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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF SAN BERNARDINO**

HECTOR J. MEJIA on behalf of himself  
and all others similarly situated,

Plaintiffs,

v.

WALMART INC., a Delaware corporation;  
and DOES 1 through 10, inclusive,

Defendant.

Case No.: CIVSB-2207614

[Assigned for all purposes to the Hon. David E.  
Driscoll, Dept. S22]

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

Date: December 19, 2023

Time: 8:30 a.m.

Dept.: S22

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Attorneys for Plaintiffs and the Class

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on December 19, 2023, at 8:30 a.m., or as soon  
3 thereafter as the matter may be heard, before the Honorable David E. Driscoll, judge presiding,  
4 in Department S-22 of the above referenced Court located at 247 W. Third Street, San  
5 Bernardino, CA 92415, Plaintiffs Hector J. Mejia, Dearl Powell, Christina Gast, and Elijha  
6 Gonzalez (collectively, “Plaintiffs”) will seek an Order: (1) approving the Joint Stipulation of  
7 Class and Representative Action Settlement (“Agreement” or “Settlement Agreement”) in this  
8 matter; (2) conditionally certifying the Class, as defined herein below, for settlement purposes  
9 only; (3) appointing Plaintiffs as Class Representatives; (4) appointing as Class Counsel Marcus  
10 Bradley and Kiley Grombacher of Bradley/Grombacher, LLP; Garen Majarian and Sahag  
11 Majarian II of Majarian Law Group APC; Larry W. Lee and Mai Tulyathan of Diversity Law  
12 Group, P.C.; Dennis S. Hyun of Hyun Legal, APC; and B. James Fitzpatrick and Laura L.  
13 Franklin of Fitzpatrick & Swanston; (5) preliminarily approving the Settlement Agreement and  
14 the total Maximum Settlement Amount in the amount of Twelve Million Dollars  
15 (\$12,000,000.00); (6) finding on a preliminary basis that the Agreement appears to be within the  
16 range of reasonableness of a settlement, including the amount of the PAGA penalties, Class  
17 Representative Service Awards, Class Counsel fees and costs, Settlement Administration Costs,  
18 and the allocation of payments to Class Members, that could ultimately be given final approval  
19 by this Court; (7) approving the Notice of Class Action Settlement to be sent to Class Members;  
20 (8) appointing Phoenix Settlement Administrators as the Settlement Administrator; and (9)  
21 setting the matter for a Final Fairness and Final Approval hearing.

22 The “Class” for which Plaintiffs will seek conditional certification for settlement  
23 purposes is defined as a collective of the following: (a) all of Defendants’ California non-exempt  
24 Walmart retail store employees whose employment ended, either voluntarily or involuntarily, at  
25 any time during the period of time from April 6, 2017, through December 31, 2022, and who  
26 during their employment with Walmart at any time between April 6, 2017, through December  
27 31, 2022, received payment of Paid Sick Days in the same quarter in which he/she earned a  
28 MyShare incentive (the “Former Employee Sick Pay Class”); and (b) all of Defendants’ current

1 and former California non-exempt Walmart retail store employees as of December 31, 2022,  
2 who, on at least one occasion between April 12, 2018 and December 31, 2022, received a  
3 payment of Paid Sick Days in the same quarter in which they earned a MyShare incentive or  
4 within 90 days after receipt of any incentive pay (the “Sick Pay Class”).

5 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which  
6 provides for court approval of the settlement of a purported class action and allows the Court to  
7 preliminarily certify a class for settlement purposes.

8 The basis for this Motion, filed without any opposition from Defendants Walmart Inc.,  
9 Wal-Mart Associates, Inc., and Wal-Mart Stores, Inc. (“Defendants” or “Walmart”), is that the  
10 proposed settlement is fair, adequate, and reasonable and the procedures proposed by the Parties  
11 are adequate to ensure the opportunity of class members to participate in, opt-out of, or object to  
12 the settlement. This Motion will be based on the attached Memorandum of Points and  
13 Authorities, the Settlement Agreement and the proposed Notice of Class Action Settlement, and  
14 the supporting Declarations of Marcus Bradley, Larry W. Lee, Mai Tulyathan, Dennis S. Hyun,  
15 B. James Fitzpatrick, Laura L. Franklin, and Plaintiffs, and upon the oral arguments of counsel  
16 (should there be any) and on the complete records and file herein.

17 DATED: October 13, 2023

BRADLEY/GROMBACHER, LLP

18  
19 By: /s/ Marcus J. Bradley  
20 Marcus J. Bradley, Esq.

21 Attorneys for Plaintiff  
22 HECTOR MEJIA

23 DATED: October 13, 2023

DIVERSITY LAW GROUP, P.C.

24   
25 By: Larry W. Lee, Esq.  
26 Mai Tulyathan, Esq.

27 Attorneys for Plaintiffs  
28 DEARL POWELL; CHRISTINA GAST and  
ELIJHA GONZALEZ

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1           **I.       INTRODUCTION**

2           Plaintiffs Hector J. Mejia (“Mejia”), Dearl Powell (“Powell”), Christina Gast (“Gast”),  
3 and Elijha Gonzalez (“Gonzalez”) (collectively, “Plaintiffs”) bring class and representative  
4 claims against Defendants Walmart Inc., Wal-Mart Associates, Inc., and Wal-Mart Stores, Inc.  
5 (“Defendants” or “Walmart”) under the California Labor Code (Plaintiffs and Defendants shall  
6 be jointly referred to as the “Parties”) in the operative First Amended Complaint (the “Action”).  
7 Plaintiffs now move for preliminary approval of the proposed class and representative settlement  
8 after lengthy litigation, mediation, and thorough investigation of the claims alleged.

