 35, 65; Yeremian Decl., Exhibit
8 A, Settlement, ¶¶ I.7; VI.2). The Settlement Agreement budgets up to \$10,000.00 for Administration
9 costs. (Lindsay Decl., ¶ 27; Yeremian Decl., Exhibit A, Settlement, ¶ V.1; VI.1). The Class Notice
10 includes a summary of the case and settlement terms and provides Class Members with instructions
11 on how to exclude themselves, dispute the amount of pay periods, and object to the settlement. Class
12 Members will have 45 days from the mailing of the Class Notice to opt-out of or object to the
13 Settlement. (Lindsay Decl., ¶ 35; Yeremian Decl., Exhibit A, Settlement, ¶¶ VI.3; *see also* Class
14 Notice at Settlement Agreement, Exhibit A).

15 **4. THE THREE-STEP APPROVAL PROCESS**

16 California Rule of Court 3.769 requires court approval of the settlement of class action
17 lawsuits. Preliminary approval is merely the first of three steps that comprise the approval procedure
18 for settlements of class actions. *See* Manual for Complex Litigation, Second §30.44 (1993); *Dunk*
19 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The second approval step is dissemination of
20 notice of the settlement to all Class Members. *Id.* The third step is a final settlement approval
21 hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of
22 the settlement may be presented and Class Members may be heard. *Id.*

23 The determinations of whether a settlement should be preliminarily approved requires,
24 “basic information about the nature and magnitude of the claims in question and the basis for
25 concluding that the consideration being paid for the release of those claims represents a reasonable
26 compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 133 (2008). However, the
27 record need not contain an explicit statement of the maximum theoretical amount that the class could
28 recover. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409

(2010) (“*Kullar* does not,... require any such explicit statement of value; it requires a record which allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.”). Class Counsel with the assistance of class data and numbers and production performed a potential liability exposure analysis in advance of mediation, which the parties addressed in detail with the mediator. (Lindsay Decl., ¶¶ 9, 17-24; Yeremian Decl., Exhibit A, Settlement, ¶ II.2-4; XII.8). “If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the Class Members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.” Manual for Complex Litigation, Second § 30.44, at 229.

In deciding whether to approve a proposed class action settlement, the Court must find that a proposed settlement is “fair, adequate, and reasonable” and falls within the “range of approval.” *Dunk*, 48 Cal.App.4th at 1801-02. The trial court considers all relevant factors, such as “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the Class Members to the proposed settlement.” *Id.* The instant settlement satisfies all of these requirements.

5. THE PROPOSED SETTLEMENT MEETS THE STANDARDS FOR APPROVAL

The Court’s decision to preliminarily approve a settlement is granted great deference, as an exercise within its broad discretion. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-235 (2001). Applying the above factors, the proposed settlement provides a substantial benefit to the Class. It is fair, reasonable, and adequate, and should be preliminarily approved.

A. The Settlement Is the Result of Serious, Informed, Non-Collusive Negotiations

The proposed settlement was reached as a result of arm’s length negotiations after the completion of substantial informal discovery and the exchange of necessary class data. (Lindsay Decl., ¶¶ 17-25, 35, 68-78; Yeremian Decl., Exhibit A, Settlement, ¶¶ I.7; II.2-4; VI.2-3; XII.8).

1 The negotiations have been, at all times, adversarial and non-collusive in nature. *See*, 4 Newberg on
2 Class Actions § 13:45 (5th ed.) (due to the preference of settlement over litigation, “a court will
3 presume that a proposed class action settlement is fair when certain factors are present, particularly
4 evidence that the settlement is the product of arms-length negotiation, untainted by collusion.”).
5 While Plaintiffs believe in the merits of their case, Plaintiffs and counsel also recognized the
6 inherent risks of litigation and understood the benefit of the Settlement Class receiving funds
7 immediately, as opposed to risking an unfavorable decision on class certification, or then at trial and
8 appeal, that would take several more years to litigate. (Lindsay Decl., ¶¶ 15-16, 19, 25, 35, 58, 61-
9 64; Yeremian Decl., Exhibit A, Settlement, ¶¶ II.2-4). Assistance from a well-respected mediator
10 ensured negotiations were non-collusive and well-informed. (Lindsay Decl., ¶¶ 9, 24; Yeremian
11 Decl., Exhibit A, Settlement Agreement, ¶ II.2-3).

