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9 GENARO REYES VILLAGRA, and all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SANTA BARBARA**

12 **(UNLIMITED JURISDICTION)**

13 GENARO REYES VILLAGRA, on behalf of
14 himself, all others similarly situated, the general
15 public, and as an “aggrieved employee” on behalf
16 of other “aggrieved employees” under the Labor
Code Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 INNOVATIVE PRODUCE, INC., a California
20 corporation; and DOES 1–50, inclusive,

21 *Defendant(s).*

Case No. 22CV02744

**PLAINTIFF GENARO REYES
VILLAGRA’S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: May 21, 2024

Hearing Time: 8:30 a.m.

Hearing Dept.: 2, The Honorable James
F. Rigali

Action filed: July 18, 2022

Trial Date: Not Set



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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**
2 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 **I. INTRODUCTION**

4 Plaintiff Genaro Reyes Villagra (“Plaintiff”) submits this memorandum of points and
5 authorities in support of his unopposed motion for preliminary approval of the Class Action and
6 PAGA Settlement Agreement and Class Notice (the “Settlement”)², which provides for a Gross
7 Settlement Amount (“GSA”) of \$150,000.00 in compromise of all disputed claims on behalf of
8 non-exempt employees during the period of July 18, 2018 through the order preliminarily
9 approving this Settlement. Through this Motion, Plaintiff respectfully requests for this Court to
10 (1) provisionally certify the below-defined Class for settlement purposes only under Code of Civil
11 Procedure § 382; (2) preliminarily approve the Settlement; (3) preliminarily appoint Plaintiff as
12 Class Representative; (4) appoint David Spivak of The Spivak Law Firm and Louis M. Benowitz
13 of Benowitz Law Corporation as Class Counsel; (5) approve the proposed notice procedures and
14 related forms; and (6) schedule a final approval hearing.

15 This Court should grant Plaintiff’s motion because: (1) for settlement purposes, the
16 Settlement Class meets the requirements for class certification under Code of Civil Procedure §
17 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness,
18 reasonableness, and adequacy; (3) for settlement purposes, Plaintiff is adequate to serve as Class
19 Representative; (4) Plaintiff’s attorneys are adequate to serve as Class Counsel; (5) the proposed
20 notice procedures, and related forms, fully comport with due process and adequately apprise Class
21 Members of their rights; and (6) a final approval hearing must be scheduled to allow Settlement
22 Class Members an opportunity to be heard regarding the Settlement and to give it finality.
23 Accordingly, for the reasons detailed below, this Court should grant Plaintiff’s Motion in its
24 entirety and preliminarily approve the Settlement.

25 **II. BACKGROUND**

26 Defendant is an agricultural business. DS, ¶ 12. Defendant employed Plaintiff as a farm
27 worker in California from about June 15, 2017 until August 5, 2021. *Id.*

28 **A. The Claims and Procedural History**

On April 20, 2022, Plaintiff notified Defendant and the California Labor and Workforce
Development Agency (“LWDA”), pursuant to the California Private Attorneys General Act of

² The Settlement is attached as Exhibit (“Ex.”) 1 to the Declaration of David Spivak (“DS”),
which is submitted herewith under a separate cover.



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2004, California Labor Code sections 2698, *et seq.* (“PAGA”), of alleged Labor Code violations committed by Defendant. DS, ¶ 13, Ex. 2. On October 6, 2023, Plaintiff submitted a supplemental letter to the LWDA and Defendant notifying them of Defendant’s failures to comply with the meal and rest period provisions of the Labor Code. DS, ¶ 13, Ex. 3.

On July 18, 2022, Plaintiff filed a Class Action Complaint in the Santa Barbara County Superior Court, Case No. 22CV02744, against Defendant on behalf of himself and all others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 221, 510, 1194, 1197, and 1198); (2) Wage Statement Penalties (Lab. Code § 226); (3) Waiting Time Penalties (Lab. Code §§ 201-203); and (4) Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*). DS, ¶ 14, Ex. 4. On July 18, 2022, Plaintiff filed his Complaint against Defendant under PAGA in this Court, Case No. 22CV02747 (“PAGA Complaint”). DS, ¶ 14, Ex. 5. On September 1, 2022, Defendant filed an answer to Plaintiff’s PAGA Complaint. DS, ¶ 14, Ex. 22. On February 21, 2024, Plaintiff filed his First Amended Complaint, which differs from Plaintiff’s original Class Action Complaint in the following respects: causes of action and supporting facts are added for unprovided or non-compliant meal periods and unprovided or non-compliant rest breaks and recovery periods on behalf of Plaintiff and the Class; additional allegations and supporting facts are added with respect to the causes of action for failure to pay all wages earned for all hours worked and other compensable hours at the correct rates of pay and wage statement penalties; Plaintiff’s counsel’s contact information is updated; a common question is added pertaining to the new causes of action; Plaintiff’s Unfair Competition cause of action is revised to add the new Labor Code violation(s); Plaintiff has added a derivative PAGA cause of action based on the meal and rest period violations and the allegations and cause(s) of action in Plaintiff’s PAGA Complaint. DS, ¶ 14, Ex. 6. The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint”). DS, ¶ 14. Defendant filed an answer on March 28, 2024. DS, ¶ 14, Ex. 7. Defendant denies all of Plaintiff’s allegations and strongly contends that its wage and hour policies, practices, and procedures are fully compliant with all applicable laws. DS, ¶ 14.