9           Prior to the settlement of this Action, the Parties thoroughly investigated the facts relating  
10 to the claims alleged in the complaint and engaged in a thorough study of the legal principles  
11 applicable to the claims asserted against Defendants. Indeed, Plaintiffs Powell, Gast and  
12 Gonzalez conducted formal written discovery, completed the depositions of Walmart’s FRCP  
13 30(b)(6) witness and a percipient witness, and briefed class certification. However, the Parties  
14 agreed to put any further formal litigation on hold so that the Parties could attempt to resolve this  
15 matter through private mediation. In connection with the mediation, Defendants provided  
16 detailed information related to the putative class, including the number of putative members,  
17 shifts worked, wages paid (including paid sick leave and incentive wages), and wage statements  
18 issued to the Class. Thereafter, the Parties commenced settlement negotiations through private  
19 wage and hour mediator Louis Marlin, Esq., and were ultimately able to reach the current  
20 settlement after continued negotiations and with assistance from the mediator after the matter did  
21 not initially settle at mediation. **Significantly, this entire amount is non-reversionary, such**  
22 **that no monies will revert to Defendants.**

23           The Parties believe that this amount is fair, adequate, and reasonable, especially given the  
24 risks and uncertainty of class certification and the merits of this case.

25           Although Plaintiffs and their counsel believe that they can prevail on class certification,  
26 as well as on the merits, Plaintiffs and their counsel recognize the inherent risks in drawn-out  
27 litigation and the specific risks that a class might not be certified and/or that Plaintiffs could fail  
28 to establish liability. Defendants deny the allegations in the Complaints and believe that they can

1 prevail at trial. Based on their own independent investigation and evaluation, the Parties and their  
2 respective counsel are of the opinion that the settlement for the consideration and on the terms  
3 set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interests  
4 of the Class and Defendants in light of all known circumstances and the expenses and risks  
5 inherent in litigation.

6 Therefore, the Parties respectfully request that the Court grant this Motion for  
7 Preliminary Approval of Class Action Settlement.

## 8 **II. FACTUAL AND PROCEDURAL BACKGROUND**

### 9 **a. The *Powell* Action**

10 On September 29, 2020, Plaintiffs Dearl Powell, Christina Gast, and Elijha Gonzalez  
11 filed a Class Action Complaint against Defendants in San Diego County Superior Court, Case  
12 No. 37-2020-00035007-CU-OE-CTL (the “*Powell* Action”), which alleges a single cause of  
13 action on behalf of former non-exempt employees for unpaid wages and penalties pursuant to  
14 California Labor Code §§ 201-203 for Walmart’s alleged failure to pay sick pay at the correct  
15 “regular rate” of pay. The *Powell* Action alleges a class period start date of April 6, 2017,  
16 pursuant to Emergency rule 9 tolling during the COVID-19 pandemic. Lee Decl. ¶ 2.

17 In December 2020, the *Powell* Action was removed to United States District Court for  
18 the Southern District of California, District Court Case No. 3:20-cv-2412-BEN-LL. On  
19 February 2, 2021, the District Court denied the *Powell* plaintiffs’ motion for remand, which  
20 argued that Walmart failed to produce sufficient evidence showing the amount in controversy  
21 had been met to establish the District Court’s subject matter jurisdiction under the Class Action  
22 Fairness Act. The February 2, 2021 Order also denied Walmart’s motion to dismiss the  
23 complaint and granted Defendants’ unopposed motion to strike a portion of the caption that  
24 erroneously referenced a Labor Code not alleged in the complaint. Lee Decl. ¶ 4.

25 The parties in the *Powell* Action engaged in significant written discovery and document  
26 productions. Plaintiffs’ counsel deposed Defendants’ Persons Most Knowledgeable as well as  
27 the economist/data analyst relied on by Walmart to compute the amount in controversy for  
28 removal purposes. Lee Decl. ¶ 5.

1 In January 2022, Walmart and Plaintiffs Dearl Powell, Christina Gast, and Elijha  
2 Gonzalez agreed to attend private mediation in connection with the *Powell* Action. After  
3 inquiring with multiple agreed-upon mediators, the earliest mutually agreeable mediation date  
4 was reserved with Louis Marlin, Esq. for June 14, 2022. Lee Decl. ¶ 6.

5 On April 7, 2022, Defendants filed a Motion for Judgment on the Pleadings, which was  
6 initially set for hearing on May 19, 2022. On April 15, 2022, Plaintiffs Powell, Gast, and  
7 Gonzalez filed their Motion for Class Certification, with a hearing date of June 23, 2022. Lee  
8 Decl. ¶¶ 7-8. Upon stipulation of the Parties, hearings for both Defendants' Motion for Judgment  
9 on the Pleadings and Plaintiffs' Motion for Class Certification were continued to October 13,  
10 2022, pending the Parties' settlement efforts. Lee Decl. ¶ 9.

11 **b. The *Mejia* Action**

12 On April 12, 2022, Plaintiff Hector J. Mejia initiated this Action in San Bernardino  
13 County Superior Court, Case No. CIV-SB-2207614 ("*Mejia* Action"), and the Action was  
14 thereafter removed to United States District Court for the Central District of California (Central  
15 District Case No. 5:22-CV-00970-AB). Similar to the *Powell* Action, Plaintiff Mejia alleges  
16 class claims arising out of Defendants' alleged failure to pay sick pay at the "regular rate" of pay.  
17 In addition to the unpaid wages and waiting time penalties sought on behalf of former employees  
18 in the *Powell* Action, Plaintiff Mejia's class includes current employees, a derivative claim for  
19 wage statement violations under Labor Code section 226, and a cause of action under California  
20 Business and Professions Code Section 17200 et seq. for unfair business practices relating to sick  
21 pay (i.e., violations of Labor Code sections 246, 226, and 1174). Declaration of Marcus J.  
22 Bradley ("Bradley Decl"). ¶ 3.

23 On April 12, 2022, Plaintiff Hector J. Mejia filed a written notice to the California Labor  
24 & Workforce Development Agency ("LWDA") alleging that Defendants violated Labor Code  
25 section 226(a) and 246, pursuant to Labor Code section 2699 ("PAGA Notice"). Bradley Decl. ¶  
26 4.