12 **B. The Parties Engaged In Extensive Discovery and Investigation**

13 As discussed above, the parties engaged in substantial informal discovery before the
14 Settlement was reached to allow them to fully evaluate the class claims and Defendant’s defenses.
15 (Lindsay Decl., ¶¶ 9; 16-25, 35; Yeremian Decl., Exhibit A, Settlement, ¶¶ II.2-4). This litigation
16 has reached the stage where the parties have a clear view of their strengths and weaknesses.

17 **C. Class Counsel Are Experienced Class Action and Employment Attorneys**

18 Experienced counsel, operating at arm’s length, have weighed the strengths of the case and
19 examined all the issues and risks of litigation and endorse the proposed settlement. Class Counsel
20 are experienced in class actions, have represented their clients zealously, and have no conflicts of
21 interest. (Yeremian Decl., ¶¶ 3-9; Lindsay Decl., ¶¶ 80-89; Declaration of Scott Wheeler (“Wheeler
22 Decl., ¶¶ 12-19). Class counsel submits the Settlement is fair, adequate and reasonable in view of
23 the risks and other considerations addressed, and is well-suited for final approval upon completion
24 of the administration process. (Lindsay Decl., ¶¶ 16, 23, 25, 35, 67-68, 88-89; Yeremian Decl.,
25 Exhibit A, Settlement, ¶¶ II.2-4; XII.8).

26 **D. The Presence of a Governmental Participant**

27 Class Counsel will be submitting the Settlement Agreement to the LWDA concurrently with
28 the filing of this motion pursuant to Labor Code § 2699(1)(2). (Lindsay Decl., ¶ 11).

1 **E. The Strength of Plaintiff's Case and the Risks and Cost of Further Litigation.**

2 As with all litigation, there was risk that Plaintiffs would not prevail on the merits of their
3 class claims. (Lindsay Decl., ¶¶ 12-15, 19, 23, 38-57, 61-64; Yeremian Decl., Exhibit A,
4 Settlement, ¶¶ II.2-4). Class counsel has addressed the strengths of each of the main class claims,
5 Defendants' arguments against liability, and the estimated potential liability exposure Defendants
6 faced on each. (Lindsay Decl., ¶¶ 36-60, 67).

7 Defendants vigorously contested liability, the amount of claimed damages, and the
8 propriety of class certification. (Lindsay Decl., ¶¶ 14-17; Yeremian Decl., Exhibit A, Settlement,
9 ¶¶ II.3-4). While Plaintiffs believe and continues to believe this is a strong case for certification,
10 there is risk and significant expense associated with class certification proceedings. As set forth
11 above, Defendants disputed liability. Defendants further contended that a trial of any purported
12 class or representative claims would be unmanageable given the individualized questions regarding
13 alleged off-the-clock work, overtime and meal and rest periods. Defendants and the Released
14 parties denied any and all liability or wrongdoing of any sort with regard to the claims alleged, but
15 have concluded that further conduct of the Action would be protracted, distracting and expensive.
16 Defendants have also taken into account the uncertainty and risks inherent in any litigation and
17 determined it was desirable and beneficial to settle. Lindsay Decl., ¶¶ 15-16, 19, 35, 58, 61-62, 64,
18 Yeremian Decl., Exhibit A, Settlement, ¶¶ II.3-4).