B. Sampling

On September 08, 2022, Plaintiff requested that Defendant informally disclose documents and data to enable Plaintiff to prepare for settlement discussions, including the number of putative class members and aggrieved employees and the number of paychecks and workweeks for the



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1 various limitations periods applicable to Plaintiff's claims. DS, ¶ 15. Plaintiff also requested a
2 reasonable, randomly selected sample of Defendant's time, payroll, and expense records, and
3 related personnel records. *Id.* Finally, Plaintiff requested Defendant's written policies applicable
4 to the claims at hand and asked Defendant to identify any and all comparable claims against it.

5 The Parties thereafter engaged in an informal, voluntary exchange of information in the
6 context of privileged settlement discussions to facilitate an early mediation. Defendant produced
7 Plaintiff's entire personnel file (including policies and agreements he signed and acknowledged)
8 and copies of its relevant company written policies. DS, ¶ 16.

9 Defendant disclosed that there have not been any comparable claims against it. DS, ¶ 15.

10 Defendant contends that it employed 126 putative class members during the period of July
11 18, 2018 to July 18, 2022. Settlement, para. 9. Defendant produced the records of 17.46% of the
12 putative class members for the period of July 18, 2018 to July 18, 2022. There were records for
13 23 employees in the sample. Defendant chose the sample. The sample was randomly selected.
14 The sample consisted of timesheets and pay stubs, and related records. DS, ¶ 17.

15 Plaintiff retained Billy Bonilla from Data Lab Analytics, a data analyst, to analyze the
16 sample. Plaintiff also employed the Raosoft³ Sample Size calculator
17 (<http://www.raosoft.com/samplesize.html>) to determine if the sample size selected is
18 statistically reliable. *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715 and *Duran v. U.S.*
19 *Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative margin of error of 32.4 percent was
20 unacceptable whereas the *Duran* court found a relative margin of error of 43.3 percent was
21 unacceptable. Using a margin of error of 32%, a confidence level of 95%, and a population size
22 of 126, the Raosoft Sample Size Calculator recommended a sample of 9. DS, ¶ 18, **Exhibit 8**
23 (Raosoft Sample Size Calculator results print-out). Thus, the sample population that Plaintiff's
24 data analyst evaluated is statistically reliable. *Id.*

25 ///

26 ³ Raosoft advertises, "Raosoft, Inc. produces EZSurvey for the
27 Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software
28 programs for information gathering and analysis. The family of survey software supports data
collection and reporting for any form-based data. Support is for web-surveys and forms, email
distribution, diskette, PDA, laptop or pen-based: all types of distribution." The Raosoft webpage
advertises that it is "database web survey software for gathering information."
<http://www.raosoft.com/>. It also advertises, "The parameters of the sample size calculation are
something that you choose." <http://www.raosoft.com/suggestreading.html>.



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1 **C. Mediation**

2 On July 18, 2023, following much of the foregoing informal discovery and exchange of
3 information, the Parties participated in a mediation session presided over by Mediator Scott
4 Radovich, an experienced class action mediator. During the mediation, the Parties had a full day
5 of productive negotiations and reached agreement on a class-wide settlement after the mediation
6 session. During the mediation sessions, each side, represented by his / its respective counsel,
7 recognized the risk of an adverse result in the Action and agreed to settle the Action and all other
8 matters covered by this Agreement pursuant to the terms and conditions of this Agreement. DS,
9 ¶ 19.

10 **III. OVERVIEW OF THE SETTLEMENT**

11 **A. Settlement Class and Aggrieved Employees Definition**

12 The Settlement defines the Settlement Class as all persons directly employed by
13 Defendant in California and classified as a non-exempt employee who worked during the Class
14 Period. Settlement, para. 1.15. The Class Period is July 18, 2018 through the order preliminarily
15 approving this Settlement. *Id.*, para. 1.13. The Settlement defines an “Aggrieved Employee” as a
16 person directly employed by Defendant in California and classified as a non-exempt employee
17 who worked during the PAGA Period. Settlement, para. 1.4. “PAGA Period” means the period
18 from July 18, 2021 to the order preliminarily approving this Settlement. Settlement, para. 1.33.
19 The “PAGA Period” begins July 18, 2021 and ends on the date of the order preliminarily
20 approving this Settlement. *Id.*

21 **B. Monetary Terms**

22 Except as otherwise provided by Paragraph 9 of the Settlement, Defendant promises to
23 pay \$150,000.00 and no more as the Gross Settlement Amount and to separately pay any and all
24 employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant
25 has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline
26 stated in Paragraph 4.1.3 of the Settlement. The Administrator will disburse the entire Gross
27 Settlement Amount without asking or requiring Participating Class Members or Aggrieved
28 Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount
will revert to Defendant. Settlement, para. 3.1.