27 In or around early June 2022, Walmart's counsel informed Plaintiffs' counsel in the  
28 *Powell* Action that Walmart had recently been served with the *Mejia* Action. Because the

putative class in the *Mejia* Action alleged claims that largely overlap with the putative class at issue in the *Powell* Action, counsel for the plaintiff in the *Mejia* Action was invited to attend the June 14, 2022 mediation, in an effort to resolve both the *Powell* and *Mejia* actions. Lee Decl. ¶ 10.

### **c. Mediation & Settlement Negotiations**

On June 14, 2022, the Parties engaged in mediation with Louis Marlin, an experienced wage and hour class action mediator. The settlement discussions were conducted at arm's-length. The case did not settle notwithstanding a full day of mediation. Following the provision of additional class data by Walmart and extended negotiations, the Parties reached the present class and PAGA settlement, in principle, on October 4, 2022. The Parties agreed to seek approval of the Settlement through this Action, as further described below. The Parties' agreement is detailed in the attached Joint Stipulation of Class and Representative Action Settlement ("Settlement Agreement"). Lee Decl., Ex. 1.

### **d. Remand and Amended Complaint**

In conjunction with the proposed settlement and the Parties' corresponding stipulation, the *Mejia* Action was remanded back to San Bernardino County Superior Court on June 26, 2023. As required by the Settlement Agreement, Plaintiffs then filed a first amended complaint in the *Mejia* Action, on or about July 14, 2023, adding plaintiffs Dearl Powell, Christina Gast, and Elijha Gonzalez, and adding PAGA claims consistent with the allegations in Plaintiff Hector Mejia's PAGA letter. Bradley Decl. ¶ 6.

## **III. LEGAL ANALYSIS**

Any settlement of a class action lawsuit must be reviewed and approved by the Court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the class members for their comment or objections. The *Manual for Complex Litigation, Third* § 30.41 states:

Approval of class action settlements involves a two-step process. First, counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation. If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class,

1 or excessive compensation for attorneys, and appears to fall within the range of  
2 possible approval, the court should direct that notice...be given to the class  
3 members of a formal fairness hearing, at which arguments and evidence may be  
presented in support of and in opposition to the settlement.

4 Thus, the preliminary approval by the trial court is simply a conditional finding that the  
5 settlement appears to be within the range of acceptable settlements. As Professor Newberg  
6 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference  
7 concerning a tentative settlement proposal may vary. The court may find that the settlement  
8 proposal contains some merit, is within the range of reasonableness required for a settlement  
9 offer, or is presumptively valid subject only to any objections that may be raised at a final  
10 hearing.” Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.26 (4th ed.  
11 2002).

12 The procedures for the parties’ submission of a proposed settlement for preliminary  
13 approval by the court also are discussed in *4 Newberg on Class Actions*:

14 When the parties to an action reach a monetary settlement, they will usually  
15 prepare and execute a joint stipulation of settlement, which is submitted to the  
16 court for preliminary approval. The stipulation should set forth the central terms  
17 of the agreement, including but not limited to, the amount of settlement, form of  
recapture clause.

18 *Id.* § 11.24.

19 Here, the Parties have reached such an agreement and have submitted to this Court in  
20 connection with this Motion a copy of the Settlement Agreement fully setting forth the  
21 agreement reached among the Parties. *See* Lee Decl., Ex. 1. The Settlement Agreement sets forth  
22 all terms of the agreement reached by the Parties, which include, among other things, the method  
23 for calculating the Class Members’ individual settlements.

24 The parties also may, at the preliminary approval stage, request that the court  
25 provisionally approve certification of the class—conditional upon final approval of the  
26 settlement. “[P]re-certification settlements are routinely approved if found to be fair and  
27 reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); *accord Dunk*  
28 *v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (although the settlement was reached

1 before any “adversary certification,” the court was satisfied that it was “fair, adequate and  
2 reasonable”); *In re Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many courts  
3 have employed this practice in the name of judicial efficiency in order to facilitate apparently  
4 beneficial settlement proposals”). As further explained by Professor Newberg:

5       The strength of the findings made by a judge at a preliminary hearing or  
6       conference concerning a tentative settlement proposal...may be set out in  
7       conditional orders granting tentative approval to the various items submitted to  
8       the court. Three basic rulings are often conditionally entered at this preliminary  
9       hearing. These conditional rulings may approve a temporary settlement class, the  
10      proposed settlement, and the class counsel’s application for fees and expenses.

11 *4 Newberg on Class Actions* § 11.26.

12       In addition to such terms as class identification, settlement amount and payment  
13      procedures, the Settlement Agreement reached among the Parties contains a provision pursuant  
14      to which the Parties stipulate to the Court’s provisional certification of the Class for the purposes  
15      of this settlement only.

#### 16       **A.     Proposed Class Definition**

17       The current settlement is being settled on behalf of a Class comprised of a collective of  
18      the following: (a) all of Defendants’ California non-exempt Walmart retail store employees  
19      whose employment ended, either voluntarily or involuntarily, at any time during the period of  
20      time from April 6, 2017, through December 31, 2022, and who during their employment with  
21      Walmart at any time between April 6, 2017, through December 31, 2022, received payment of  
22      Paid Sick Days in the same quarter in which he/she earned a MyShare incentive (the “Former  
23      Employee Sick Pay Class”); and (b) all of Defendants’ current and former California non-exempt  
24      Walmart retail store employees as of December 31, 2022, who, on at least one occasion between  
25      April 12, 2018 and December 31, 2022, received a payment of Paid Sick Days in the same  
26      quarter in which they earned a MyShare incentive or within 90 days after receipt of any incentive  
27      pay (the “Sick Pay Class”). *See* Settlement Agreement Section A, ¶ 4.

