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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE – UNLIMITED CIVIL JURISDICTION

FELISA COVARRUBIAS GONZALEZ, both individually and as class representative on behalf of herself and all other similarly situated non-exempt current and former employees,

Plaintiffs,

vs.

CASE VANDER EYK DAIRY, LLC, a California Sole Proprietorship; CASE VANDER EYK JR. DAIRY, LLC, a California Sole Proprietorship; DAVID VANDER EYK DAIRY, LLC, a California Sole Proprietorship; CASE VANDER EYK, dba CASE VANDER EYK DAIRY, a Sole Proprietorship; DAVID VANDER EYK, dba DAVID VANDER EYK DAIRY, a Sole Proprietorship; and DOES 1 through 10, inclusive,

Defendants.

Case No.: VCU293120
[*Assigned for All Purposes to The Honorable David C. Mathias*]

CLASS ACTION

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

[*Filed Concurrently with the Declaration of Grant Joseph Savoy, Esq.; Declaration of Felisa Covarrubias Gonzalez; Declaration of Settlement Administrator; [Proposed] Order and Judgment*]

Date: January 29, 2026
Time: 8:30AM
Dept.: D1

Complaint Filed: August 30, 2022
Trial Date: None Set

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

PLEASE TAKE NOTICE that, on January 29, 2026, at 8:30AM, or as soon thereafter as this matter may be heard, in Department D1 of the above-captioned courthouse, located at 300 E. Olive, Porterville, CA 93257, Plaintiff Felisa Covarrubias Gonzalez ("Plaintiff"), will, and hereby does, move this Court for final approval of the Joint Stipulation of Class Action and Private Attorneys General Act Action Settlement and Release ("Settlement" and/or "Agreement") reached by the parties in the above-captioned litigation. Plaintiff moves the Court for entry of an order and judgment providing for the following:

1. Granting final approval of the terms of the Settlement as fair, adequate, and reasonable to all parties and to all Participating Class Members;

2. Certifying the Class for settlement purposes only;

3. Finding that the notice distributed to Class Members, pursuant to the Court's Order Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement, dated June 26, 2025, constituted the best notice practicable under the circumstances;

4. Approving payment of Individual Settlement Payments to Participating Class Members pursuant to the terms of the Settlement;

6. Approving payment of a Class Representative Service Award to the named Plaintiff in the amount of $10,000.00;

7. Awarding Class Counsel attorney's fees in the amount up to one-third of the Maximum Settlement Amount for a maximum fee award of $ 300,000.00, plus an award of actual costs and reimbursement of reasonable litigation costs of $20,560.81;

8. Approving payment of Settlement Administration Costs to Phoenix Settlement Administrators, Class Action Settlement Administrators in the amount of $10,000.00.

The motion will be based upon this Notice, the attached Memorandum of Points and Authorities, the accompanying Declaration of Grant Joseph Savoy, Declaration of Plaintiff Felisa Covarrubias Gonzalez, Declaration of Settlement Administrator, the Class Action Settlement Agreement, the complete files and records of this case, and any other evidence or oral argument which may be considered by the Court at the time of the hearing.

Dated: January 6, 2026

SOLOUKI | SAVOY, LLP

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This motion is brought by Plaintiff Felisa Covarrubias Gonzalez ("Plaintiff" and/or "Gonzalez"), in the matter of *Felisa Covarrubias Gonzalez, et al. vs. Case Vander Eyk Dairy, LLC, et al.* (Case No. VCU293120) (the "Action" or "Matter")) in this wage and hour class action brought on behalf of all current and former non-exempt California employees who worked for Defendants CASE VANDER EYK, dba CASE VANDER EYK DAIRY, a Sole Proprietorship; and DAVID VANDER EYK, dba DAVID VANDER EYK DAIRY, a Sole Proprietorship (collectively "Defendants") at any time from August 30, 2018 through April 20, 2025. The Action alleges the following cause of action: (1) Failure to provide required meal periods; (2) Failure to provide required rest periods; (3) Failure to pay overtime wages; (4) Failure to pay minimum wage; (5) Failure to timely pay wages; (6) Failure to pay all wages due to discharged and quitting employees; (7) Failure to maintain required records; (8) Failure to furnish accurate itemized statements; (9) Failure to indemnify employees for necessary expenditures incurred in discharge of duties; (10) Unfair and unlawful business practices; and (11) Private Attorneys General Act of 2004 ("PAGA") . Plaintiff and Defendant (collectively, the "Parties") entered into a JOINT STIPULATION OF CLASS ACTION AND PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AND RELEASE ("Settlement" and/or "Agreement"), which provides for a non-reversionary, Gross Settlement Amount ("GSA" or "MSA") of Nine Hundred Thousand Dollars ($900,000.00). On June 26, 2025, the Court granted preliminary approval of the Settlement. Plaintiff now seeks an order granting final approval of the Settlement, including an award of attorney's fees and costs.