 The Administrator will make and deduct the following payments from the Gross
Settlement Amount, in the amounts specified by the Court in the Final Approval:



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1 The Administrator will make and deduct from the Gross Settlement Amount a Class
2 Representative Service Payment to the Class Representative of not more than \$10,000.00 (in
3 addition to any Individual Class Payment and any Individual PAGA Payment the Class
4 Representative is entitled to receive as a Participating Class Member and Aggrieved Employee).
5 Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that
6 does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class
7 Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative
8 Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court
9 approves a Class Representative Service Payment less than the amount requested, the
10 Administrator will retain the remainder in the Net Settlement Amount. The Administrator will
11 pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full
12 responsibility and liability for employee taxes owed on the Class Representative Service Payment
13 and agrees to hold Defendant harmless, and indemnify Defendant, from any dispute or
14 controversy regarding any division or sharing of any of these Payments. Settlement, para. 3.2.1.

15 The Administrator will make and deduct from the Gross Settlement Amount a Class
16 Counsel Fees Payment of not more than one-third of the Gross Settlement Amount and a Class
17 Counsel Litigation Expenses Payment of not more than \$12,000.00. Defendant will not oppose
18 requests for these payments provided that do not exceed these amounts and such expenses claimed
19 are recoverable under statute. Plaintiff and/or Class Counsel will file a motion for Class Counsel
20 Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the
21 Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class
22 Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will
23 allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to
24 Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class
25 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will
26 pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more
27 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
28 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and agrees to
hold Defendant harmless, and indemnify Defendant, from any dispute or controversy regarding
any division or sharing of any of these Payments. Settlement, para. 3.2.2.



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1 The Administrator will make and deduct from the Gross Settlement Amount an
2 Administrator Expenses Payment not to exceed \$10,000.00 except for a showing of good cause
3 and as approved by the Court. To the extent the Administration Expenses are less or the Court
4 approves payment less than \$10,000.00, the Administrator will retain the remainder in the Net
Settlement Amount. Settlement, para. 3.2.3.

5 The Administrator will make and deduct from the Gross Settlement Amount to each
6 Participating Class Member an Individual Class Payment calculated by (a) dividing the Net
7 Settlement Amount by the total number of Class Pay Periods worked by all Participating Class
8 Members during the Class Period and (b) multiplying the result by each Participating Class
9 Member's Class Pay Periods. Settlement, para. 3.2.4.

10 With respect to tax allocation of Individual Class Payments, 10.00% of each Participating
11 Class Member's Individual Class Payment will be allocated to settlement of wage claims (the
12 "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an
13 IRS W-2 Form. The 90.00% of each Participating Class Member's Individual Class Payment will
14 be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The
15 Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms.
16 Participating Class Members assume full responsibility and liability for any employee taxes owed
on their Individual Class Payment. Settlement, para. 3.2.5.

17 Non-Participating Class Members will not receive any Individual Class Payments. The
18 Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement
19 Amount for distribution to Participating Class Members on a pro rata basis. Settlement, para.
20 3.2.6.

21 The Administrator will make and deduct from the Gross Settlement Amount the following
22 payments to the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$4,000.00,
23 with 75% (\$3,000.00) allocated to the LWDA PAGA Payment and 25% (\$1,000.00) allocated to
24 the Individual PAGA Payments. Settlement, para.3.2.7.

25 The Administrator will calculate each Individual PAGA Payment by (a) dividing the
26 amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$1,000.00) by the total
27 number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and
28 (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved



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1 Employees assume full responsibility and liability for any taxes owed on their Individual PAGA
2 Payment. Settlement, para. 3.2.8.

3 If the Court approves PAGA Penalties of less than the amount requested, the
4 Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will
5 report the Individual PAGA Payments on IRS 1099 Forms. Settlement, para. 3.2.9.

6 Based on its records, Defendant estimates that, as of the date of the Parties' mediation, (1)
7 there were 126 Class Members and 14,193 total Pay Periods during the Class Period. If the
8 number of Class Members exceeds 126 by 10% or more or if the number of Pay Periods worked
9 by Class Members exceeds 14,193 by 10% or more, whichever figure is more favorable to
10 Defendant, by the date of preliminary approval ("the Pro Rata Increase Threshold"), the GSA will
11 increase pro rata per additional class member above 137 (e.g., $126 + [.1 * 126]$) or additional
12 workweeks above 15,612 (e.g., $14,193 + [.1 * 14,193]$), whichever figure Defendant elects to use,
13 but only to the extent Defendant does not choose a date earlier than the date of preliminary
14 approval to avoid any pro rata increase. If the Pro Rata Increase Threshold is triggered, Defendant
15 shall have the exclusive right to choose an earlier date than the date of preliminary approval as
16 the end of the Class Period and PAGA Period so to avoid triggering any pro rata increase.
17 Settlement, para. 9.