#### 28       **B.     Settlement Terms and Evaluation**

      Courts presume the absence of fraud or collusion in the negotiation of settlement unless  
evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars*

1 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In*  
2 *re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their  
3 judgment for that of the proponents, particularly where, as here, settlement has been reached  
4 with the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*  
5 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp.  
6 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car*  
7 *Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav.*  
8 *& Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

9 While the recommendations of counsel proposing the settlement are not conclusive, the  
10 Court can properly take them into account, particularly where, as here, they have been involved  
11 in formal and informal discovery and negotiations for some period of time, appear to be  
12 competent, have experience with this type of litigation, and have exchanged substantial evidence  
13 from the opposing party. *See Newberg on Class Actions, supra*, § 11.47; *Nat'l Rural Telecomms.*  
14 *Coop.*, 221 F.R.D. at 528 (“[s]o long as the integrity of the arm’s length negotiation process is  
15 preserved, however, a strong initial presumption of fairness attaches to the proposed  
16 settlement...[citations] and ‘great weight’ is accorded to the recommendations of counsel, who  
17 are most closely acquainted with the facts of the underlying litigation”).

18 Here, both Plaintiffs’ and Defendants’ counsel have a great deal of experience in wage  
19 and hour class action litigation. Plaintiffs’ counsel has been approved as class counsel in a  
20 numerous wage and hour class actions and have extensive litigation experience. Lee Decl. ¶¶ 27-  
21 29; Bradley Decl. ¶¶ 7-16; Declaration of Mai Tulyathan (“Tulyathan Decl.”) ¶¶ 6-11;  
22 Declaration of Dennis S. Hyun (“Hyun Decl.”) ¶¶ 3-6; Declaration of B. James Fitzpatrick  
23 (“Fitzpatrick Decl.”) ¶¶ 6-7; Declaration of Laura L. Franklin (“Franklin Decl.”) ¶¶ 6-7. Each  
24 side has apprised the other of their respective factual contentions, legal theories and defenses,  
25 resulting in negotiations taking place between the Parties. Lee Decl. ¶¶ 14-25.

26 Additionally, this case meets all of the factors for preliminary approval pursuant to *Kullar*  
27 *v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 130, 133 (2008). In *Kullar*, the Court of  
28 Appeal held that a class action settlement should be approved when the plaintiff has conducted

1 sufficient discovery and the settlement is reasonable in light of the strengths of the plaintiff's  
2 claims. As discussed herein, Plaintiffs' counsel has conducted extensive discovery and  
3 investigation and, in light of the strength and weaknesses of Plaintiffs' claims, Plaintiffs'  
4 attorneys submit that this settlement is fair pursuant to *Kullar*.

5 Defendants identified approximately 109,222 putative class members. Lee Decl. ¶ 17.  
6 Plaintiffs estimated that the realistic exposure Defendants would face was approximately  
7 \$200,000.00 for the unpaid sick wages, and potentially \$100 million in derivative waiting time  
8 penalties.<sup>1</sup> *Id.* Specifically, this took into account the realistic chances of prevailing based on the  
9 defenses raised by Defendants that presented significant risks. For example, Defendants argued  
10 that their formula for calculating sick pay was lawful. *Id.* ¶ 18. If so, then the value of Plaintiffs'  
11 claims would be \$0. *Id.* Additionally, Defendants would have argued there is no private right of  
12 action for sick pay under the Healthy Workplace Healthy Family Act or the California Labor  
13 Code and, thus, Plaintiffs would not recover any unpaid sick pay wages, as a matter of law. *Id.*  
14 Again, if Defendant were to prevail on this argument, then the value of Plaintiffs' claims would  
15 be \$0. *Id.* Finally, even if Plaintiffs prevailed and showed that Defendants underpaid the alleged  
16 sick wages, Plaintiffs would have to further prove that such underpayments by Defendants was  
17 willful and intentional in order to recover any waiting time penalties. *Id.* Thus, even if Plaintiffs  
18 were able to prevail and recoup the underpaid sick wages, if Plaintiffs were unable to establish  
19 the "willfulness/intentional" standard required by Labor Code § 203, the value of Plaintiffs'  
20 claims would be significantly less than the current settlement. Indeed, should the Court find  
21 against Plaintiffs on willfulness, the total waiting time penalties recoverable by Plaintiffs would  
22 be \$0. *Id.* Plaintiffs also took into account the risk to prevailing on class certification on the  
23 underpaid sick pay wages claim. *Id.* ¶¶ 18-19. In this regard, there is essentially no precedent  
24 from California courts granting class certification of a sick pay regular rate claim. Thus, while  
25 Plaintiffs believe that a class can be certified, there is a possibility that the Court will not grant  
26

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27 <sup>1</sup> The main claim and/or damages to be recovered in an underpaid/unpaid sick pay wages claim  
28 are typically waiting time penalties under Labor Code § 203. The amount of actual  
underpaid/unpaid sick wages is typically minimal.

1 class certification on Plaintiffs' sick pay regular rate claim.

2 With respect to potential liability of Plaintiffs' PAGA claims, Plaintiffs estimated that  
3 Defendants could face civil penalties under the PAGA for the violations described above in  
4 excess of \$10 million. However, even assuming Plaintiffs prevailed on their PAGA claims, the  
5 Court has discretion to reduce PAGA penalties substantially. Pursuant to Labor Code §  
6 2699(e)(2), the Court can decline to award PAGA penalties where "if, based on the facts and  
7 circumstances of the particular case, to do otherwise, would result in an award that is unjust,  
8 arbitrary and oppressive, or confiscatory." Indeed, as shown in the Court of Appeal's decision in  
9 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his  
10 PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%,  
11 citing the employer's good faith attempt at complying with the law. *Id.* at p. 517. Upon review,  
12 the Court of Appeal found such reduction to be proper. *Id.* at p. 539.

