CARLOS JIMENEZ, SBN 227534
carlos@protectionlawgroup.com
BRENDAN BURTON, SBN 323495
brendan@protectionlawgroup.com
STEPHANIE PAPAYANIS, SBN 337655
stephanie@protectionlawgroup.com
PROTECTION LAW GROUP, LLP
149 Sheldon Street
El Segundo, California 90245
Telephone: (424) 290-3095
Facsimile: (866) 264-7880

Attorneys for Plaintiff
JOSE RODRIGUEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

JOSE RODRIGUEZ, individually and on behalf of others similarly situated, and as an aggrieved employee and Private Attorney General, Plaintiff, vs. VALLEYWIDE FARM LABOR, INC., a California corporation; REITZ ALMOND HARVESTING, INC. a California corporation and DOES 2 through 50, inclusive, Defendants.	Case No.: 22CECG01009 *Assigned for all purposes to Hon. Lisa Gamoian, Dept. 403* **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Hearing Date: May 21, 2025 Time: 3:30 p.m. Dept.: 403 Complaint Filed: April 1, 2022 FAC Filed: June 7, 2022 Trial Date: None

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

PLEASE TAKE NOTICE THAT on May 21, 2025 at 3:30 p.m. in Department 403 of the above-captioned Court located at 1130 "O" Street, Central Division, Fresno, California, 93724, pursuant to Code of Civil Procedure §382 and California Rule of Court 3.769, Named Plaintiff Jose Rodriguez ("Plaintiff") will and hereby does move the Court for an Order granting preliminary approval of the proposed class action settlement between Plaintiff and Defendants Valleywide Farm Labor, Inc. ("Valleywide") and Reitz Almond Harvesting, Inc. ("Reitz") (Valleywide and Reitz are jointly referred to as "Defendants") (collectively with Plaintiff, the "Parties").

Specifically, Plaintiff requests that the Court enter an Order:

1. Preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement ("Agreement" or "Settlement Agreement") attached as **Exhibit 2** to the Declaration of Carlos Jimenez ("Jimenez Decl.");

2. Certifying a Class for settlement purposes;

3. Appointing Plaintiff Jose Rodriguez as the Class Representative for settlement purposes;

4. Appointing Heather M. Davis, Amir Nayebdadash and Carlos Jimenez of Protection Law Group LLP as Class Counsel for settlement purposes;

5. Approving the proposed Notice of Proposed Class and PAGA Action Settlement ("Notice of Settlement") attached as **Exhibit A** to the Settlement Agreement to be mailed to the Class;

6. Approving the opt-out and objection procedures provided in the Settlement Agreement and set forth in the Notice of Settlement;

7. Directing Defendants to furnish each Class Member's full name, last known home address and telephone number, social security number, dates of employment as a non-exempt employee, workweeks worked during the Class Period and PAGA Period for all Class Members,

amongst other information within twenty-one (21) calendar days after the Court grants preliminary approval of the Settlement as well as any other information the Settlement Administrator may reasonably need to administer this Settlement; and

8. Setting a date for a hearing on final approval of the proposed settlement.

Pursuant to California Labor Code § 2699(l)(2), a copy of the proposed Settlement Agreement, as well as the hearing date, time and location for the scheduled preliminary approval hearing on this Action, were submitted to the California Labor and Workforce Development Agency via online filing at https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html on May 21, 2025. *See* Jimenez Decl. ¶128, **Exhibit 7**.

The motion is based upon this notice, the attached memorandum of points and authorities, the Declaration of Carlos Jimenez, the Declaration of Jodey Lawrence, the pleadings and other records on file with the Court in this Action, and any other further evidence or argument that the Court may properly receive at or before the hearing.

DATED: April 25, 2025 Respectfully submitted,

PROTECTION LAW GROUP, LLP

By: ______________________________
Carlos Jimenez
Brendan Burton
Stephanie Papayanis
Attorneys for Plaintiff
JOSE RODRIGUEZ

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Named Plaintiff Jose Rodriguez ("Plaintiff") seeks preliminary approval of a Joint Stipulation of Class Action and PAGA Settlement ("Settlement Agreement" or "Settlement") on behalf of all current and former non-exempt employees of Defendants Valleywide Farm Labor, Inc. ("Valleywide") and Reitz Almond Harvesting, Inc. ("Reitz") (Valleywide and Reitz are jointly referred to as "Defendants") who worked in the State of California at any time between April 1, 2018 and March 24, 2022. The Settlement terms are outlined as follows:

- Size of the Class: approximately 232 individuals.
- Gross Settlement Amount: $125,000.00, exclusive of employer-side payroll taxes.
- Settlement Administration Costs: not to exceed $10,000.00.
- Requested Class Representative Enhancement Payment: $7,500.00 to Plaintiff.
- PAGA Payment: $7,500.00, 75% ($5,625.00) of which will be paid to the California Labor and Workforce Development Agency ("LWDA") with the remaining 25% ($1,875.00) distributed to PAGA Members.
- Requested Class Counsel's Fees and Costs: $43,750.00 plus actual litigation costs and expenses not to exceed $20,000.00.
- Net Settlement Amount: approximately $36,250.00 to be distributed to Participating Class Members.