The Settlement Class is composed of approximately 435 non-exempt employees of Defendants, who worked for Defendants as non-exempt employees in the state of California (the "Class"), at any time from August 30, 2018 through April 20, 2025 (the "Class Period"). A presumption of fairness exists because the Settlement was reached through extensive, arm's-length negotiations. Sufficient investigation and discovery allowed Class Counsel to act intelligently. Class Counsel is experienced in similar wage and hour class litigation, there are no opt-outs, no workweek disputes, and most importantly, no objections to the Settlement at the time of filing these papers.

The Settlement provides substantial benefits to Class Members. The estimated average Individual Settlement Payment will be approximately $1,171.12. Furthermore, the Settlement has been favorably received by Class Members. Of the 435 Class Members, not a single individual objected to the terms of the Settlement and no Class Members opted out of the settlement.

Plaintiff's request in an amount not to exceed $300,000.00 in attorney's fees and reimbursement of litigation costs in the amount of $20,560.81, is reasonable. The amount of attorney's fees, which amounts to one third of the common fund, is well within the range generally sought and approved in class actions. The amount of fees requested is also reasonable given Class Counsel's lodestar of $337,200.00, based upon 421.5 billable hours at hourly rates recently approved by various California state and federal courts.

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

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties

Defendants engages in the agricultural business. Specifically, Defendants own and operate dairy farms in the California Central Valley. At the time of preliminary approval, there was an estimated 488 current and former employees Defendants who were eligible to participate in the Settlement. As of the time of distribution of the Class Notice Packet and the submission of this declaration, there are an estimated 435 current and former employees of Defendant eligible to participate in the Settlement. (*Declaration of Settlement Administrator* ("*SA Decl*."), at para. 11; *Declaration of Grant Joseph Savoy* ("*Savoy Decl.*"), at para. 16.)

B. The Operative Complaint

The operative Complaint asserts eleven causes of action for: (1) Failure to provide required meal periods; (2) Failure to provide required rest periods; (3) Failure to pay overtime wages; (4) Failure to pay minimum wage; (5) Failure to timely pay wages; (6) Failure to pay all wages due to discharged and quitting employees; (7) Failure to maintain required records; (8) Failure to furnish accurate itemized statements; (9) Failure to indemnify employees for necessary expenditures incurred in discharge of duties; (10) Unfair and unlawful business practices; and (11) Private Attorneys General Act of 2004 ("PAGA") ("FAC," "Complaint," or "Operative Complaint".) (*Savoy Decl*., at para. 3.)

C. Discovery and Investigation

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

Pursuant to the Parties' pre-mediation agreement, Defendants informally produced, among other things, hundreds of pages relevant written policies and procedures, Plaintiff's personnel file (inclusive of Plaintiff's time and payroll records), and an agreed upon 20% sampling of class payroll and timekeeping data payroll and timekeeping data. Plaintiff's Counsel's review of the time records, payroll records, and information relating to the size and scope of the Class, was sufficient data to permit Plaintiff's Counsel and their retained expert to understand the number of workweeks and pay periods at issue in the Class and PAGA Periods. (*Savoy Decl.*, at para. 9.)

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

For example, Defendants' records, by their face, could not provide us with information regarding the alleged Off-The-Clock work or whether rest breaks were given in compliance with the applicable laws. Through the interviews conducted by Plaintiff's Counsel, it appeared that on average, the employees we spoke with conducted approximately 30 minutes of work while off-the-clock per week. Further, it was determined that at least one rest break every day was either missed, interrupted, or cut short due to the interviewed employees' work duties. This information simply could not have been known by the fact of the records and standard written discovery. (*Savoy Decl.*, at para.11.)

For example, Defendants' records, by their face, could not provide us with information regarding the alleged Off-The-Clock work or whether rest breaks were given in compliance with the applicable laws. Through the interviews conducted by Plaintiff's Counsel, it appeared that on average, the employees we spoke with conducted approximately 30 minutes of work while off-the-clock per week. Further, it was determined that at least one rest break every day was either missed, interrupted, or cut short due to the interviewed employees' work duties. This information simply could not have been known by the fact of the records and standard written discovery. (*Savoy Decl.*, at para. 12.)