13 Although Plaintiffs believe in the merits of the alleged claims and maintain that there is  
14 no reason for reducing PAGA penalties, Plaintiffs are aware that Defendants may raise defenses  
15 to Plaintiffs' claims that could be persuasive to the Court. Thus, even if Plaintiffs were to  
16 successfully prove their claims at trial, there is a possibility that the Court may only award a  
17 small percentage of PAGA penalties, as the Court has discretion to do so. Taking into account  
18 the risks and discretion of the Court to reduce PAGA penalties, a reasonable expectation of  
19 PAGA penalties if this case were taken to trial is approximately \$2.5 million.

20 Thus, the settlement for each Class Member is fair, reasonable, and adequate, given the  
21 inherent risks of litigation, including the substantial risks relative to class certification and the  
22 merits of the claims, the costs of pursuing such litigation, the risk of appeals, and the risks  
23 associated with the Court's discretion to reduce PAGA penalties. The settlement is the result of  
24 extensive arm's-length negotiations between the Parties and their counsel and was facilitated by  
25 an experienced and neutral mediator.

26 Although Plaintiffs believe that a class can be certified, Plaintiffs also believe in the  
27 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiffs  
28 involved in not prevailing on one or more of the causes of action or theories alleged in the

1 Complaints, the possibility of non-certification, and the potential for appeals. Lee Decl. ¶¶ 14-19.

2         These risks on class certification are compounded by the California Supreme Court's  
3 holding in *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained  
4 class certification and subsequently prevailed at trial after eight years of litigation, but the  
5 judgment and the certification ruling were reversed by the California Supreme Court after an  
6 additional five years of litigation. The case was remanded to superior court where class  
7 certification was denied and plaintiffs' subsequent appeal also was denied.

8         Indeed, numerous courts have held that **gross** settlements approximating between only 8  
9 and 25% of the defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego Fin.*  
10 *Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement  
11 recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a cash  
12 settlement amounting to only a fraction of the potential recovery does not per se render the  
13 settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be  
14 assessed relative to risks of pursuing the litigation to judgment"; noting that whether the  
15 settlement is fair and adequate depends on the "the difficulties in proving the case");  
16 *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at \*6 (N.D.  
17 Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of  
18 the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct.  
19 Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour  
20 class settlement which obtained **only 9.1%** of projected damages, given the risks of continued  
21 litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL  
22 5878390, at \*6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of  
23 approximately 15% of the potential recovery was fair and reasonable). Here, the Maximum  
24 Settlement Amount is fair and reasonable as it is approximately 12% of the potential recovery of  
25 Plaintiffs' class and PAGA claims if Plaintiffs were to fully succeed at trial. Lee Decl. ¶ 24.

26         Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class  
27 Action Settlement, should any Class Member wish to pursue his or her own case for the claims  
28 being released herein, each Class Member has the right to submit a request for exclusion (*i.e.*,

opt-out) from the settlement. Settlement Agreement Section D, ¶ 17. Moreover, as set forth in the Notice, Class Members are advised of their right to object to any of the terms contained in the Settlement Agreement. Settlement Agreement Section D, ¶ 20.

**1. Amount and Manner of Distribution of the Compensation to be Provided to Class Members Including the Amount, or an Estimate, of What Each Class Member Will Receive**

The Settlement Agreement provides for a Maximum Settlement Amount of Twelve Million Dollars (\$12,000,000.00) to be paid by Defendants. Settlement Agreement Section A, ¶ 18. The Net Settlement Amount, calculated after deduction of attorneys' fees (up to 35%, or \$4,200,000.00), costs (up to \$100,000.00), Class Representative Service Awards (up to \$10,000.00 for each Plaintiff for a total of \$40,000.00), a PAGA Payment to the Aggrieved Employees and the LWDA (\$400,000.00), and Settlement Administration Costs (currently estimated at \$431,950.00), is estimated to be approximately \$6,828,050.00. Lee Decl. ¶ 16; *see* Settlement Agreement Section A, ¶ 19.

Each Participating Class Member who does not opt-out of the Settlement will be awarded a portion of the Net Class Settlement Amount on a pro-rata basis. Fifty percent (50%) of the Net Class Settlement Amount shall be allocated to the Sick Pay Class Members and shall be distributed to the Sick Pay Class Members by dividing said amount by the total number of pay periods in which all Sick Pay Class Members were paid sick pay wages in the same time period that they earned any incentive pay between April 12, 2018 and December 31, 2022, and multiplying said value by the number of pay periods each Sick Pay Class Member was paid sick pay wages in the same time period that they earned any incentive pay between April 12, 2018 and December 31, 2022. The other fifty percent (50%) of the Net Class Settlement Amount shall be allocated to the Former Employee Sick Pay Class Members on a pro rata basis based on the number of Former Employee Sick Pay Class Members. Settlement Agreement Section D, ¶ 8. Thus, while the Net Class Settlement Amount equates to a potential recovery by each participating Class Member of approximately \$63.43 based on a raw average, the amount actually paid to each participating Class Member will increase or decrease depending on the calculations above and to which settlement class(es) each individual belongs. Given the defenses

1 raised, the history of litigation detailed above, and the risk of lengthy appeals, Plaintiffs’ counsel  
2 believes this to be a fair result for the Class.

3 Finally, the terms of the settlement provide that uncashed checks (upon the expiration  
4 date) shall be distributed to the California Controller's Unclaimed Property Fund to be held in the  
5 name of the participating class member. Settlement Agreement Section D, ¶ 23.

## 6 **2. None of the Settlement Funds Will Revert to Defendants**

7 The Settlement Agreement clearly affirms that this is a non-reversionary Settlement and  
8 that no portion of the Maximum Settlement Amount shall revert to Defendants. Settlement  
9 Agreement Section A, ¶ 19; Section D, ¶ 1.

## 10 **3. Scope of the Release of Class Members’ Claims**

11 As a condition of participating in this settlement, participating Class Members shall  
12 waive and release claims corresponding with their class – i.e., the Sick Pay Class or the Former  
13 Employee Sick Pay Class.