As set forth herein, the Settlement is the product of informed discovery, arms-length negotiations, and provides a fair, adequate, and reasonable recovery for the Class in light of the relative strength of Plaintiff's claims, the risk, expense and uncertainty of further litigation, and the benefit conferred by the Settlement. Plaintiff therefore respectfully requests that the Court grant preliminary approval of the proposed Settlement, conditionally certify the Class, approve the proposed Notice, and set a hearing date for final settlement approval, among other requested relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Valleywide provides farm labor workers to employers that need workers to sow, harvest, and/or work their farms. Jimenez Decl. ¶14.

Reitz grows and harvests almonds. Jimenez Decl. ¶15.

Plaintiff worked for Defendants as an hourly-paid, non-exempt employee from approximately 2017 through approximately 2021. Jimenez Decl. ¶16. During his employment, Plaintiff was employed as a Harvester and as a Maintenance Worker. *Id.* As a Harvester, Plaintiff's job duties and responsibilities included, but were not limited to, inspecting and fixing a tractor as needed, and operating a tractor to harvest the almonds from the almond trees. *Id.* As a Maintenance Worker, Plaintiff's job duties and responsibilities included, but were not limited to, spraying chemicals on the fields, chopping down almond trees, and washing the tractors and other machinery. *Id.*

On March 31, 2022 Plaintiff provided notice to the California Labor and Workforce Development Agency ("LWDA") and Valleywide Farm Labor, Inc. of his intent to seek civil penalties under Labor Code § 2699, *et seq*. against Valleywide. Jimenez Decl. ¶17, Ex. 1.

On April 1, 2022, Plaintiff filed his class action in Fresno County Superior Court asserting claims for: (1) Unpaid Overtime; (2) Unpaid Meal Period Premiums; (3) Unpaid Rest Period Premiums; (4) Unpaid Minimum Wages; (5) Wages Not Timely Paid during Employment; (6) Failure to Provide Accurate Wage Statements; and (7) Failure to Reimburse Necessary Business Expenses; and (8) Unfair Business Practices ("the Action") against Defendant Valleywide. Jimenez Decl. ¶18.

On June 7, 2022, Plaintiff filed a First Amended Complaint ("FAC") adding a Private Attorneys General Act ("PAGA") Cause of Action. Jimenez Decl. ¶19.

Between July 20, 2022 and November 28, 2022, the Court continued the Case Management Conference on multiple occasions. Jimenez Decl. ¶¶20-23.

On December 24, 2022, after evading service of the Complaint and Summons, Valleywide was personally served. Jimenez Decl. ¶24.

On January 18, 2023, the Court issued a Notice of Assignment of Judge for All Purposes assigning The Honorable Jeffrey Y. Hamilton to this Action. Jimenez Decl. ¶25.

On January 19, 2023, Plaintiff filed a Proof of Service of Summons with this Court.

Jimenez Decl. ¶26.

On March 2, 2023, Valleywide filed an Answer to Plaintiff's FAC. Jimenez Decl. ¶27.

On April 4, 2023, Plaintiff doed in Reitz. On April 7, 2023, the Court signed the Order on Plaintiff's Amendment to Complaint. Jimenez Decl. ¶28.

On April 6, 2023, Plaintiff filed a Unilateral Case Management Conference Statement. Jimenez Decl. ¶29. On April 7, 2023, Valleywide unilaterally filed a Case Management Conference Statement. *Id.* at ¶30.

Also on April 12, 2023, the Court issued a Minute Order continuing the Case Management Conference to July 11, 2023. Jimenez Decl. ¶31.

The Parties met and conferred and on June 23, 2023, the Parties filed a Joint Case Management Conference Statement. Jimenez Decl. ¶32.

On June 26, 2023, Reitz was personally served. Jimenez Decl. ¶33.

On June 29, 2023, Plaintiff propounded: (i) Special Interrogatories, Set One; (ii) Demand for Production of Documents, Set One; and (iii) Form Interrogatories-General, Set One on Valleywide and served Deposition Notices for Valleywide's Persons Most Knowledgeable ("PMK"). Jimenez Decl. ¶34. Valleywide failed to serve any responses by its deadline and therefore waived all objections. *Id.*

On June 30, 2023, Plaintiff filed a Proof of Service of Summons. Jimenez Decl. ¶35.

On June 30, 2023, the Court issued a Minute Order continuing the Case Management Conference to September 14, 2023. Jimenez Decl. ¶36.

On July 24, 2023, Reitz filed an Answer to Plaintiff's FAC. Jimenez Decl. ¶37.

On August 23, 2023, Plaintiff propounded: (i) Special Interrogatories, Set One; (ii) Demand for Production of Documents, Set One; (iii) and Form Interrogatories—General, Set One on Reitz. After a few extensions, Reitz served its responses on October 25, 2023. Jimenez Decl. ¶38.

After meet and confer efforts, the Parties agreed to schedule private mediation. Jimenez Decl. ¶39. On September 1, 2023, the Parties filed a Joint Stipulation to Continue Case Management Conference and [Proposed] Order to allow the Parties time to allow the Parties time to schedule mediation. *Id.*

On September 5, 2023, the Court signed the Order and continued the Case Management Conference to January 3, 2024. Jimenez Decl. ¶40.

After meet and confer efforts, on December 27, 2023, the Parties filed a Joint Status Report in Advance of Case Management Conference. Jimenez Decl. ¶41.

On January 2, 2024, the Court issued a Minute Order continuing the Case Management Conference to April 4, 2024. Jimenez Decl. ¶42.