18 **C. Timing of Payments**

19 Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts
20 necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the
21 Administrator no later than 60 days after the Effective Date. Settlement, para. 4.1.3.

22 Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator
23 will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA
24 PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the
25 Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.
26 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
27 Payment, and the Class Representative Service Payment shall not precede disbursement of
28 Individual Class Payments and Individual PAGA Payments. Settlement, para. 4.1.4.

The Administrator will issue checks for the Individual Class Payments and/or Individual
PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid.
The face of each check shall prominently state the date (not less than 180 days after the date of



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mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Notice Packet was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Notice Packet was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database. Settlement, para. 4.1.5

D. Calculation of Settlement Shares

The Administrator will calculate each Individual Class Payment by (a) dividing the Net Settlement Amount by the total number of Class Pay Periods worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Class Pay Periods. Settlement, para. 3.2.4.

The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$1,000.00) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Settlement, para. 3.2.8.

E. Apportionment of Settlement Shares

10.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 90.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. Settlement, para. 3.2.5.

F. The Releases

All Participating Class Members and all Aggrieved Employees (who shall not have the right to opt out) shall be bound by a release, as of the Effective Date, of all claims alleged in the



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1 Operative Complaint or any of Plaintiff's PAGA Notice(s), or which could have been alleged
2 based on the facts alleged in the Operative Complaint or any of Plaintiff's PAGA Notice(s), and
3 which arose during the Class Period and PAGA Period. The Released Class Claims shall include
4 all claims alleged by Plaintiff in the Operative Complaint, or which could have been alleged by
5 Plaintiff in the Operative Complaint based on the facts stated in the Operative Complaint,
6 including any and all claims or causes of action regarding unpaid wages, including but not limited
7 to failure to pay minimum wages, straight time wages, overtime compensation, and interest;
8 failure to timely pay regular and final wages; failure to provide compliant meal, rest, and/or
9 recovery periods; failure to pay premiums at all or at the correct rate for any violation of meal and
10 rest obligations; claims arising from invalid meal period waivers; payment for all hours worked;
11 wage statements and paystubs, including wage statements and paystubs furnished or available in
12 physical, electronic, or other forms; failure to keep accurate records; unfair business practices
13 related thereto; and any and all related penalties, including recordkeeping penalties, wage
14 statement penalties, minimum wage penalties, waiting time penalties, and other statutory or civil
15 penalties associated with any of the foregoing. Such Released Class Claims shall include, but are
16 not limited to those claims arising under California Labor Code sections 201, 202, 203, 204, 204b,
17 207, 208, 210, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5,
18 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, and 2699 *et seq.*, and/or those
19 arising under the applicable Industrial Welfare Commission Wage Order(s) (including but not
20 limited to subsections 3, 4, 5, 7, 8, 9, 11, 12, 13, 18, and 20 of the applicable Wage Order(s), such
21 as IWC Wage Order 14-2001 [including the provisions of the California Code of Regulations
22 codifying the applicable Wage Order(s)], 8 C.C.R. §3395, California Business Professions Code
23 17200 *et seq.* (including, without limitation, §§17200 through 17208); the California Civil Code
24 sections 3287, and 3289; California Code of Civil Procedure section 1021.5, and any related
25 claims under the claims under the provisions of the Fair Labor Standards Act (29 USC §§201, *et*
26 *seq.*) ("Released Claims"). Any Non-Participating Class Member shall only be bound by claims
27 for civil penalties released under PAGA as provided in this section and shall not be deemed to
28 release any individual claims for which recovery under PAGA is not permitted. Settlement, para.
6.3.

Plaintiff and his respective former and present spouses, representatives, agents, attorneys,
heirs, administrators, successors, and assigns, as of the Effective Date, generally release and



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1 discharge Released Parties from all claims, transactions, or occurrences that occurred between or
2 involving the parties through the date of Plaintiff's execution of the Settlement Agreement
3 ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce the
4 Settlement, or to any claims for unemployment benefits, disability benefits, social security
5 benefits, or workers' compensation benefits that arose at any time, or based on occurrences
6 outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different
7 from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees,
8 nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding
9 such different or additional facts or Plaintiff's discovery of them. Plaintiff understands and agrees
10 that by signing the Settlement Agreement he is giving up any and all legal claims he has or may
11 have against the Released Parties through his execution of the Settlement Agreement, expressly
12 including claims under the federal Age Discrimination in Employment Act ("ADEA"). Plaintiff
13 is advised to consult with legal counsel regarding the waiver contained in the Settlement
14 Agreement generally and specifically as to the waiver of claims under the ADEA. Plaintiff
15 understands and agrees that he has been advised in writing of his right to consult with an attorney
16 before signing the Settlement Agreement. Plaintiff has twenty-one (21) days to consider the
17 Settlement Agreement, although he may sign it at any time prior to the expiration of the twenty-
18 one (21) days. Plaintiff may revoke the Settlement Agreement at any time during the seven (7)
19 days after he signs the Settlement Agreement. The Settlement Agreement shall not become
20 effective until the seven (7) day revocation period has passed. Settlement, para. 6.1.