14 “Released Class Claims for Sick Pay Class Members” means all causes of action  
15 that were alleged or reasonably could have been alleged against the Released  
16 Parties, and that reasonably arise out of the same set of operative facts or are  
17 reasonably related to the allegations in the Complaint that Defendants did not  
18 properly pay for paid sick days provided for under the Healthy Workplace  
19 Healthy Family Act of 2014 (hereinafter “HWHFA”) (Labor Code Sections 245-  
20 249), including, but not limited to, of violations of Cal. Labor Code sections 201-  
21 203, 204, 210, 226, 226.3, 246, and 1174 and Cal. Bus. & Prof. Code section  
22 17200 set seq. predicated on the alleged failure to properly pay for paid sick days  
23 that accrued at any time between April 12, 2018 through December 31, 2022.

24 Settlement Agreement Section A, ¶ 28.

25 “Released Class Claims for Former Employee Sick Pay Class Members” means  
26 all causes of action that were alleged or reasonably could have been alleged  
27 against the Released Parties, and that reasonably arise out of the same set of  
28 operative facts or are reasonably related to the allegations in the Complaint that  
29 Defendants did not properly pay for paid sick days provided for under the  
30 HWHFA, and that this resulted in a failure to pay all wages owed at the time of  
31 separation of employment, including but not limited to violations of Cal. Labor  
32 Code sections 201-203 and 246 that accrued at any time between April 6, 2017  
33 through December 31, 2022.

34 Settlement Agreement Section A, ¶ 29. These releases are appropriately limited to encompass  
35 only the relevant claims that accrued during the specified release periods.

1 The Released PAGA Claims are also appropriately limited to claims for civil penalties  
2 under PAGA “which were alleged or reasonably could have been alleged against the Released  
3 Parties, and that reasonably arise out of the same set of operative facts or are reasonably related  
4 to the allegations in the Complaint that Defendants did not properly pay for paid sick days  
5 provided for under the HWHFA” and which are “predicated on the failure to properly pay for  
6 paid sick days that accrued at any time between April 12, 2021 through December 31, 2022.”  
7 Settlement Agreement Section A, ¶ 30.

#### 8 **4. Tax Treatment of Settlement Amounts**

9 As Plaintiffs’ lawsuit sought statutory and civil penalties, the Parties have agreed that the  
10 settlement payments to Class members will be allocated for Sick Pay Class Members as 80% to  
11 penalties and interest and reported on an IRS Form 1099 and 20% to wages and reported on an  
12 IRS Form W-2. Settlement Agreement Section D, ¶ 26. Former Employee Sick Pay Class  
13 Members and Individual PAGA Payments shall be allocated as 100% as penalties. *Id.*

#### 14 **5. Affirmative Obligations to be Undertaken by Class Members or Class** 15 **Counsel and the Reasons for Any Such Obligations**

16 As stated above, Class Members do not need to do anything should they wish to receive  
17 their share of the settlement funds. Thus, this substantially decreases the amount of burden each  
18 Class Member must bear in order to receive their settlement share. If a Class Member does not  
19 wish to take part in this settlement and be bound by the release, the Class Member must submit  
20 an exclusion request. Settlement Agreement Section D, ¶ 17.

#### 21 **C. Notice to Class Members**

22 Within thirty (30) days of the preliminary approval of this settlement, Defendants will  
23 transmit to the Settlement Administrator an Excel document containing each Class Member’s  
24 full name, last known home address and telephone number, social security number, beginning  
25 and ending dates of employment, whether the Class Member is a member of the Sick Pay Class  
26 and/or Former Employee Sick Pay Class, and the number of pay periods in which the Sick Pay  
27 Class Member received Paid Sick Days in the same quarter in which they earned a MyShare  
28 incentive, and/or received Paid Sick Days within 90 days after receipt of any incentive pay

1 between April 12, 2018 and December 31, 2022, and the number of Former Employee Sick Pay  
2 Class Members (“Class List and Data”). Settlement Agreement Section A, ¶ 7; Section D ¶ 12.

3 Upon receipt of the information and prior to mailing the Notice of Class Action  
4 Settlement (“Notice”), the Settlement Administrator shall perform a search based on the National  
5 Change of Address Database for information to update and correct for any known or identifiable  
6 address changes. Settlement Agreement Section D, ¶¶ 11c, 14. Within five (5) business days of  
7 receipt of the Class List and Data, the Settlement Administrator shall mail the Notice to all Class  
8 Members. Settlement Agreement Section D, ¶ 13. The Settlement Administrator will re-mail the  
9 Notice to Class Members for whom the notice is returned with a forwarding address and perform  
10 a skip-trace or other search on Class Members and re-mailing for whom a Notice is returned as  
11 undeliverable. Settlement Agreement Section D, ¶ 16.

12 As set forth in the Notice, Class Members will be allowed to opt out of the settlement by  
13 a certain deadline, or object to the settlement. Settlement Agreement Section D, ¶¶ 17, 20.

14 **D. Typicality and Adequacy of Representation**

15 **1. Class Representative’s Claims are Typical of the Class**

16 The commonality requirement is met when there are questions of law and fact common to  
17 the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared  
18 legal issues with divergent legal factual predicates is sufficient, as is a common core of salient  
19 facts couple with disparate legal remedies within the class”). Commonality requires only that  
20 some common legal or factual questions exist; the plaintiffs need not show that all issues in the  
21 litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981).  
22 Defendant’s conduct is central to the commonality inquiry. *See City of San Jose v. Superior*  
23 *Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971).  
24 Where the employer’s conduct is uniformly directed at a class of employees, as it is here, the  
25 class wide impact of the defendant’s policies satisfies the commonality requirement. *See*  
26 *Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

27 Plaintiffs claim and continue to claim that the Released Claims have merit and give rise  
28 to the liability on the part of Defendants. In other words, Plaintiffs were subjected to the same

1 policy and practice as other Class Members. Thus, Plaintiffs' claims are typical to those of Class  
2 Members.