19 Finally, in class actions, decertification is always a possibility, and there is always a risk
20 that a trial of this magnitude can become unmanageable. Cases like *Duran v. U.S. Bank Nat. Assn.*,
21 59 Cal. 4th 1, 34 (2014) address the complexity of using statistical samples in class actions, and
22 decertification is a real risk that Class Counsel must take into account. (Lindsay Decl., ¶ 63). A
23 class trial would have also required expert witnesses, the accrual of extensive litigation costs, and
24 commitment of extensive further time and financial resources. Finally, given the complexity and
25 unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy
26 and costly appeal. An appeal would result in further delay for the Class Members who have already
27 waited years for resolution in this matter. (*Id.* at ¶ 64). Risk and legal uncertainty must be dealt with
28 in any litigation, and this Settlement was the product of compromise accounting for this.

1 **F. The Amount Offered in Settlement and Method of Allocation are Fair**

2 If the Court approves all requested allocations and awards from the Gross Settlement
3 Amount of \$275,000.00 as addressed above, the Net Settlement Amount is estimated to be
4 **\$118,333.33**. For the approximately **367** estimated Class Members (if no exclusions), the average
5 gross individual settlement payment share, using a straight average, is **\$322.43**. By summarizing
6 the potential liability exposure numbers estimated for Plaintiffs main claims as addressed above
7 and in the Settlement, Class Counsel estimated **\$1,213,040.00** in potential liability exposure to
8 Defendants for Plaintiffs' main Class claims for damages and penalties. The Gross Settlement
9 Amount of \$275,000.00 therefore represents a recovery for the Class Members of approximately
10 **22.67%** of the total maximum liability exposure Plaintiffs estimated Defendants could face on these
11 class-wide claims. (Lindsay Decl., ¶¶ 58-59). Plaintiff and Class Counsel submit this is an excellent
12 result in the face of uncertainty and the prospects of protracted and contested litigation through
13 class certification, summary judgment, and trial. (Lindsay Decl., ¶ 60). Plaintiff and Class counsel
14 submit the Settlement is fair, reasonable, and certainly advantageous to the Class. (Lindsay Decl.,
15 ¶¶ 16, 23, 25, 35, 67-68, 88-89; Yeremian Decl., Exhibit A, Settlement, ¶¶ II.2-4; XII.8; Lindsay
16 Decl., ¶ 12).

17 Each Settlement Class Member will be compensated using a formula based on the total
18 number of workweeks during the Class Period. (Lindsay Decl., ¶ 29, Yeremian Decl., Exhibit A,
19 Settlement, ¶¶ VII.2). Basing the size of the award on Settlement Class Members' work weeks
20 during the Class Period ensures that those with more valuable potential claims receive more money.
21 All Settlement Class Members will enjoy benefits under the same formula, and none are singled
22 out for special treatment, save for Plaintiffs' requested representative enhancement payments.
23 (Yeremian Decl., ¶¶ 15-20; *see also* concurrently filed Declaration of Rene Garcia ("Garcia Decl."),
24 ¶¶ 3-16 and Declaration of Roberto Perez ("Perez Decl."), ¶¶ 3-16).

25 **G. A Balance of Risk Factors and Kullar Analysis Support Approval**

26 In deciding whether to approve the settlement, the Court must balance these risk factors
27 against an "understanding of the amount in controversy and the realistic range of outcomes of the
28 litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130, 133; *Munoz v. BCI*

1 *Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-09. The court “must stop
2 short of the detailed and thorough investigation that it would undertake if it were actually trying the
3 case” *Munoz*, at 408. Plaintiffs’ counsel used the comprehensive data and documents provided
4 to perform an analysis of the potential liability exposure Defendants faced on Plaintiffs main class-
5 wide claims, establishing the realistic upper range of the outcome here. As noted above, the Gross
6 Settlement Amount represents a recovery of approximately **22%** of the total maximum liability
7 exposure Plaintiffs estimated. (Lindsay Decl., ¶¶ 58-60).