21 For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the
22 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

23 A general release does not extend to claims that the creditor or releasing party does not
24 know or suspect to exist in his or her favor at the time of executing the release, and that if
25 known by him or her would have materially affected his or her settlement with the debtor
26 or Released Party.

27 Settlement, para. 6.2.

28 **G. Notice and Claims Process and Procedures**

No later than three (3) business days after receipt of the Class Data, the Administrator
shall notify Class Counsel that the list has been received and state the number of Class Members,



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1 Aggrieved Employees, Class Pay Periods, and PAGA Pay Periods in the Class Data. Settlement,
2 para. 8.4.1.

3 Using best efforts to perform as soon as possible, and in no event later than 14 days after
4 receiving the Class Data, the Administrator will send to all Class Members identified in the Class
5 Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet with Spanish
6 translation substantially in the forms attached to the Settlement as **Exhibits A, B, C, and D**. The
7 first page of the Class Notice shall prominently estimate the dollar amounts of any Individual
8 Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number
9 of Class Pay Periods and PAGA Pay Periods (if applicable) used to calculate these amounts.
10 Before mailing Notice Packets, the Administrator shall update Class Member addresses using the
11 National Change of Address database. Settlement, para. 8.4.2.

12 Not later than three (3) business days after the Administrator’s receipt of any Notice
13 Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet
14 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
15 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Notice
16 Packet to the most current address obtained. The Administrator has no obligation to make further
17 attempts to locate or send Notice Packets to Class Members whose Notice Packets are returned
18 by the USPS a second time. Settlement, para. 8.4.3.

19 The deadlines for Class Members’ written objections, Challenges to Class Pay Periods
20 and/or PAGA Pay Periods (disputes), and Requests for Exclusion will be extended an additional
21 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose
22 notice is re-mailed. The Administrator will inform the Class Member of the extended deadline
23 with the re-mailed Notice Packet. Settlement, para. 8.4.4.

24 If the Administrator, Defendant, or Class Counsel is contacted by or otherwise discovers
25 any persons who believe they should have been included in the Class Data and should have
26 received a Notice Packet, the Parties will expeditiously meet and confer in person or by telephone,
27 and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties
28 agree, such persons will be Class Members entitled to the same rights as other Class Members,
and the Administrator will send, via email or overnight delivery, a Class Notice requiring them
to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or
the deadline dates in the Class Notice, whichever are later. Settlement, para. 8.4.5.



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1 **1. Disputes**

2 Each Class Member shall have 60 days after the Administrator mails the Notice Packet
3 (plus an additional 14 days for Class Members whose Notice Packet is re-mailed) to challenge
4 the number of Class Pay Periods and PAGA Pay Periods (if any) allocated to the Class Member
5 in the Class Notice. This is also known as a dispute. A Pay Period Dispute form, attached as
6 Exhibit C to the Settlement, may be used for this purpose but is not required. The Class Member
7 may challenge the allocation by communicating with the Administrator via fax, email, or mail.
8 The Administrator must encourage the challenging Class Member to submit supporting
9 documentation. In the absence of any contrary documentation, the Administrator is entitled to
10 presume that the Pay Periods contained in the Class Notice are correct so long as they are
11 consistent with the Class Data. The Administrator's determination of each Class Member's
12 allocation of Class Pay Periods and/or PAGA Pay Periods shall be final and not appealable or
13 otherwise susceptible to challenge. The Administrator shall promptly provide copies of all
14 challenges to calculation of Class Pay Periods and/or PAGA Pay Periods to Defense Counsel and
15 Class Counsel and the Administrator's determination of the challenges. Settlement, para. 8.6.

16 **2. Opting Out**

17 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must
18 send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later
19 than 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class
20 Members whose Notice Packet is re-mailed). A Request for Exclusion is a letter from a Class
21 Member or his/her representative that reasonably communicates the Class Member's election to
22 be excluded from the Settlement and includes the Class Member's name, address, and email
23 address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed,
24 or postmarked by the Response Deadline. A Request for Exclusion form, attached as Exhibit B
25 to the Settlement, may be used for this purpose but is not required. Settlement, para. 8.5.1.

26 The Administrator may not reject a Request for Exclusion as invalid because it fails to
27 contain all the information specified in the Class Notice. The Administrator shall accept any
28 Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the
person as a Class Member and the Class Member's desire to be excluded. The Administrator's
determination shall be final and not appealable or otherwise susceptible to challenge. If the
Administrator has reason to question the authenticity of a Request for Exclusion, the
Administrator may demand additional proof of the Class Member's identity. The Administrator's



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1 determination of authenticity shall be final and not appealable or otherwise susceptible to
2 challenge. Settlement, para. 8.5.2.

3 Every Class Member who does not submit a timely and valid Request for Exclusion is
4 deemed to be a Participating Class Member under the Settlement, entitled to all benefits and
5 bound by all terms and conditions of the Settlement, including the Participating Class Members'
6 Releases under Paragraph 6.3 of the Settlement, regardless of whether the Participating Class
7 Member actually receives the Class Notice or objects to the Settlement. Settlement, para. 8.5.3.