My firm is informed and believes that the existence of an ascertainable class can be established through Defendant's own records. (*Savoy Decl.*, at para. 12.)

D. Settlement Negotiations

The Settlement was reached following extensive negotiations during a private mediation with professional mediator and former Judge Pro Tempore of the Los Angles, Superior Court, Daniel Ben-Zvi, Esq. The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. The parties went into the mediation session willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate its position through trial and appeal if a settlement had not been reached. (*Savoy Decl.* paras. 13 - 15.)

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

Moreover, Mr. Ben-Zvi presided over the back and forth exchange of information, and helped guide the parties towards what he believed, based on his experience, was a reasonable resolution given the disputed issues of liability. (*Id*.)

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

1357, 1368; *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.)

E. <u>The Settlement Class</u>

"Settlement Class" or "Class" or "Class Members" means all current and former non-exempt employees of Defendants who worked at any of Defendants' locations in the State of California at any time from August 30, 2018 through April 20, 2025. The Class consists of 435 persons with an estimated 30,226 workweeks, and includes "PAGA Aggrieved Employees", defined as all nonexempt Class Members in California employed at any time from August 30, 2021 through April 30, 2025.

F. <u>Preliminary Approval</u>

On June , 2025, the Court granted preliminary approval of the Settlement.

<u>III. SETTLEMENT TERMS</u>

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

1. The "Gross Settlement Amount" or "GSA" refers to the maximum total payment Defendant shall be obligated to make in the amount of $900,000.00 pursuant to this Settlement. The Gross Settlement Amount shall include (a) attorneys' fees of up to $300,000.00, (b) Plaintiff's reasonable litigation costs and expenses in the amount of $20,560.81, (c) reasonable third party administration costs in the amount of $10,000.00, (d) a PAGA Penalty Payment of $50,000.00, of which $37,500.00.00 will be paid to the Labor Workforce Development Agency, representing 75% of PAGA civil penalties, with the remaining 25%, $12,500.00, to be distributed among the PAGA Aggrieved Employees ("Individual PAGA Payment Amount"), (e) a class representative Service Payment in the amount of $10,000.00, and Net Settlement Amount of $509,439.19, as described in Paragraph 19 of the Settlement and paragraph 13 of the Settlement Administrator's concurrently filed declaration. Defendant's share of any employer-payroll taxes attributed to Individual Payment Amounts shall be paid separately and in addition to the Gross Settlement Amount, and shall be determined by the Settlement Administrator. Subject to Court approval, this amount shall be allocated as follows:

2. The "Net Settlement Amount" or "NSA" is the remaining portion of the Gross Settlement Amount after deduction of the court-approved attorneys' fees and costs, including any attorney liens,

Settlement Administration Costs, the payment to the Labor Workforce Development Agency in the amount of $37,500.00 (representing 75% of the PAGA Penalty Payment), and the Class Representative's Service Payment. The Net Settlement Amount will be attributed to the portion of Individual Payment Amounts and distributed to Settlement Class Members and the PAGA Aggrieved Employees, as described in the Settlement Agreement.

a. Subject to Court approval, the Settlement Administrator will pay an "Individual Payment Amount" from the NSA to each Participating Class Member as follows:

i. Each Class Member's Individual Payment Amount shall be paid from the NSA and based on Class Members' eligible employee service time for Covered Class Workweeks, as reflected on Defendants' internal records. Individual Class Settlement Payments will be calculated as follows: the numerator shall be the number of the Class Member's individual Covered Class Workweeks; the denominator shall be the total Covered Class Workweeks for all Class Members; this fraction shall be multiplied by the Net Settlement Amount.

ii. If the Court approves a lesser amount of attorneys' fees and litigation costs or the Service Enhancement, than the amount sought by Plaintiff and Plaintiff's Counsel, any amount disallowed by the Court will be added to the Net Settlement Amount to be distributed in pro rata shares to the Settlement Class Members. The Parties agree that the Settlement Agreement will remain binding with such modification(s) as ordered by the Court, and its terms will be otherwise unchanged. This Settlement is not conditioned upon the Court's approval of Plaintiff's Counsel's petition for attorneys' fees and litigation costs or the amount of any Service Enhancement awards. Plaintiff's Counsel agrees not to appeal any reduction in the award of attorney's fees, litigation costs, and/or the Service Enhancement awards.

iii. Similarly, From the Gross Settlement Amount, a payment of $12,500.00 to be allocated among PAGA Members based on PAGA Members' eligible employee service time for Covered PAGA Pay Periods, as reflected on Defendants' internal records (the PAGA Group Payment). Individual PAGA Group Payments will be calculated as follows: the numerator shall be the number of the PAGA Member's individual Covered PAGA Pay Periods; the denominator shall be the total Covered PAGA Pay Periods for all PAGA Members; this fraction shall be multiplied by the total PAGA Group Payment amount.