8 The fact remains there was a very real prospect that nothing would be recovered if litigation
9 continued and class certification was ultimately denied. At the same time, further litigation would
10 require the expenditure of significant time and financial resources, and there is always the possibility
11 of adverse developments in the law and the likelihood of extended battles in both the trial court and
12 the courts of appeal. Settlement is a prudent compromise that benefits the Class Members promptly
13 and eliminates such concern.

14 **6. THE NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS MEMBERS**

15 To be deemed proper, a Notice must provide the Class Members with sufficient information
16 to make an informed decision as to whether to accept or object to the settlement. *Mullane v. Central*
17 *Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314. The notice must apprise the Class Members
18 of the pendency of the action; reasonably convey information regarding the settlement and the Class
19 Members’ rights, entitlements, and obligations; and afford Class Members the opportunity to present
20 their objections. *Id.* The Notice (at Lindsay Decl., Yeremian Decl., Exhibit A, Settlement, Class
21 Notice at Exhibit 1 thereto) provides all the information a reasonable person would need to make a
22 fully informed decision about the settlement. It will notify all Class Members of the terms of the
23 settlement, of its effect on their rights, of their options as Class Members (i.e., participate, object,
24 opt out, and dispute work weeks), and of the consequences of and procedures for exercising those
25 options. (Lindsay Decl., ¶¶ 35, 65-66; Yeremian Decl., Exhibit A, Settlement, ¶¶ I.7; II.2-4; VI.2-
26 3; *see also* Class Notice at Settlement Agreement, Exhibit A).

27 The standard for determining the adequacy of notice is whether it has “a reasonable chance
28 of reaching a substantial percentage of the class members.” *Cartt v. Superior Court* (1975) 50

1 Cal.App.3d 960, 974. Here, the Notice will be sent via first-class mail to each of the approximately
2 367 Class Members at their addresses from Defendant's records. (Lindsay Decl., ¶¶ 35, 65-66;
3 Yeremian Decl., Exhibit A, ¶¶ VI.2; VII.7). If any Notice Packets are returned undeliverable
4 without a forwarding address, the Claims Administrator will use the national change of address
5 database and perform a skip trace to locate the Class Member and mail a new Notice to the correct
6 address. (*Id.*). The Class Notice (at Settlement, Exhibit A) should be approved as the best and most
7 practicable way to ensure the greatest possible number of Class Members will receive notice.

8 **7. CLASS REPRESENTATIVE ENHANCEMENT IS FAIR AND REASONABLE**

9 "At the conclusion of a class action, the class representatives are eligible for a special
10 payment in recognition of their service to the class." 5 Newberg on Class Actions § 17:1 (5th ed.).
11 Plaintiffs requests a reasonable enhancement payment for their effort and initiative in bringing and
12 helping to prosecute this class action. Plaintiffs have dedicated significant time and effort to these
13 proceedings. (Yeremian Decl., ¶¶ 15-20; Garcia Decl., ¶¶ 2-16; Perez Decl., ¶¶ 2-16). Plaintiffs'
14 courage in proceeding with their class-wide claims should not be underestimated. By suing
15 Defendant, Plaintiffs increased their risk of retaliation by prospective employers, who must choose
16 between an applicant who has never sued a prior employer and one who has. (Yeremian Decl., ¶ 17;
17 Garcia Decl., ¶¶ 11-12; Perez Decl., ¶¶ 11-12). This risk is particularly real in the information age,
18 where employers can perform background checks of prospective employees, sometimes with the
19 stroke of a key. (*Id.*).

20 Plaintiffs have devoted a substantial amount of time to helping Class Counsel effectively
21 develop and prosecute this action at every stage of the litigation. (Yeremian Decl., ¶¶ 15-20; Garcia
22 Decl., ¶¶ 2-10; Perez Decl., ¶¶ 2-10). Both before and after filing, Plaintiffs conferred with Class
23 Counsel to discuss every aspect of this case, and each Plaintiff has invested many hours in this action
24 thus far. They provided Class Counsel with information about Defendants and the industry,
25 reviewed documents, consulted Class Counsel throughout the litigation, helped complete informal
26 discovery, participated in the mediation process and reviewed and signed the settlement agreement
27 after several conferences with Class Counsel.