After extensive meet and confer efforts, on February 1, 2024, the Parties filed a Joint Stipulation Regarding Discovery and Mediation, along with a [Proposed] Order ("Mediation Stipulation"), wherein the Parties agreed to mediate the Action with well-respected mediator, Judge Carl West (Ret.), who has substantial experience handling wage and hour class actions. Jimenez Decl. ¶43. On February 5, 2024, The Honorable Jeffrey Y. Hamilton, Jr. signed the Order. *Id.* at ¶44.

On August 23, 2024, counsel for Defendant Valleywide Farm Labor, Inc. filed a Notice of Change of Affiliation. Jimenez Decl. ¶45.

Pursuant to the Mediation Stipulation, counsel for Valleywide provided Plaintiff with a payroll summary and pay stubs for the entire Class. Jimenez Decl. ¶46. Further, Defendants' counsel provided Plaintiff's counsel with, the number of workweeks for the Class Members and total number of pay periods for the PAGA Members, and the total number of former employees since April 1, 2019. *Id.* However, Valleywide's counsel advised Plaintiff's counsel that Valleywide was no longer in business as of March 24, 2022 and, therefore, Valleywide was no longer in possession of any employee time records. *Id.* Valleywide's counsel further admitted that Valleywide never paid meal or rest period premiums. *Id.* Counsel for Reitz represented to Plaintiff's counsel that, because the employees were employed by Valleywide, Reitz did not have any data to provide. *Id.* at ¶47. This informal discovery and investigation allowed Plaintiff's Counsel to perform a comprehensive damages analysis and estimate Defendants' potential liability on a class and PAGA basis. *Id.* at ¶48.

On October 2, 2024, the Parties attended mediation with Judge Carl West (Ret.). Jimenez

Decl. ¶49. At the mediation, the Parties engaged in intensive settlement discussions during which they debated their respective positions and exchanged views regarding the strengths and weaknesses of the alleged claims. *Id.*

With the assistance of Judge Carl West (Ret.), at the October 2, 2024 mediation, the Parties agreed to resolve the Action for a Gross Settlement Amount of One Hundred and Twenty-Five Dollars and Zero Cents ($125,000.00). Jimenez Decl. ¶50. The Parties spent considerable time negotiating and finalizing the terms of a Memorandum of Understanding ("MOU"), which was ultimately fully executed on October 23, 2024. *Id.*

Thereafter, the Parties spent considerable time negotiating and finalizing the terms of the long form agreement. Jimenez Decl. ¶51. Between approximately January 29, 2025 and February 14, 2025, the Parties fully executed the Joint Stipulation of Class Action and PAGA Settlement. *Id.*, **Exhibit 1**.

On December 2, 2024, the Court issued a Minute Order continuing the Case Management Conference to January 16, 2025. Jimenez Decl. ¶52.

On December 27, 2024, the Parties met and conferred and filed a Joint Case Management Conference Statement. Jimenez Decl. ¶53. On January 16, 2025, the Court issued a Minute Order continuing the Case Management Conference to May 22, 2025. *Id.* at ¶54.

On March 4, 2025, the Court issued a Notice of Assignment of Judge for All Purposes. Jimenez Decl. ¶55. On March 6, 2025, the Court issued a second Notice of Assignment. *Id.*

Now, following significant investigation into the alleged claims, and lengthy settlement discussions, Plaintiff hereby moves for preliminary approval of the proposed Settlement Agreement and has notified the LWDA of the proposed Agreement. Jimenez Decl. ¶¶56, 113.

III. THE SETTLEMENT TERMS

A. Class Definition

For purposes of settlement only, the Parties have agreed that the Class shall be defined as: all current and former non-exempt employees of Defendants who worked in the State of California at any time during the Class Period. Jimenez Decl. ¶58; Settlement Agreement ¶¶6-7. The Class Period and release of claims cover the time period from April 1, 2018 through March

24, 2022. *Id.*; Settlement Agreement ¶7. It is estimated that there are approximately 232 Class Members. Jimenez Decl. ¶59.

B. Amount of Settlement

The Parties have agreed to settle the Class and PAGA claims at issue for a non-reversionary Gross Settlement Amount of $125,000, exclusive of any employer-side payroll taxes. Jimenez Decl. ¶60; Settlement Agreement ¶16.

C. Allocation of the Gross Settlement Amount

The Gross Settlement Amount is a Common Fund and therefore, includes all requested costs, fees, and other allocations. As stated above, the Gross Settlement Amount includes: (1) attorneys' fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, equaling $43,750.00; (2) litigation costs, not to exceed $20,000.00; (3) Settlement Administrator costs currently estimated at $10,000.00; (4) class representative enhancement payment in the amount of $7,500.00 to Plaintiff; and (5) PAGA Payment of $7,500.00, 75% of which shall be distributed to the LWDA and 25% of which will be distributed to PAGA Members. Jimenez Decl. ¶61; *see also* Settlement Agreement ¶¶4, 9, 16, 21, 42-46.