3 Moreover, Plaintiffs do not have any interests adverse to the Class, nor have any such  
4 issues been raised or presented. Declaration of Hector J. Mejia ("Mejia Decl.") ¶ 8; Declaration  
5 of Dearl Powell ("Powell Decl.") ¶ 4; Declaration of Christina Gast ("Gast Decl.") ¶ 4;  
6 Declaration of Elijha Gonzalez ("Gonzalez Decl.") ¶ 4. Plaintiffs have taken all necessary steps  
7 to represent the interests of the Class, and by providing information and documents to Plaintiffs'  
8 counsel. Mejia Decl. ¶ 8; Powell Decl. ¶¶ 5-6; Gast Decl. ¶¶ 5-6; Gonzalez Decl. ¶¶ 5-6. For  
9 such reasons, Plaintiffs have adequately represented the Class Members and will continue to do  
10 so.

## 11 **2. Class Counsel Has Adequately Represented the Class and Has** 12 **Experience with Wage and Hour Class Actions**

13 From the inception of the case, Class Counsel has zealously represented the interests of  
14 the class. The settlement was obtained for the benefit of the class, as opposed to the individual  
15 Class Representatives. Further, Class Counsel has been approved as class counsel on a number of  
16 prior cases, have litigated numerous other class action cases, and are competent to represent the  
17 class. Lee Decl. ¶¶ 27-29; Bradley Decl. ¶¶ 7-16; Tulyathan Decl. ¶¶ 6-11; Hyun Decl. ¶¶ 3-6;  
18 Fitzpatrick Decl. ¶¶ 6-7; Franklin Decl. ¶¶ 6-7.

### 19 **E. Costs and Fees**

#### 20 **1. Attorneys' Fees and Costs**

21 California state and federal courts have recognized that an appropriate method for  
22 determining award of attorneys' fees is based on a percentage of the total value of benefits to  
23 Class Members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254  
24 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472,  
25 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of  
26 this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs  
27 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire  
28 burden alone." *Vincent*, 557 F.2d at 769.

1           The common fund doctrine is predicated on the principle of preventing unjust  
2 enrichment. When a litigant’s efforts create or preserve a fund from which others derive benefits,  
3 he may require the passive beneficiaries to compensate those who created the fund. Both  
4 California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at 35;  
5 *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th  
6 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine has  
7 been applied “consistently in California when an action brought by one party creates a fund in  
8 which other persons are entitled to share.” The reasons for applying the common fund doctrine  
9 include: “fairness to the successful litigant, who might otherwise receive no benefit because his  
10 recovery might be consumed by the expenses; correlative prevention of an unfair advantage to  
11 the others who are entitled to share in the fund and who should bear their share of the burden of  
12 its recovery; encouragement of the attorney for the successful litigant who will be more willing  
13 to undertake and diligently prosecute proper litigation for the protection or recovery of the fund  
14 if he is assured that he will be properly and directly compensated should his efforts be  
15 successful.” *Id.*

16           Indeed, most recently, the California Supreme Court has also now held that the award of  
17 attorneys’ fees in common fund wage and hour class action settlements should start with the  
18 percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the  
19 overwhelming majority of federal and state courts in holding that when class action litigation  
20 establishes a monetary fund for the benefit of the class members, and the trial court in its  
21 equitable powers awards class counsel a fee out of that fund, the court may determine the amount  
22 of a reasonable fee by choosing an appropriate percentage of the fund created”).

23           The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3  
24 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that  
25 required a multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is  
26 “extraordinarily high or low [should] the trial court [] consider whether the percentage method  
27 should be adjusted so as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.  
28

1 Here, the Parties have agreed to a payment of a maximum of thirty-five percent (35%) of  
2 the Maximum Settlement Amount (or \$4,200,000.00) for payment to Class Counsel as attorneys'  
3 fees. The Parties have agreed to a payment of the foregoing attorney's fees and, thus, this  
4 payment should be presumed to be fair. The litigation history in the collective actions also  
5 demonstrates the value provided to the class and expended by class counsel.

6 Further, the Parties have agreed to reimbursement of Class Counsel's litigation costs in  
7 an amount up to \$100,000.00. Class Counsel has expended costs at their own risk, for example,  
8 to file this instant action, effect service of process, pay the mediation fees, and pay of other  
9 litigation-related costs.

10 Based on the foregoing, the Court should preliminarily approve the attorneys' fees and  
11 costs being requested by the Parties.

## 12 **2. Proposed Payment to the Class Representative**

13 Class Representatives Mejia, Powell, Gast, and Gonzalez request a service award of  
14 \$10,000.00 each for a total of \$40,000.00. Settlement Agreement Section A, ¶ 14; Section D, ¶ 4.  
15 The Class Representatives met and conferred with Class Counsel on a number of occasions to  
16 discuss the case, provided documents and information to Class Counsel, and reviewed the  
17 Settlement Agreement. As part of their duties as the Class Representatives, Plaintiffs provided  
18 invaluable information and documents that resulted in this settlement. Mejia Decl. ¶ 9; Powell  
19 Decl. ¶¶ 5-6; Gast Decl. ¶¶ 5-6; Gonzalez Decl. ¶¶ 5-6. In addition to the invaluable services that  
20 Plaintiffs provided, they also took a significant risk, both professionally and monetarily, in acting  
21 as the Class Representatives and seeking benefits on behalf of the Class. Because the claims  
22 alleged by the Class Representatives involved the payment of costs to the prevailing party,  
23 Plaintiffs could have possibly faced paying the costs of Defendants had they not prevailed in this  
24 action.

25 Furthermore, given that future employers are much less likely to hire individuals who  
26 have filed suit against their prior employer, particularly cases of this nature, Plaintiffs may face  
27 prejudice in the future from other potential employers. Plaintiffs took this risk upon themselves  
28 and the whole Class benefited from these risks taken by Plaintiffs. Class Members did not have

1 to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did  
2 they have to face the potential for retaliation and not getting future employment had they filed a  
3 public lawsuit. Plaintiffs also agreed to provide a general release and waiver of Civil Code  
4 Section 1542 as part of the settlement. Settlement Agreement Section D, ¶ 31.