8 Every Class Member who submits a valid and timely Request for Exclusion is a Non-
9 Participating Class Member and shall not receive an Individual Class Payment or have the right
10 to object to the class action components of the Settlement. Aggrieved Employees are eligible for
11 an Individual PAGA Payment. Settlement, para. 8.5.4.

12 The Administrator will promptly review on a rolling basis Requests for Exclusion to
13 ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting
14 Requests for Exclusion, the Administrator shall email a list to Defense Counsel containing (a) the
15 names and other identifying information of Class Members who have timely submitted valid
16 Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of
17 Class Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests
18 for Exclusion documentation submitted (whether valid or invalid). Upon request, the
19 Administrator may provide summary information regarding the information described in this
20 paragraph to Class Counsel, but shall not provide any personal identifying information (e.g.,
21 names and contact information) to Class Counsel. Settlement, para. 8.8.2.

22 **3. Objecting**

23 Only Participating Class Members may object to the class action components of the
24 Settlement, including contesting the fairness of the Settlement, and/or amounts requested for the
25 Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Class
26 Representative Service Payment. Settlement, para. 8.7.1.

27 Participating Class Members may send written objections to the Administrator, by fax,
28 email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an
attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
Participating Class Member who elects to send a written objection to the Administrator must do
so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional



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1 14 days for Class Members whose Notice Packet was re-mailed). The Objection form attached as
2 Exhibit D to the Settlement may be used for this purpose but is not required. Settlement, para.
3 8.7.2.

4 Non-Participating Class Members have no right to object to any of the class action
5 components of the Settlement. Settlement, para. 8.7.3.

6 **H. Uncashed Checks**

7 For any Class Member whose Individual Class Payment check or Individual PAGA
8 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
9 funds represented by such checks to the California Controller's Unclaimed Property Fund in the
10 name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of
11 California Code of Civil Procedure Section 384, subd. (b). Settlement, para. 4.1.7.

12 **IV. CERTIFICATION OF THE CLASS IS APPROPRIATE**

13 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable
14 and its members are too numerous for joinder to be practical; (2) the representative and absent
15 class members share a community of interest and questions of law and fact common to the class
16 predominate over questions unique to individual class members; (3) the representative's claims
17 are typical of the class's claims; and (4) the representative will fairly and adequately represent the
18 class's interests. *See, e.g., Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Moreover,
19 in the settlement context, the Court can use a lesser standard to determine the appropriateness of
20 a settlement class as opposed to a litigated class certification. *Dunk v. Ford Motor Co.* (1996) 48
21 Cal.App.4th 1794, 1807. As explained below, all of these requirements are met in this case.

22 **A. The Settlement Class Is Objectively Ascertainable**

23 A class is ascertainable when it may be readily identified without unreasonable expense
24 or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932
25 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiff maintains that the above-
26 defined Class is ascertainable because its members may be identified by reference to Defendant's
27 records, and Defendant has agreed to share the relevant information from its records to facilitate
28 the settlement process. DS, ¶ 22. Therefore, the Settlement Class is ascertainable.

B. The Membership of the Settlement Class Is Sufficiently Numerous

The Settlement Class has sufficiently numerous members to render joinder impractical.
No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove*
(1972) 28 Cal.App.3d 1017, 1030. Defendant estimates that there are approximately 126 Class



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Members. DS, ¶ 23. Plaintiff maintains that it would be impractical and economically inefficient to require each Class Member to separately maintain an individual action or be joined as a named plaintiff in this action. The California Supreme Court has upheld a class of as few as 10 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these considerations, the Settlement Class’s membership is sufficiently numerous. DS, ¶ 23. *See Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695.

C. Class Members Share a Well-Defined Community of Interest

The community of interest requirement “embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 326. It “does not mandate that class members have uniform or identical claims.” *Capitol People First v. Dept. of Developmental Servs.* (2007) 155 Cal. App. 4th 676, 692. Rather, courts focus on the defendant’s internal policies and “pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs renders class certification appropriate.” *Id.* (citing *Sav-On*, 34 Cal. 4th at 333).

To justify certification, the class proponent “must show ... that questions of law or fact common to the class predominate over the questions affecting the individual members” *See, Arenas v. El Torito Rests., Inc.* (2010) 183 Cal. App. 4th 723, 732 (citing *Washington Mut. Bank, FA v. Superior Court* (2001) 248 Cal. 4th 906, 913). In light of the more lenient standard for certification of a settlement class, the Parties agree that for the purposes of the Settlement only, the claims of the Class Members all stem from the same sources.