3. Settlement Class Members who are sent Class Settlement Payments and PAGA Members who are sent PAGA Group Payments will have 180 calendar days after mailing by the Settlement Administrator to cash settlement checks and will be so advised of such deadline. If such Settlement Class Members and/or PAGA Members do not cash their checks within that period, those checks will become void and a stop payment will be placed on the uncashed checks. Within thirty (30) days after the expiration date of the settlement checks, the Settlement Administrator shall provide to Class Counsel and Defendants' Counsel a verification/declaration signed under penalty of perjury that it has mailed the settlement checks to Settlement Class Members and/or PAGA Members, and if uncashed, that such amounts have been sent to the California Controller's Unclaimed Property Fund in the name of the Settlement Class Member and/or PAGA Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd.

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

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

The notice plan, as approved by the Court, has been fully implemented by the Settlement Administrator, Phoenix and the time for filing responses (included objections, requests for exclusion, and workweek disputes) has run. On or about August 8, 2025, Phoenix received from Defendants' counsel data for 435 Class Members, including their contact and the workweek information. (*SA Decl.*, at para. 3.) Phoenix updated the mailing addresses utilizing the National Change of Address Database maintained by the U.S. Postal Service. (*Id*, at para. 4.) On or about August 29, 2025, Phoenix mailed Notice Packets containing the Notice of Class Action Settlement to all 435 Class Members. (*Id*, at para. 5.) The Notice Packet advised Class Members that they could take no action and become Settlement Class Members, opt-out of the settlement, dispute their Workweeks or contact information, or submit an objection postmarked by the Response Deadline of October 28, 2025.

As of the time of the submission of the Administrator's Declaration, there were 98 undeliverable Notices. (*SA Decl.*, at para.7.) Further, Phoenix has received zero (0) request for exclusion, zero (0) workweek disputes, and most importantly, zero (0) objections from any Class Members. (*Id,* at paras. 8 through 10.) Since there will be residue after distribution of the Settlement Funds, said funds will be sent to the State Controller's Unclaimed Property Fund in the name of the individual Class Members.

V. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE

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

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

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

During mediation, Plaintiff and Plaintiff's counsel strongly asserted the validity of her arguments and her assessment that this case could be worth a substantial amount of money. However, as the mediation progressed, Defendants presented its arguments as to various issues and it became apparent that many issues would be highly disputed and could pose a risk to both parties in going forward with litigation. As a result, the parties agreed to resolve this matter for a total of Nine Hundred Thousand and Zero Cents ($900,000.00). (*Savoy Decl.* para. 22.)

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

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

B.   <u>Settlement Negotiations Were Conducted Based on Sufficient Investigation and Discovery</u>

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

Pursuant to the Parties' pre-mediation agreement, Defendants informally produced, among other things, hundreds of pages relevant written policies and procedures, Plaintiff's personnel file (inclusive of Plaintiff's time and payroll records), and an agreed upon 20% sampling of class payroll and timekeeping data payroll and timekeeping data. Plaintiff's Counsel's review of the time records, payroll records, and information relating to the size and scope of the Class, was sufficient data to permit Plaintiff's Counsel and their retained expert to understand the number of workweeks and pay periods at issue in the Class and PAGA Periods. (*Savoy Decl.*, at para. 9.)

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

8. For example, Defendants' records, by their face, could not provide us with information regarding the alleged Off-The-Clock work or whether rest breaks were given in compliance with the applicable laws. Through the interviews conducted by Plaintiff's Counsel, it appeared that on average, the employees we spoke with conducted approximately 30 minutes of work while off-the-clock per week. Further, it was determined that at least one rest break every day was either missed, interrupted, or cut short due to the interviewed employees' work duties. This information simply could not have been known by the fact of the records and standard written discovery. (*Savoy Decl.,* at para. 11.)

Plaintiff's statistical experts analyzed this information, and Plaintiff's counsel evaluated the potential liability and damages for the Class Members. Based upon this information, Plaintiff's counsel was able to act intelligently and effectively in negotiating the proposed Settlement. (*Savoy Decl.*, at para. 12.)