28 Plaintiffs have spent a significant amount of time with Class Counsel detailing knowledge

1 of Defendants' practices. They have diligently, adequately, and fairly represented the Class
2 Members, and have not placed their interests above any member of the putative Class. This sort of
3 payment to a Class representative has been a common feature of settlements negotiated by Class
4 Counsel and has been routinely approved by trial courts. The representative enhancement award
5 payment in the amount of **\$10,000.00** to each Class Representative is fair and reasonable. (Yeremian
6 Decl., ¶¶ 15-20, Exhibit A, Settlement, ¶¶ IV.2; Garcia Decl., ¶¶ 2-16; Perez Decl., ¶¶ 2-16).

7 **8. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

8 Class Counsel respectfully requests, without opposition from Defendants, an award of
9 attorneys' fees not to exceed one-third of the Total Settlement Amount (i.e., up to **\$91,666.67**), and
10 an award of reasonable costs and expenses in an amount not to exceed **\$20,000.00**, subject to
11 approval by the Court. (Yeremian Decl., ¶¶ 10-14; Settlement, ¶¶ I.6; IV.7; VII.1).

12 Class counsel submits it has the requisite experience, knowledge, and resources to serve as
13 Class counsel and to zealously represent the Class. (Yeremian Decl., ¶¶ 3-9; Lindsay Decl. ¶¶ 80-
14 89; Wheeler Decl. ¶¶ 12-19). Plaintiffs' counsel provide further details regarding hourly rates,
15 lodestar, and hours, and will document expenses incurred, in support of final approval and its fees
16 and costs motion. (Yeremian Decl., ¶¶ 10-14). Costs not requested or awarded will remain in the
17 Net Settlement Amount, and will increase the individual settlement shares of the Settlement Class
18 Members accordingly. Class Counsel has incurred substantial hours in prosecuting this action, and
19 counsel estimates that no lodestar multiplier will be necessary in cross-check to confirm the
20 reasonableness of the requested fee award. (Yeremian Decl., ¶ 13).

21 **9. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

22 Certification is appropriate when the moving party has demonstrated the existence of an
23 ascertainable class and a well-defined community of interest among the class. *See, e.g., Brinker*
24 *Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1021. Defendants do not dispute, for
25 settlement purposes only, that all of the elements for class certification are met here. Defendants do
26 not concede that certification is appropriate outside of this Settlement and preserve all rights to
27 oppose certification if, for any reason, the settlement does not become effective. (Lindsay Decl., ¶
28 68, Yeremian Decl., Exhibit A, Settlement Agreement, ¶¶ II.D, II.E, III.I.1.a-c).

1 **A. There Is A Numerous and Ascertainable Class**

2 Whether a class is ascertainable is determined by examining the class definition, the size of
3 the class and the means available for identifying Class Members. *See, Vasquez v. Superior Court*
4 (1971) 4 Cal. 3d 800, 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal.
5 App. 3d 1263, 1271. Defendant’s records at the time of the mediation reflected approximately **367**
6 total Class Members. (Lindsay Decl., ¶ 69). Defendants do not dispute that these Class Members
7 are ascertainable and sufficiently numerous. (Lindsay Decl., ¶¶ 69-70).

8 **B. There Is a Well-Defined Community of Interest**

9 A community of interest is established by predominant common issues of law and fact. *See*
10 *Vasquez*, 4 Cal. 3d at 811. It “does not depend upon an identical recovery,...The mere fact that
11 separate transactions are involved does not of itself preclude a finding of the requisite community
12 of interest so long as every member of the alleged class would not be required to litigate numerous
13 and substantial questions to determine his individual right to recover...” *Id.* at 809.