After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net Settlement Amount of approximately $36,250.00 shall be distributed and paid to the Participating Class Members. Jimenez Decl. ¶62; Settlement Agreement ¶ 46. The Net Settlement Amount will be distributed and paid to Participating Class Members on a *pro-rata* basis based on the number of workweeks worked during the Class Period. Jimenez Decl. ¶63; Settlement Agreement ¶47(a). In addition, PAGA Members will receive a *pro-rata* share of the 25% portion of the PAGA Payment allocated for aggrieved employees. Jimenez Decl. ¶64; Settlement Agreement ¶47(b). Payments to the Class Members shall be allocated as ten percent (10%) wages, forty-five percent (45%) penalties, and forty-five percent (45%) interest. Jimenez Decl. ¶65; Settlement Agreement ¶47(c). The portion of the Individual Settlement Payment allocated to wages will be reported by the Settlement Administrator on an IRS Form W-2. The remaining non-wage payments will be reported on an IRS Form-1099 by the Settlement Administrator. Jimenez Decl. ¶66; Settlement Agreement ¶47(a)-(c). Defendants shall be responsible for all employer-side payroll taxes on the wage portion of each settlement payment. Jimenez Decl. ¶67; Settlement Agreement ¶¶16 & 38. The proposed Agreement is a non-reversionary, non-claims made settlement. All money from the Net Settlement Amount will be distributed to the Class Members. No money from the Settlement will revert to Defendants. Jimenez Decl. ¶68; Settlement Agreement ¶38.

The Parties have agreed Defendants shall fund the Gross Settlement Amount within fourteen (14) calendar days of the Effective Date of the Settlement (as defined in the Settlement Agreement), Defendants shall deposit the Gross Settlement Amount into a Qualified Settlement Fund ("QSF"). Then, within seven (7) calendar days of the funding of the Settlement, the Settlement Administrator will issue payments for (a) Individual Settlement Payments; (b) the PAGA Payment to the LWDA; (c) the Class Representative Enhancement Payments; (d) Class Counsel's Fees and Costs; and (d) Settlement Administration Costs. Jimenez Decl. ¶69; Settlement Agreement ¶69. Any residue from Individual Settlement Payment Checks remaining uncashed after 180 days will be distributed to the Controller of the State of California to be held in trust for such Class Members pursuant to California's Unclaimed Property Law. As such, no "unpaid residue" under California Code of Civil Procedure §384 will result from the Settlement. Jimenez Decl. ¶70; Settlement Agreement ¶61.

D. Release of Wage and Hour Claims

In exchange for participating in the Settlement, Participating Class Members will release their wage and hour claims, including claims that are alleged or reasonably could have been asserted, against Defendants and the Released Parties, as defined in the Settlement Agreement. Jimenez Decl. ¶71; Settlement Agreement ¶29. However, the release for Participating Class Members will only occur upon the complete funding of the Gross Settlement Amount and all applicable employer-side payroll taxes and is narrowly tailored to only release claims based upon the facts alleged in the operative complaint in the Action, for the Class Period. The proposed Settlement also resolves all of the PAGA Members' claims arising under the PAGA for the PAGA Period. Jimenez Decl. ¶¶71-72; Settlement Agreement ¶¶29-30, 66-67.

IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL

The settlement of a class action requires court approval. *See*, *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794 (1996) ("*Dunk*"). "In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds) ("*Wershba*").

The review and approval of a proposed class action settlement involves a two-step process. *See*, Cal. Rules of Court, Rule 3.769(c). First, counsel submit the proposed terms of settlement and the Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the range of a fair settlement to justify providing notice of the proposed settlement to class members. *Id.* After notice is provided to the class, the Court must conduct a second inquiry into whether the proposed settlement is fair, reasonable and adequate. *Id.*

The initial evaluation of the settlement at the preliminary approval step "is not a fairness hearing." *Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the proposed settlement is within the range of possible approval and, as a result, "whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing." A presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *See*, *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006).

Preliminary approval does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to object or exclude themselves from the settlement. *See*, Cal. R. Ct. 3.769(g). In considering a potential class settlement, the court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute, and need not engage in a trial on the merits. *See*, *Officers for Justice v. Civil Service Commission of City and County of San*

Francisco, 688 F.2d 615, 625 (1982).

V. THE SETTLEMENT IS PRESUMED FAIR

A. Arm's-Length Bargaining

California courts recognize that "a presumption of fairness exists where . . . [a] settlement is reached through arm's-length bargaining." *Wershba*, 91 Cal.App.4th at 245 (disapproved on other grounds); *see also*, *Clark v. Am. Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009). Here, Defendants disputed liability, and settlement negotiations were at all times at arm's length and adversarial. Indeed, the material terms of the Settlement were only reached after extensive settlement discussions including a day of mediation with a highly respected mediator. The Parties also engaged in extensive negotiations before finalizing the long-form agreement presently before the Court. At all times, Plaintiff was willing and prepared to litigate this Action if the parties had been unable to reach a favorable resolution. Jimenez Decl. ¶¶49-51, 56, 76.

B. Sufficient Investigation and Discovery by Experienced Class Counsel

Courts typically assess the status of discovery in determining whether a class action settlement agreement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801. As discussed above, the parties engaged in extensive informal discovery prior to reaching a settlement following a full day of mediation. Through informal discovery, Defendants produced a payroll summary and pay stubs for the entire Class, as well as the number of workweeks for the Class Members and total number of pay periods for the PAGA Members, and the total number of former employees since April 1, 2019. However, Valleywide's counsel advised Plaintiff's counsel that Valleywide was no longer in business as of March 24, 2022 and, therefore, Valleywide was no longer in possession of any employee time records. Valleywide's counsel further admitted that Valleywide never paid meal or rest period premiums. This allowed Plaintiff to conduct a class-wide assessment and analysis of potential damages. The parties extensively briefed issues regarding class certification and liability and provided their analyses to the mediator who helped the parties debate the strengths and weakness of their positions. Jimenez Decl. ¶46-49, 77.