C. <u>None of the Class Members Have Objected to the Settlement</u>

The 435 Class Members' overwhelmingly positive response is indicative of the fairness of the Settlement. To date, zero (0) objections have been submitted to the Settlement Administrator, and 100% of the Class Members are participating in the Settlement. (*SA Decl*., para. 9.)

D. <u>Assessment of Amount in Controversy and Risks Associated with Proceeding</u>

Class Action Settlement Amount is Fair, Just, and Reasonable

Plaintiff and Plaintiff's counsel remain confident of the merits of Plaintiff's claims. Plaintiff and Plaintiff's counsel considered several factors in reaching the decision to settle at this point in the litigation. Plaintiff's counsel has calculated the maximum damages of the Class Members, inclusive of solely non-derivative claims without interest, as well as claims based on subjective factors, such as missed rest breaks and off-the-clock time worked, to be approximately Four Million, Five Hundred Sixty-Nine Thousand, Forty-Four with Sixty-Five Cents ($4,569,044.65) and believes this amount would be the maximum damage potential should the case proceed to trial and Plaintiff prevail on all causes of action. Plaintiff's Counsel has handled hundreds of wage and hour class actions and tried multiple employment cases in

California, all of which assisted in the valuation. All of the payroll, timekeeping, and class data was provided to our expert statistician in advance of the aforementioned mediation. Our expert provided an accurate and detailed breakdown of the damages, as evidenced by the face of the records, as well as based on class data points provided by Defendants. However, at the time of mediation and preliminary approval, the Parties believed that there were 488 eligible class member, when in fact at the time of distribution of the Notice of Settlement, it was determined that there were only 435 eligible class members, leading to an increase in the amount each class member would receive from the Settlement, further supporting the reasonableness of the GSA. (*Savoy Decl.*, at para. 16.)

Given the maximum potential damages, the settlement sum of Nine Hundred Thousand and Zero Cents ($900,000.00), which is approximately 20% of the total soaking wet non-derivative and non-subjective damages, is reasonable considering the substantial risks entailed by this case. Based on mine and my partner Shoham J. Solouki, Esq.'s extensive experience litigating wage and hour class actions, Plaintiff's Counsel estimates a Sixty Percent (60%) likelihood of obtaining and maintaining certification of Plaintiff's claims, which reduces the value of these claims. Further, my office further estimates that there is a Sixty Percent (60%) chance that Plaintiff will prevail at trial on his individual and class claims, further reducing the value of the claims. Taking these two risk factors into account, a more realistic damages recovery analysis brings values the instant action at approximately One Million, Six Hundred Forty-Four Thousand, Eight Hundred Fifty-Six Dollars and Seven Cents ($1,644,856.07). The GSA is approximately 55% of the revised and realistic total damages exposure. The significant risk that this Court may deny class certification is obviated by the Settlement. Moreover, continued litigation would very likely reduce and substantially delay recovery by Class Members. In contrast, because of the proposed Settlement, Class Members will receive timely relief and avoid the risk of an unfavorable judgment and avoids the possibility of having all, or a portion, of the class and representative claims lost to dispositive motion, which was not included as a factor in reaching the above reduced damages amount. (*Savoy Decl.*, at para. 18.)

Defendant, on the other hand, strongly contends that its policies and practices do not violate any laws and that it complied with all applicable laws. Specifically, Defendant maintains that Plaintiff's claims that he and class members were not reimbursed for all necessary business expenditures is factually incorrect. It is Defendant's position that there would be no liability for unpaid business expenditures, and therefore, the derivative claims of waiting time penalties therefore also fail.

Additionally, Defendant contends that Plaintiff would not obtain class certification on his claims, particularly because the claims would require an individualized inquiry. (*See Koval v. Pacific Bell Telephone Co*., 232 Cal. App. 4th 1050, 1062 (2014) (denying certification and holding that plaintiff's failure to demonstrate that allegedly unlawful policies were consistently applied "create[d] a shifting kaleidoscope of liability determinations that render this case unsuitable for class action treatment"); *Dailey v. Sears, Roebuck & Co.*, 214 Cal. App. 4th 974, 1002 (2013) (denying class certification of meal period and rest break claims of employees alleging that they did not regularly take uninterrupted meal and rest breaks where there was no evidence of a uniform policy showing that the Company required the employees to forego breaks).) In such an event, there would be no recovery for Class Members at all. A discount was required at this stage of the litigation for settlement purposes based on these risk factors. The significant risks that this Court may deny class certification or rule against Plaintiff on the merits are obviated by the Settlement, as is any risk associated with trial. Moreover, continued litigation would very likely reduce and substantially delay recovery by Class Members. In contrast, because of the proposed Settlement, Class Members will receive timely relief and avoid the risk of an unfavorable judgment.