In this case, Plaintiff asserts all Class Members were subject to the same or similar operations and employment policies, practices, and procedures. The claims arise from Defendant’s alleged policy-driven failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay wages during employment and upon termination of employment, failure to maintain required payroll records, and related labor law violations, all of which Plaintiff claims constitute unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common questions include, but are not limited to: (1) Whether Defendant failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay; (2) Whether Defendant failed to provide the Class with all meal and rest periods in



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1 compliance with California law; (3) Whether Defendant failed to pay the Class one additional
2 hour of pay on workdays it failed to provide the Class with one or more meal or rest periods in
3 compliance with California law; (4) Whether Defendant knowingly and intentionally failed to
4 provide the Class with accurate wage statements; (5) Whether Defendant willfully failed to
5 provide the Class with timely final wages; and (6) Whether Defendant engaged in unfair
6 competition within the meaning of Business and Professions Code sections 17200, *et seq.*, with
7 respect to the Class. DS, ¶ 24. Therefore, common questions predominate.

8 **D. Plaintiff Is Typical of the Settlement Class**

9 The class representative must be similarly situated to the rest of the purported class. *See*
10 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46 (stating “it has never been the law in California
11 that the class representative must have identical interests with the class members. The only
12 requirements are ... that the class representative be *similarly* situated”) (emphasis in original); *See*
13 *also* Newberg, § 3:29 (typicality “focuses on whether there exists a relationship between the
14 Plaintiff’s claims and the claims alleged on behalf of the class”). Plaintiff contends that his claims
15 are typical for the purposes of certifying the Settlement Class. Plaintiff asserts that he, like absent
16 Class Members, was subject to the same relevant policies and procedures governing his
17 compensation, hours of work, and meal and rest periods. Because Plaintiff contends that he was
18 subject to the same general course of conduct as absent Class Members, resolving the common
19 questions as they apply to Plaintiff will determine Defendant’s *prima facie* liability to all Class
20 Members. Moreover, Plaintiff’s claims could potentially be subject to the same primary
21 affirmative defenses as those of absent Class Members. Accordingly, Plaintiff’s claims are typical
22 of the Class. DS, ¶ 25.

23 **E. Plaintiff Will Adequately Represent the Settlement Class**

24 The adequacy requirement is met where the plaintiff is represented by counsel qualified
25 to conduct the litigation and the plaintiff’s interest in the litigation is not antagonistic to the class’s
26 interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the
27 plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling
28 conflicts of interest that might hinder the plaintiff’s ability to represent the class. DS, ¶ 26.

First, Class Counsel have supplied the Court with declarations to show that they are
adequate to represent the Settlement Class and that they have significant experience in
employment litigation generally, and wage and hour and employment-related class action



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litigation specifically. *See* DS, ¶¶ 28-35; Declaration of Louis M. Benowitz (“Benowitz Decl.”) ¶ 3. Thus, Plaintiff’s counsel are adequate to serve as Class Counsel.

Second, Plaintiff contends that he is an adequate class representative. Plaintiff and the Class Members have strong and co-extensive interests in this litigation because they all worked for Defendant during the relevant time period, allegedly suffered the same alleged injuries from the same alleged course of conduct, and there is no evidence of any conflict of interest between Plaintiff and the Class Members. DS, ¶ 27. Moreover, Plaintiff has demonstrated his commitment to the Settlement Class by, among other things, retaining experienced counsel, providing counsel with documents, and extensively speaking with them to assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as well as exposing himself to the risk of attorneys’ fees and costs awards against him if this lawsuit had been unsuccessful. DS, ¶ 27. Thus, Plaintiff is adequate to serve as settlement class representative. Accordingly, this Court should find that Plaintiff and his counsel are adequate to represent the Settlement Class as required under Code of Civil Procedure § 382.

F. Class Action Treatment Is the Superior Means for Resolving the Claims of the Class Members

Plaintiff further contends that a class action is also superior to other means of adjudicating the issues in this action. The predominance of common legal and factual questions shows that this Court could fairly adjudicate the claims of Class Members through a single class action. In view of the *theoretical* alternatives that proposed class members could potentially utilize—representative PAGA action (where there is less relief available), individual civil lawsuits or wage claims through the Division of Labor Standards Enforcement (where there would be relatively little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly superior to all of them. Thus, this consideration supports conditional class action treatment for purposes of this Settlement only. DS, ¶ 36.

V. INTRODUCTION: THE COURT SHOULD GRANT PRELIMINARY APPROVAL BECAUSE THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

A. Legal Standard

A class action settlement requires court approval. California Rules of Court (“CRC”), Rule 3.769 provides three steps for approval: (1) Preliminary approval after submission of a written motion for preliminary approval, the proposed class settlement, and the proposed class notice; (2) Issuance of notice of settlement to class members; and (3) A final settlement approval



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1 hearing where class members may be heard regarding the settlement, and at which evidence and
2 argument concerning the fairness, adequacy, and reasonableness of the settlement is presented.
3 The decision to approve or reject a class settlement is committed to the Court's broad discretion.
4 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.^{4th} 116, 128. The decision to approve a
5 class settlement may be reversed only upon a showing of "clear abuse of discretion." *Id.*

6 **B. The Settlement Is Presumptively Fair**

7 In assessing preliminary approval, a court evaluates if the settlement process has certain
8 indicia of fairness. A "presumption of fairness exists where (1) the settlement is reached through
9 arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
10 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage
11 of objectors is small." *Kullar*, 168 Cal. App. ^{4th} at 128, quoting *Dunk v. Ford Motor Co.*, (1996)
12 48 Cal.App.^{4th} at 1794.