Additionally, settlement negotiations were conducted by highly capable and experienced counsel. Plaintiff's Counsel are respected members of the bar with strong records of vigorous and effective advocacy and are experienced in handling complex wage and hour class action litigation. Jimenez Decl. ¶¶2-13, 78. Accordingly, Plaintiff's Counsel had sufficient information and experience to act intelligently in negotiating the Settlement. *Id*. ¶79.

C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal Positions and Recovery Risks

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable. *Wershba*, 91 Cal.App.4th at 246, 250 (disapproved on other grounds). In evaluating the reasonableness of a settlement, a trial court must consider "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." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008).

Here, the reasonableness of the Settlement is underscored by the fact that Defendants have legal and factual grounds for defending the action. Based upon Plaintiff's Counsel's experience litigating similar complex matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class certification and the merits absent a settlement. Jimenez Decl. ¶¶3-13, 80.

1. Plaintiff's Counsel's Analysis of the Maximum Available Liability and Damages

Prior to mediation, Plaintiff's Counsel analyzed payroll records for the putative class provided by Defendants and other relevant documents and informal discovery. This included records for the entire Class who were employed during the Covered Period. With these records, Plaintiff's Counsel were able to perform a comprehensive damages analysis and estimate Defendants' potential violations, liability, and exposure, including, and not limited to, analyzing pay data, considering potential meal period violations, potential rest period violations, potential synthetic meal period recordings, unpaid meal or rest period premiums, overtime and premium payments, etc. Jimenez Decl. ¶81. Based on the informal discovery provided, Plaintiff's Counsel estimated with respect to the claims at issue, with all claims adjudicated in favor of the Class, Defendants faced a maximum potential liability of $1,693,137.50. This estimated maximum liability includes: $1,063,125.00 for meal period and rest period violations; $106,312.50 for unpaid off-the-clock work, overtime and for unpaid minimum wages; penalties for inaccurate wage statements in the amount of $76,550.00; and $11,100.00 for unreimbursed business expenses. Plaintiff also estimated non-duplicative PAGA penalties of approximately $436,050.00 which also includes penalties under Labor Code §§ 204 and 1174(d). Jimenez Decl. ¶82

2. <u>Plaintiff's Counsel's Risk-Based Analysis and Risk-Based Adjustments</u>

While Plaintiff believes Defendants faced significant exposure, substantial barriers to a class recovery exist and Plaintiff faced numerous challenges attempting to bring the alleged claims on a class and representative basis. Jimenez Decl. ¶83. Defendants contended that Plaintiff's claims in general were without merit and not suitable for class certification because individual issues and affirmative defenses would predominate should this case go to trial. *See*, *Brinker Restaurant Corp. v. Super. Ct.*, 53 Cal.4th 1051 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014). While Plaintiff and Plaintiff's Counsel disagree with Defendants' predictions, they also recognize that there is a significant risk that the Court may deny class certification. Jimenez Decl. ¶84; *see also*, *Findings of the Study of California Class Action Litigation*, 2000-2006, available at http://www.courts.ca.gov/documents/class-action-lit-study.pdf (finding that only 21.4% of class actions were certified either as part of a settlement ***or*** as part of a contested certification motion).

Meal and Rest Period Claims

For instance, a large portion of Defendants' estimated liability lies in Plaintiff's meal period claims. Meal period claims have become increasingly difficult to certify in recent years and Defendants contended their practices were lawful. *See Brinker*, 53 Cal. 4th at 1034-35.

Defendants argued that they had compliant practices and Plaintiff's Counsel had to consider the risk that the Court would find validity in the individualized proof defense to the certification of Plaintiff's meal period claim. Similarly, Plaintiff will likely face difficulties proving the alleged rest period violations, as Defendants were not required to record these breaks under California law. Defendants claimed they allowed employees to take their state mandated rest periods and given the lack of records demonstrating rest period violations, there were legitimate concerns Plaintiff would not be able to certify this claim or prove substantial damages. Jimenez Decl. ¶85.

Minimum Wage and Overtime Claims

Plaintiff also faced challenges certifying and proving liability for his minimum wage and overtime claims. These claims were largely based on alleged unrecorded, off-the-clock work performed by Class Members both before and after their shifts. Defendants also argued that the individualized nature of such damages presented substantial concerns regarding the manageability of the case and the risk the Court could find these issues prevented certification. Jimenez Decl. ¶86.

Waiting Time Penalties and Wage Statement Claims

There are also substantial risks associated with these claims. First, while Plaintiff argued that his waiting time penalties and wage statement claims were non-derivative, Defendants contended that these claims were derivative of Plaintiff's previous claims and if certification was denied on those underlying claims, these claims would also likely fail. Moreover, even if Plaintiff prevailed on his underlying off-the-clock claims, he would still be required to demonstrate that Defendants' violations of Labor Code § 203 were <u>willful</u> violations, a difficult prospect. *See, e.g.*, *Choate v. Celite Corp.*, 215 Cal.App.4th 1460, 1468 (2013) (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding of willfulness"). Wage statement claims have also seen varying treatment at the appellate level because such claims have an element of discretion attached to them rather than a pure calculation of damages after liability is proven. *Cf., Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) *with Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011). Accordingly, if the Court agreed with Defendants' argument that these claims were in fact derivative, which comprised a substantial portion of Defendants' estimated potential liability, Plaintiff faced a large risk in taking these claims to trial. Jimenez Decl. ¶87.