Furthermore, while Plaintiff is confident in the merits of the case, a legitimate controversy exists as to each cause of action. It must be noted that the lion share of the non-derivative and non-penalty class damages are attributable to meal and rest period violations. Further, the Unpaid Off-The-Clock claim and Rest Break Violation claim (approximately 66% of all non-derivative non-penalty damages) are both based solely on subjective information, such as statements given by Plaintiff and Class Members, in opposition to valid written timekeeping and rest break policies, making them hard to certify, and even harder to prove to the tier of fact. This substantial factor was taken into consideration when valuing the reasonableness of the Settlement. (*Savoy Decl.*, at para. 19.) Plaintiff also recognizes that proving the amount of reimbursement compensation due to each individual Class Member would be an expensive, time-consuming, and extremely uncertain proposition. (*Savoy Decl.,* at para. 20.)

Based on the calculations of the Settlement Administrator, the Net Settlement Amount of $509,439.19 available to pay Settlement Class Members was determined by subtracting the requested

Class Counsel attorneys' fees ($300,000.00), and Class Counsel costs ($20,560.81), requested Enhancement Payment to Plaintiff Gonzalez ($10,000.00), the PAGA Amount ($50,000.00), and the requested Settlement Administration Costs ($10,000.00) from the Gross Settlement Amount ($900,000.00). Further, the highest Individual Settlement Share to be paid is approximately $5,882.16, the lowest Individual Settlement Share to be paid is approximately $16.85, while the average Individual Settlement Share to be paid is approximately $1,171.12. Settlement Class Members will be issued payment of their Individual Settlement Shares subject to reduction for the employee's share of taxes and withholdings with respect to the wages portion of the individual settlement shares. (*Savoy Decl.,* at para. 26; *SA Decl.*, at para. 14.)

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

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

The Settlement Administrator has calculated the number of unique PAGA pay periods to be 15,153, based on data and records provided by Defendants. (*SA Decl.*, at para. 15.) When focusing on all applicable claims, Plaintiff's expert found Defendants' maximum PAGA penalty exposure to be approximately Four Million, Nine Hundred and Eight Thousand, Seven Hundred Dollars and Zero Cents ($4,908,700.00). As noted, based on Plaintiff's Counsel's experience, Plaintiff estimate a sixty percent (60%) chance of beating a motion for summary judgment/adjudication on the underlying Labor Code causes of action, as well as a 60% chance of a favorable outcome at trial. This reduces Defendants' potential PAGA penalty exposure to approximately One Million, Seven Hundred Sixty-Seven Thousand, One Hundred Thirty-Two Dollars and Zero Cents ($1,767,132.00). However, as explained below, this number must be greatly reduced when the facts and evidence presented during litigation and mediation are taken into account. The Parties have jointly agreed to attribute a total of Fifty Thousand Dollars and Zero Cents ($50,000.00) to PAGA penalties, which is not an insignificant portion of the NSA. For the reasons below, Plaintiff's Counsel believes that the PAGA allocation is more than fair, just, and reasonable for the Class Members. (*Savoy Decl*., para. 28.)

As calculated by the Settlement Administrator, 75%, or $37,500.00, shall be paid to the Labor and Workforce Development Agency ("LWDA"), and 25%, or $12,500.00, of which shall be paid to the Aggrieved Employees. There are four hundred thirty-five (435) Aggrieved Employees who worked a total of fifteen thousand one hundred fifty three (15,153) pay periods during the PAGA Period. The highest Individual PAGA Payment to be paid is approximately $144.36, and the average Individual PAGA Payment to be paid is approximately $28.74. (*Savoy Decl*., at para. 29.)

By allocating a majority of the GSA to class action claims, the Class Members will actually receive a majority of the GSA. As such, the low PAGA allocation is in the best interest of Class Members, and therefore should be deemed reasonable and fair. As such, Plaintiff believes it is proper to attribute approximately 5.56% of the Gross Settlement Amount to PAGA penalties, an amount that was preliminarily approved by this Court. (*Savoy Decl*., at para. 30.)