### 5                   **3.       Settlement Administration Fees**

6           The Parties have agreed to an estimated payment of \$431,950.00 to the Settlement  
7 Administrator, Phoenix Settlement Administrators ("PSA"), to send notices and to administer  
8 this settlement. Settlement Agreement Section D, ¶ 5. PSA is a well-recognized class action  
9 settlement administrator. The Parties believe that the administration fee is reasonable and should  
10 be approved.

### 11                   **F. THE PAGA PROVISIONS OF THE AGREEMENT SHOULD BE** 12                   **APPROVED**

13           PAGA enables aggrieved employees to sue as a proxy for the State of California. Lab.  
14 Code § 2699(a), (g). To do so, a PAGA plaintiff must comply with Section 2699.3. *Id.* Pursuant  
15 to Section 2699.3(c)(1)(A), a PAGA plaintiff “shall give written notice by online filing with the  
16 [LWDA] and by certified mail to the employer of the specific provisions of this code alleged to  
17 have been violated, including the facts and theories to support the alleged violation.” Labor Code  
18 § 2699.3(c)(1)(A).

19           Here, Plaintiffs have exhausted their administrative remedies by providing notice to the  
20 LWDA and Defendants of their claims under the PAGA. Bradley Decl. ¶ 4. Specifically, on or  
21 about April 12, 2022, Mejia’s counsel submitted written notice to the LWDA and Defendants  
22 alleging that Defendants:

- 23           1. Failed to provide Employee and aggrieved employees sick pay at the regular rate (Lab.  
24           Code § 246; and
- 25           2. Failed to provide Employee and aggrieved employees with accurate, itemized wage  
26           statements (Lab. Code, § 226(a)).

27           *Id.* ¶ 21, & Exh. 1. Courts have repeatedly held that such allegations suffice to exhaust an  
28 employee’s administrative remedies and proceed under the PAGA. As explained by the Court of  
Appeal, the requirement to identify *specific* Labor Code provisions is distinct from the

1 requirement to provide *some* “facts and theories.” *Brown v. Ralphs Grocery Co.*, 28 Cal. App.  
2 5th 824, 836 (2018) (“The Supreme Court in *Williams* [*v. Superior Court*, 3 Cal. 5th 531 (2017),]  
3 recognized the distinction in the notice provision between the alleged violation (i.e., ‘the  
4 allegations an aggrieved employee is making’) and the facts and theories to support the alleged  
5 violation (i.e., ‘any basis for those allegations’).”).

6 With respect to the facts and theories required in a PAGA notice, the California Supreme  
7 Court has established that “[n]othing in Labor Code section 2699.3, subdivision (a)(1)(A),  
8 indicates the ‘facts and theories’ provided in support of ‘alleged’ violations must satisfy a  
9 particular threshold of weightiness, beyond the requirements of nonfrivolousness generally  
10 applicable to any civil filing.” *Williams v. Superior Court*, 3 Cal. 5th 531, 545 (2017).

11 “Following the *Williams* court’s admonition that the ‘facts and theories’ alleged in a PAGA  
12 notice need not ‘satisfy a particular threshold of weightiness,’ courts have since found few ‘facts  
13 and theories’ are needed to satisfy PAGA’s notice requirement.” *Rojas-Cifuentes v. Superior*  
14 *Court of San Joaquin Cty.*, 58 Cal. App. 5th 1051, 273 Cal. Rptr. 3d 76, 81 (2020) (quoting  
15 *Williams*, 3 Cal. 5th at 545).

16 Moreover, a plaintiff who proposes to settle a PAGA claim must provide notice to the  
17 LWDA. Labor Code § 2699(1)(2). Here, in conjunction with the filing of this Motion, Plaintiffs  
18 provided notice to the Labor and Workforce Development Agency. Lee Decl. ¶ 30. Accordingly,  
19 Plaintiffs have provided adequate notice to the LWDA.  
20

21 Additionally, as set forth above, this settlement is fair, adequate and reasonable. In  
22 *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 76-77 (2021), the Court of Appeal noted that in  
23 approving PAGA settlements, “the trial court conducts an ‘independent assessment of the  
24 adequacy of the settlement terms,’ which requires that the court have before it a record from  
25 which it can discern sufficient information about the amount in controversy and the realistic  
26 range of outcomes.” *Id.* As discussed above, this Court retains discretion to significantly reduce  
27 the PAGA penalties. Again, in *Carrington* 30 Cal. App. 5th at 539, the Court of Appeal affirmed  
28 the trial court’s reduction of PAGA penalties by 90%.

Further, courts have repeatedly affirmed PAGA allocations as part of settlements which are far lower than the amount allocated herein, *i.e.*, \$400,000.00. *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 589 (2010) (holding that settlement allocating \$0 to the LWDA was fair, adequate and reasonable); *Rodriguez v. Danell Custom Harvesting, LLC*, 293 F. Supp.3d 1117, 1133 (E.D. Cal. 2018) (approving \$10,000 allocation for PAGA of \$1.5 million settlement).

**IV. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION  
FOR PRELIMINARY APPROVAL**

Here, the proposed settlement is fair, adequate, and reasonable. It will result in both substantial monetary benefits to class members; it is non-collusive; and it was achieved as the result of informed, extensive, and arm's-length negotiations conducted by counsel for respective parties who are experienced in wage and hour class action litigation. For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of the proposed Notice of Class Action Settlement, and set a date for a final approval hearing.

DATED: October 13, 2023

BRADLEY/GROMBACHER, LLP

By: /s/ Marcus J. Bradley

Marcus J. Bradley, Esq.

Attorneys for Plaintiff  
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DATED: October 13, 2023

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