Plaintiff's Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the amount of wages due to each Class Member would be an expensive, time-consuming, and extremely uncertain proposition. In order to prove liability and damages, Plaintiff's Counsel would be required to spend hundreds of additional hours obtaining discovery and likely substantial motion practice, in addition to contacting Class Members and obtaining numerous declarations at great expense. Moreover, even if Plaintiff prevailed, possible appeals would substantially delay any recovery by the Class. Jimenez Decl. ¶88.

Unreimbursed Business Expenses Claim

Plaintiff's reimbursement claim would likely present similar problems of individualized proof. Plaintiff's reimbursement claim was based on Plaintiff and putative class members being required to use gloves, weather-related protective gear, and work boots to complete their work and incur out-of-pocket expenses. However, Defendant disputed that Plaintiff, and any putative class member were required to incur these expenses. Defendant further contended that the reason for why a putative class member undertook certain expenses, while not others, and failed to receive reimbursement for certain expenses, would raise individual issues that could not be certified. Jimenez Decl. ¶89.

PAGA Claim

Plaintiff's Counsel also separately contemplated the risks of proceeding with the PAGA action and the potential liability Defendants could face from this claim. Jimenez Decl. ¶90. The Parties agreed during settlement negotiations to allocate $7,500.00 of the Settlement towards the PAGA claims, which represents 6.0% of the Gross Settlement Amount. This percentage of the settlement allocated to the PAGA claims is well above the range in wage and hour settlements regularly approved in both state and federal court for cases that include both a class and PAGA action. Courts have approved allocations of as little as 1% of the Gross Settlement Amount.

Jimenez Decl. ¶¶91-92. Plaintiff's Counsel also recognizes that the PAGA claims would be subject to the same defenses and risks as Plaintiff's class claims, as well as defenses unique to PAGA, the substantial risk that PAGA penalties may not be stacked for violations based on the same conduct, and the substantial risk that PAGA penalties may be reduced where they are duplicative, arbitrary or oppressive. As part of the valuation of the potential PAGA claims, Plaintiff's Counsel also included claims under Labor Code §§ 204, and 1174(d). Jimenez Decl. ¶93. The value of Plaintiff's claim under Labor Code § 204 could be recovered either through Labor Code § 210 or PAGA, but as a matter of law, Plaintiff is not entitled to a duplicative recovery. *See* Labor Code § 210(c) (permitting recovery of penalties through § 210 or PAGA, but not both). Plaintiff's claims under Labor Code §1174(d) were arguably only recoverable under PAGA. *See*, *Caliber Bodyworks, Inc. v. Super. Ct.*, 134 Cal.4th 365, 383 (2005).

Therefore, taking into consideration the risks regarding certification of the class claims, Class Counsel discounted Defendants' estimated liability by 50%. In light of merits-based risk factors even if the claims were brought to trial, Class Counsel reduced Defendants' estimated liability for merits-based risks 50%. Jimenez Dec. ¶94.

In addition, during settlement negotiations, Plaintiff's counsel was advised by Defendant Valleywide's counsel that Valleywide went out of business. Accordingly, instead of obtaining an expert analysis of Valleywide's financial records in preparation for mediation, Plaintiff's counsel took Valleywide's counsel at their word and negotiated a settlement based on Valleywide's counsel's representation that the settlement amount was the maximum amount Valleywide could pay. Jimenez Decl. ¶95.

Finally, in recognition of the additional risks faced by Plaintiff's PAGA claim, including the discretionary nature of such claim and the Court's discretion to reduce penalties, Plaintiff applied an additional discount of 80% to PAGA. Jimenez Decl. ¶96. However, in consideration of Defendant Valleywide no longer being in business, Plaintiff gave Defendants another discount of 70%. This resulted in adjusted liability of $120,444.56. *Id*.

In light of the Parties' respective legal positions and the risks to potential recovery, it is clear that the proposed settlement is fair, adequate, and reasonable. Jimenez Decl. ¶97.

VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

Code of Civil Procedure §382 provides that three basic requirements must be met in order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined community of interest in the question of law or fact affecting the parties to be represented; and (3) certification will provide substantial benefits to litigants and the courts, *i.e.*, proceeding as a class is superior to other methods. *See*, *Dunk*, 48 Cal.App.4th at 1806. Plaintiff contends that this matter, which is primarily based upon Defendants' wage and hour policies and practices, satisfies the class certification requirements under California Code of Civil Procedure §382. Defendants deny Plaintiff's allegations, but for purposes of this Settlement only, Defendants have stipulated to certification of the proposed class action.

A. An Ascertainable and Numerous Class Exists

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying the class members. *See*, *Miller v. Woods*, 148 Cal.App.3d 862, 873 (1983). In this case, all three considerations strongly favor class certification. Here, the Class is defined as all current and former non-exempt employees of Defendants who worked in the State of California at any time during the Class Period. Settlement Agreement ¶6. This provides a clear and definite scope for the proposed class.

Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity requirement. Under the Federal Rules, the minimum number of a class is one-hundred individuals. Under California law, that number is significantly less. *See e.g., Rose v. City of Haywood*, 126 Cal.App.3d 926, 934 (1981) (holding forty-two class members sufficient to satisfy numerosity). Here, the estimated Class size of 232 Class Members plainly favors class certification.