VI. THE CLASS REPRESENTATIVE SERVICE AWARD IS REASONABLE

Plaintiffs in class action lawsuits are eligible for reasonable service payments as compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz v. BCI Coca-Cola Bottling Company of Los Angeles* (2010) 186 Cal.App.4th 399, 412.) Here, the Settlement provides for a Class Representative Service Award not to exceed $10,000.00 for Plaintiff. The requested service payment is reasonable according to controlling and persuasive case law. (*See Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 805-6.) The payment is intended to recognize the substantial time and effort that Plaintiff expended on behalf of the Class. (*Savoy Decl*. para. 31.) Throughout this litigation, Plaintiff cooperated with counsel and took actions to protect the interests of the Class. (*Savoy Decl*. para. 32; *Declaration of Felisa Covarrubias Gonzalez* (*"Gonzalez Decl."*), paragraphs 5-8.) Plaintiff provided valuable information regarding potential witnesses, Defendant's meal period and rest period practices, Defendant's reimbursement practices, and Defendant's failure to properly compensate for overtime hours. (*Id*.) Plaintiff kept informed of the developments in the Action, informed counsel of information relevant to the Action, participated in decisions concerning the Action, provided counsel with the names and contact information of potential witnesses, participate in the preparation for and the taking of his full-day in-person deposition, and was an engaged participant during the full-day mediation proceedings. (*Id*.) The information and documentation provided by Plaintiff was instrumental in establishing supporting the Labor Code violations alleged in the Action, and the recovery provided for in the Settlement Agreement would have been impossible to obtain without Plaintiff's active participation. (*Id*.)

Plaintiff faced many risks in bringing the lawsuits as class actions. (*Savoy Decl*. para. 33; *Gurzenski Decl.*, paras 5-8.) Because of Plaintiff's efforts, approximately 435 Class Members will now have the opportunity to participate in a settlement and to recover payment for wage violations they may have never known about on their own or been willing to pursue on their own. (*Id*.) If each Class Member attempted to pursue his or her legal remedies individually, each person would have been required to expend a significant amount of his or her own monetary resources and time. (*Id*.) In sum, the Action would not have been possible without the aid of Plaintiff, who put his own time and effort into the litigation, sacrificed the value of his own individual claims, and placed himself at risk for the sake of the other Class Members (*Id*.) The requested Class Representative Service Award of $10,000.00 to Plaintiff is therefore reasonable to compensate Plaintiff for his active participation in the Action. (*Id*.)

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

The Settlement provides for attorney's fees and costs to Class Counsel in an amount up to one-third (33 & 1/3%) of the Gross Settlement Amount, for a maximum fee award of $300,000.00, plus actual litigation expenses not to exceed $20,000.00 (actual costs amount to $20,560.81). Plaintiff's Counsel request attorney's fees pursuant to the "common fund theory" with a lodestar cross-check. The requested fees are far below the range of fees generally sought and approved in common fund class action cases and the fees are also reasonable based on Class Counsel's total lodestar. (*Savoy Decl.,* paras. 43, 44.)

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

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

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

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

The percentage of attorney's fees set forth in the Settlement Agreement, i.e. 33 1/3% of the Gross Settlement Amount, is reasonable. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. (*Newberg on Class Actions*, 4th Ed. 2002, § 14: 6.)

Furthermore, California and federal courts have long recognized that a percentage of recovery for attorney's fees is properly awarded on the basis of the total settlement fund. (*Boeing v. Van Gemert* (1980) 444 U.S. 472, 480-481; see also *In re Consumer Privacy Cases*, 175 Cal.App.4th at 558 n.13 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery") (emphasis added).)

Here, the Gros Settlement Amount is $900,000.00. The requested attorney's fees are one-third (1/3) of that total, or $300,000.00, which is the standard attorney fee requested per the common fund theory. The requested fee percentage is less than that charged by Class Counsel for other employment cases, which is 40%. Moreover, Class Counsel invested significant time and resources into this case, with payment deferred to the end of the case and entirely contingent on the outcome. (*Savoy Decl.,* generally.) It has been a long-recognized principle that an attorney merits a significantly larger fee when the compensation is contingent, rather than being fixed on a time or contractual basis. (See *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-51.) In the nearly three and a half (3.5) years that this case has been pending, Class Counsel has advanced all expenses and has not received any compensation or reimbursement for efforts in prosecuting the action on behalf of Class Members. The significant outlay of monetary and personnel resources has been completely at risk and wholly dependent upon obtaining a substantial recovery for the Class. (*Id.*) Class Counsel should not be penalized with a lower fee for settling the case prior to filing a motion for class certification, because the percentage of the fund method "encourages early settlement, which avoids protracted litigation." (*Laffitte*, 1 Cal.5th at 490.) Thus, the requested award of attorney's fees is reasonable under the percentage of the fund method.