14 Plaintiffs contend, and Defendants do not dispute for settlement purposes, that common
15 issues of fact and law predominate as to each of the claims alleged by Plaintiffs. (Lindsay Decl., ¶¶
16 75-76). California courts show “no hesitancy” in inferring class-wide causation, injury, and damages
17 when a common course of action has been shown. *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
18 (1987) 191 Cal.App.3d 1341, 1350. This inference ““eliminates the need for each class member to
19 prove individually the consequences of the Defendant’s actions to him or her.”” *Id.* at 1351 (quoting
20 *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753).

21 This action involves, *inter alia*, a determination about Defendants’ alleged failure to provide
22 meal and rest periods, failure to pay wages and overtime due to allegedly common off the clock
23 work policies, the resulting failure to pay final wages when required, the failure to provide accurate
24 paystubs, and largely derivative claims under the UCL and PAGA. Plaintiffs contend these practices
25 affected Class Members in the same way and present questions that are suitable for common
26 adjudication because all Class Members were subject to the same employment policies and
27 practices, which applied uniformly to all Class Members. The outcome of litigation on this matter
28 depends upon questions that are common to Class Members. (Lindsay Decl., ¶¶ 75-76). While

Defendants maintained otherwise, these issues will not be decided on the basis of facts peculiar to each Class Member, but rather on facts common to them all, and liability can be determined on a class-wide basis. (*Id.*)

C. The Named Plaintiffs' Claims Are Typical

A class representative's claims are typical when they arise from the same event, practice, or course of conduct that gives rise to the claims of other putative Class Members, and if their claims rest on the same legal theories. The class representative's claims must be "typical" but not necessarily identical to the claims of other Class Members. It is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of all Class Members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been the law in California that the class representative must have identical interests with the class members."). Thus, it is not necessary that the class representative should have personally incurred all of the damages suffered by each of the other Class Members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

Plaintiffs contend, and Defendants do not dispute for settlement purposes only, that Plaintiff's claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. (Lindsay Decl., ¶¶ 71-72).

D. Adequacy of Class Counsel and Class Representatives

Class Counsel are experienced in class actions, have represented their clients zealously and have no conflicts of interest. (Yeremian Decl., ¶¶ 3-9; Lindsay Decl., ¶¶ 80-88; Wheeler Decl., ¶¶ 12-19). The Class Representative's interests are aligned with those of the Class Members, they have suffered the same injuries, and have no conflicts of interest. (Yeremian Decl., ¶¶ 15-20; Garcia Decl., ¶¶ 3-16; Perez Decl., ¶¶ 3-16). Class Counsel and the Class Representatives are adequate.

E. Predominance and Superiority

Individual issues do not predominate over those common to the class, as addressed above. (Lindsay Decl., ¶¶ 90-91). Additionally, class proceedings are superior to individualized actions, as there is little interest or incentive for Class Members to individually control the prosecution of separate actions. If Class Members are forced to litigate their claims individually, it would result in

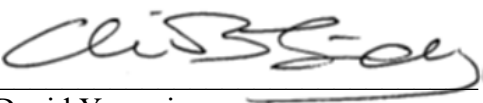
1 close to 367 individual actions against Defendant, and the cost of individually litigating each such
2 case against Defendant would easily exceed the value of any relief that could be obtained. (Lindsay
3 Decl., ¶¶ 76-78). Class proceedings are superior to individual ones.

4 **10. CONCLUSION**

5 Plaintiffs respectfully request that the Court grant preliminary approval to the parties'
6 Settlement Agreement; provisionally certify the proposed Class for settlement purposes; approve
7 Plaintiffs as the Class Representatives and their counsel as Class Counsel; approve the proposed
8 form of the Class Notice and plan for administration; and schedule the final settlement approval
9 hearing by entering the concurrently provided [Proposed] Order.

10
11 DATED: October 23, 2023

DAVID YEREMIAN & ASSOCIATES, INC.

12
13 By 

14 David Yeremian
15 Alvin B. Lindsay
16 Attorneys for Plaintiff Rene Garcia
17 and the Settlement Class
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