Finally, the question whether class members are easily identifiable turns on whether a plaintiff can establish "the existence of an ascertainable class." *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695 at 706 (1967). The existence of an ascertainable class in this case can be established through Defendants' payroll records, and the class definition is sufficiently specific to enable the parties, potential Class Members and the Court to determine the parameters of the Class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal.App.3d 605, 617 (1987) (proposed class defined as all persons nationwide subscribing to telephone service since January 1, 1981, who were charged for long distance calls deemed "plainly" ascertainable).

B. The Class Shares a Well-Defined Community of Interest

The community of interest requirement embodies three factors: (1) predominant questions of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. *Dunk*, 48 Cal.App.4th at 1806. Plaintiff easily satisfies all three requirements.

The commonality criterion requires the existence of common questions of law or fact and is generally established with the issues of predominance and typicality. *See Daar*, 67 Cal. 2d 695, 706. What is required is that a common question of fact or law exists which predominates over issues unique to individual plaintiffs. The existence of individual issues or facts—generally present in any case arising from employment—is not a bar to class certification as long as they do not render class litigation unmanageable or predominate over the common issues. *See B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

In this Action, the alleged claims present sufficient common issues of law and fact that predominate and warrant class certification. Plaintiff alleges that Defendants denied compliant meal and rest periods to employees, failed to properly compensate employees for missed meal or rest periods, required employees to perform work off-the-clock, and failed to fully compensate employees for all time worked. Jimenez Decl. ¶18. Plaintiff contends these alleged policies and practices mean that Defendants failed to pay minimum and overtime wages, and other related claims. Plaintiff further alleges that these practices were uniform as to all Class Members and thus, class treatment is appropriate.

To satisfy the typicality requirement, California law does not require that a plaintiff have claims identical to the other class members. Rather, the test of typicality for a class representative is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiff, and whether other class members have been injured by the same alleged course of conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007). The typicality requirement for a class representative refers to the nature of the claim or defense of the representative, and not to the specific facts from which it arose or the relief sought. *See id*.

Here, Plaintiff alleges that his claims are similar to those of the other Class Members. Plaintiff alleges his claims arise out of the same alleged facts and course of conduct giving rise to the claims of the other Class Members. Finally, Plaintiff's claims are typical of the other Class Members because he seeks the same relief for the alleged violations. Because Plaintiff's claims are based upon the same alleged conduct and practices as those of Class Members, the typicality requirement has been satisfied.

Finally, the question of adequacy of representation "depends on whether the plaintiff's attorney qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests of the class." *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations are satisfied. Counsel for Plaintiff include well-regarded and accomplished lawyers who are qualified and experienced in employment-related, class-action litigation. Jimenez Decl. ¶¶2-13. Plaintiff will vigorously, adequately, and fairly represent the interests of the Class as they have done since this Action was filed. Because Plaintiff's claims are typical of other Class Members and are not based on unique circumstances, there is no antagonism between the interests of Plaintiff and the Class.

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

Under the circumstances, proceeding as a class action is a superior means of resolving this Action, as the Class Members and the court will derive substantial benefits. Class certification would serve as the only means to deter and redress the alleged violations. *See*, *Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will come forward to prove his or her separate claim and whether the class approach would actually serve to deter and redress the alleged wrongdoing). Further, individual actions arising out of the same operative facts would unduly burden the courts and could lead to inconsistent results. Therefore, class action proceedings are superior to individual litigation.

VII. THE REQUESTED ENHANCEMENT PAYMENT IS REASONABLE

Plaintiffs in class action and PAGA lawsuits are eligible for reasonable enhancement 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 Co.*,186 Cal.App.4th 399, 412 (2010). Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. *See*, *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995) (approving $50,000 enhancement); *Gaudin v. Saxon Mortgage Servs., Inc*., 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of $15,000 to be "fair and reasonable").

The requested Enhancement Payment in the amount of $7,500.00 to Plaintiff is fair and appropriate based on the substantial amount of effort Plaintiff invested into bringing this lawsuit and assisting Class Counsel with the Action, and Notice of the requested enhancement payment is disclosed to the Class Members in the proposed Notice of Proposed Class Settlement ("Notice"). *See* Settlement Agreement, **Ex. A**; Jimenez Decl. ¶¶98-99. Throughout the litigation, Plaintiff spent substantial time and effort searching for relevant documents, speaking with Class Counsel, and providing the facts and evidence necessary to prove the allegations. Plaintiff actively attempted to obtain information that would benefit the Settlement Class. Prior to signing the Settlement Agreement, Plaintiff reviewed the Settlement Agreement, asked questions, and discussed the settlement with Class Counsel. The information and documentation provided by Plaintiff was instrumental in asserting the alleged wage and hour violations in the Action, and the recovery provided for in the Settlement would have been impossible to obtain without his participation. These services unquestionably merit the requested Enhancement Payment. Jimenez Decl. ¶100.

At the same time, Plaintiff faces many risks in adding himself as class representative in the Action. Plaintiff faces actual risks with his future employment, as putting himself on public record in an employment lawsuit could also very well affect his likelihood for future employment. Despite this, Plaintiff still chose to bring this litigation on behalf of others and have put those interests ahead of his own. Jimenez Decl. ¶101.

As a result of Named Plaintiff's service, approximately 232 of his former co-workers will have the opportunity to participate in a settlement related to alleged wage violations they may have never known about on their own or been willing to pursue on their own. If these co-workers would have tried to pursue their legal remedies on their own, that would have resulted in each having to expend a significant amount of their own monetary resources and time, which was obviated by Plaintiff making those allegations on behalf of these other individuals. Jimenez Decl. ¶102. Plaintiff has also agreed to a general release of his claims that is broader than that of his former co-workers. Plaintiff has not received any compensation to date, but should be compensated for the time, effort, and risk he took to bring the Action on behalf of others. *See* Rodriguez Decl. ¶17.