B. <u>The Requested Attorney's Fees Are Reasonable Under the Lodestar Method</u>

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

Here, Class Counsel's total lodestar is $377,200.00, which is based upon 421.5 hours of attorney time at customary hourly rates recently approved by numerous California Superior Court and the California Central District federal Court at a lodestar hourly billable rate of $800.00 per hour (421.5 x 800 =

$337,200.00). (*Savoy Decl*. paras. 45-48.) Thus, Plaintiff's request for $300,000.00 in attorney's fees, which is less than my firm's actual lodestar calculation, is reasonable under the lodestar method.

1. Class Counsel's Hours Are Reasonable

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

Here, Class Counsel has spent **421.5** hours litigating this case to bring it to resolution, not including the estimated dozens of hours preparing for and attending the final approval hearing and monitoring the administration of the settlement and distribution of funds to Participating Class Members and the State of California. The efforts expended by Class Counsel to achieve this excellent result include, but are not limited to, the following: interviews with Plaintiffs and review of documents provided by Plaintiffs; preparation of multiple drafts of the class action complaint; filing of the class action complaint; meeting and conferring with Defendant's counsel to obtain relevant documents and information; communicating with Plaintiff and witnesses regularly regarding the status of the case; propounding both class certification based and merit based informal discovery; review and analysis of a substantial sampling of time records, payroll records, and other employment records; preparing for and participating in Plaintiff's full-day in-person deposition; working with an expert statistician to analyze the data sample;

legal research regarding Defendant's reimbursement practices and policies; preparing Plaintiff's mediation briefs; appearing at a full-day mediation; appearing at multiple status conferences; participating in settlement discussions; drafting, negotiation, and revision of the Settlement and Notice Packet; drafting the Motion for Preliminary Approval and supporting papers, as well as supplement documents related thereto; communicating with the Settlement Administrator and monitoring the notice process; and drafting the Motion for Final Approval and supporting papers. Class Counsel also bears the risk of taking whatever actions are necessary if Defendants fail to pay. (*Savoy Decl*., at para. 46.) Thus, the Court should find that Class Counsel's hours were necessary and reasonable to achieve the excellent result on behalf of the Class.

2. Class Counsel's Hourly Rates Are Reasonable

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

The current prevailing billing rates in the Southern California area range from $275 to $900 per hour. Class Counsel are experienced litigators specializing in employment law, with a substantial wage and hour class action practice.

C. Class Counsel's Costs Are Reasonable

The Settlement Agreement allows for a "not to exceed" attorneys' costs amount of Forty Thousand Dollars ($40,000.00). As of the date of this declaration, my firm has incurred actual costs in the amount of $20,560.81in this action, which amounts to approximately half (51%) of the bargained for and agreed upon amount, which is far lower than the capped amount under the Settlement Agreement. These costs were reasonable and necessary to prosecute this case to a successful conclusion. (*Savoy Decl*., paras, 51, 52.)

D. <u>Neither Defendants Nor the Class Members Oppose the Request for Fees and Costs</u>

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

<u>VIII. THE REQUESTED SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE</u>

The Settlement Administrator's costs in the amount of $10,000.00 are reasonable, given the tasks performed and remaining to be performed. (*SA Decl*., generally.) Plaintiff respectfully requests that the Court approve Settlement Administration Costs in the amount of $10,000.00.

<u>IX. NOTICE TO LABOR AND WORKFORCE DEVELOPMENT AGENCY</u>

On or about January 6, 2026, Class Counsel caused a copy of Plaintiff's Motion for Final Approval of Joint Stipulation of Class Action and PAGA Settlement, the Joint Stipulation of Class Action and PAGA Settlement, and the concurrently filed Declaration of Grant Joseph Savoy, Esq. to be submitted to the California Department of Industrial Relations, Labor and Workforce Development Agency via the Department's online portal and received a receipt of submission. Further, Class Counsel did not receive an error notice or other response indicating that the submission was unsuccessful. A true and accurate copy of the Receipt of Submission is attached to the Declaration of Grant Joseph Savoy as **Exhibit "A."**

<u>X. CONCLUSION</u>

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

Dated: January 6, 2026

SOLOUKI | SAVOY, LLP

<u>/s/ *Grant Joseph Savoy* .</u>
SHOHAM J. SOLOUKI, ESQ.
GRANT JOSEPH SAVOY, ESQ.
Attorneys for Plaintiff and Those Similarly Situated