VIII. REQUESTED ATTORNEYS' FEES AND COSTS

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal, Inc.*, 82 Cal.App.4th 19, 41 (2000). California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Id*. at 47. In cases where class members present claims against a common fund and the defendant agrees to the use of a percentage of the fund as part of the settlement, use of the percentage method is appropriate. *Id.* at 32.

Here, the requested attorneys' fees of $43,750.00, which is thirty-five (35%) of the common fund, are disclosed to Class Members in the proposed Notice. *See* Settlement Agreement, ¶¶4, 42. The percentage award of the attorneys' fees is commensurate with: (1) the economic risk Class Counsel took in commencing the Action on a contingency basis, knowing that there would likely be a long battle with a premier defense firm; (2) the time, effort, and expense dedicated to the Action; (3) the skill and determination the Action has required; (4) the results achieved throughout the litigation; and (5) the value of the settlement achieved for Class Members, PAGA Members, and the State of California. The requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by Defendants. The Motion for Final Approval will elaborate on the nature of the legal services provided and will also support Plaintiff's Counsel's request for the reimbursement of litigation costs not to exceed $20,000.00. Jimenez Decl. ¶104.

IX. NOTICE TO THE CLASS, THE OPT OUT AND OBJECTION PROCESS MEETS DUE PROCESS REQUIREMENTS

The Parties have jointly drafted a Notice which will be delivered to the Class Members. *See*, Settlement Agreement, **Ex. A**. The Notice will include information regarding the nature of the lawsuit, a summary of the terms of the Settlement, the Class definition, information on how to object and opt-out, information regarding the release of the class and PAGA claims, and the date of the Final Approval Hearing. The Notice will also list each Class Member's total workweeks and the approximate Individual Settlement Payment to be paid to the Class Member. *Id.* The Notice will indicate that the Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate and reasonable, and a final determination of such issues will be made at the final hearing. *Id.*; Jimenez Decl. ¶123.

No later than twenty-one (21) calendar days after the Court grants preliminary approval of the Settlement, Defendants will provide the Class List to the Settlement Administrator including the full name, last known address and telephone number, social security number, dates of employment, workweeks worked during the Class Period and PAGA Period for all Class Members, amongst other information. Jimenez Decl. ¶124; Settlement Agreement ¶¶5 & 50. The Settlement Administrator shall perform any searches necessary for confirmation of the Class Members' addresses and shall mail the Notice to the Class Members within seven (7) calendar days of receiving the Class List from Defendants. Jimenez Decl. ¶125; Settlement Agreement ¶¶51-52.

In determining whether to approve a settlement of a class action, a trial court has virtually complete discretion as to the manner of giving notice to class members, and review on appeal is governed by the abuse of discretion standard. *See*, *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380 (2010). Here, Plaintiff's Counsel is not aware of an alternative method of providing notice to the Class which would result in a higher likelihood of actual notice. The original source of the mailing addresses is from each Class Member, who provided the information to Defendants. As a fail-safe, additional searches will be performed on any notice returned as non-deliverable. The Settlement Administrator will also report any and all opt-outs, objections, and disputes. Jimenez Decl. ¶126; Settlement Agreement ¶¶50-52, 60.

Any Class Member who wishes to be excluded from the Settlement must mail the Settlement Administrator a signed written request for exclusion including their name, signature, address, telephone number, dates of employment at Defendants' in California, and the last four digits of the Class Member's Social Security number and/or the Employee ID number (b) the case name and number; and (c) a clear statement requesting to be excluded from the settlement of the class claims similar to the following: "I wish to exclude myself from the class settlement reached in the matter of "*Jose Rivas Rodriguez v. Valleywide Farm Labor, Inc., et al.*, filed in the Fresno County Superior Court, Case No. 22CECG01009, I understand that by excluding myself, I will not receive money from the settlement of my individual claims." The request for exclusion must be postmarked no later than sixty (60) calendar days after mailing of the Notice. Settlement Agreement ¶¶ 32-33, 56; Jimenez Decl. ¶110. Any Class Member wishing to object to the approval of this Settlement shall provide a written statement stating: stating: (a) the objector's full name, signature, address, telephone number, the approximate dates of employment at Defendants' in California, last four digits of the Class Member's social security number or employee ID number; (b) the case name and number; (c) a written statement of all grounds for the objection accompanied by legal support, if any, for such objection; (d) copies of any papers, briefs, or other documents upon which the objection is based, if any; and (e) a statement describing whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel at the Class Member's expense. Such written statement must be mailed to the Settlement Administrator within sixty (60) calendar days following the initial mailing of the Notice. Class

Members may also appear and object at the final approval hearing, regardless of whether they have submitted a written objection. *Id.*; Settlement Agreement ¶¶ 28, 32-33, 56 & 59.

X. <u>CONCLUSION</u>

For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's Motion for Preliminary Approval of Class and PAGA Settlement and the relief requested herein.

Dated: April 25, 2025 **PROTECTION LAW GROUP, LLP**

By: ______________________________
Carlos Jimenez
Brendan Burton
Stephanie Papayanis
Attorneys for Plaintiff
JOSE RODRIGUEZ