13 The class Settlement here satisfies all of these factors. DS, ¶ 37. The Settlement resulted
14 from thorough, arms' length negotiations between experienced counsel with the assistance of a
15 respected mediator after sufficient discovery was exchanged to assess the relative strengths and
16 weaknesses of their respective cases and Defendant's estimated exposure. *Id.*

17 On July 18, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes
18 of action against Defendant for failure to pay wages, failure to issue proper wage statements,
19 failure to timely pay wages during and at the conclusion of employment, unfair competition, and
20 related claims. On July 18, 2022, Plaintiff filed another lawsuit against Defendant under PAGA.
21 On September 1, 2022, Defendant filed an answer to Plaintiff's PAGA Complaint. On February
22 21, 2024, Plaintiff filed a First Amended Complaint alleging causes of action against Defendant
23 for failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal
24 periods, failure to authorize and permit rest and recovery periods, failure to issue proper wage
25 statements, failure to timely pay wages during and at the conclusion of employment, failure to
26 maintain required payroll records, unfair competition, and related allegations. The First Amended
27 Complaint is the Operative Complaint in the Action (the "Operative Complaint"). Defendant filed
28 answerer on March 28, 2024. Defendant denies the allegations in the Operative Complaint, denies
any failure to comply with the laws identified in in the Operative Complaint, and denies any and
all liability for the causes of action alleged. Settlement, para. 2.1. DS, ¶ 38. Plaintiff prepared
"damages" estimates in advance of the mediation. DS, ¶ 38, Ex. 9. Plaintiff determined



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1 Defendant's maximum possible exposure for restitution and penalties to be approximately
2 \$9,993,418.65 (consisting of \$1,372,251.14 in unpaid wages, \$1,372,251.14 in liquidated
3 damages, \$0.00 in missed meal period premium wages, \$0.00 in missed rest break premium
4 wages, \$689,950.00 for wage statement penalties, \$215,866.37 for waiting time penalties, and
5 \$6,343,100.00 for civil penalties under PAGA). Plaintiff calculated the damages based on the
6 number of workweeks and pay periods provided by Defendant, Plaintiff's reports, and the sample
7 data. *Id.*

8 However, based on the difficulties of proof, the Defendant's defenses, and the other
9 attendant risks Plaintiff identifies, Plaintiff estimates the likely awards at trial should Plaintiff
10 prevail to be the following amounts:

- 11 a. Unpaid wages and liquidated damages with interest in the amount of
12 \$2,058,376.72;
- 13 b. Meal period premium wages with interest in the amount of \$0.00;
- 14 c. Rest period premium wages with interest in the amount of \$0.00;
- 15 d. Statutory pay stub penalties in the amount of \$344,975.00;
- 16 e. Waiting time penalties in the amount of \$107,933.18; and
- 17 f. Civil penalties in the amount of \$511,550.00.

18 The total of these amounts is \$3,022,834.90. DS, ¶ 56.

19 Plaintiff also considered the possibility that Defendant could launch a *Pick Up Stix*
20 campaign and pursue individual release agreements from the Class Members. Defendant also
21 represented that it had interviewed all of Defendant's current employees regarding Plaintiff's
22 claims, all of whom would provide declarations, under penalty of perjury, that were favorable to
23 Defendant with respect to the relevant factual issues at issue in Plaintiff's action. Plaintiff's
24 Counsel applied discounts to the maximum possible exposure to account for all other risks
25 discussed below. While it is difficult to assign anything but crudely-determined percentages of
26 risk to any of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign would preclude
27 recovery for such employees is substantial and alone justifies a significant discount because
28 Defendant would likely by trial have gathered releases from the majority of the Class Members.
Id.

Plaintiff is aware of only two significant awards under the PAGA in a contested



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proceeding, both issued by federal district courts.⁴ DS, ¶ 52. PAGA penalty awards are often small even for egregious, intentional violations of the Labor Code.⁵ *Id.* For instance, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a PAGA penalty of only \$5 per pay period for the defendant’s meal period violations. A similar result could occur here. *Id.*

Plaintiff’s initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. *Id.* Therefore, Plaintiff believes a class settlement for \$150,000.00 is fair and reasonable. *Id.*

C. The Settlement Satisfies the Kullar Factors for Approval

The *Kullar* case sets forth several factors a court should consider in determining whether

⁴ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil penalties under the PAGA of \$12,277,500.00 where total adjusted damages were \$18,695,692.58. In this regard, the district court stated,

The plain language of PAGA provides that “a court may award a lesser amount than the maximum civil penalty amount specified by this part if, *based on the facts and circumstances of the particular case*, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code s 2699(e)(2) (emphasis added). The relationship between the amount of total damages and the amount of maximum PAGA penalties is certainly a “circumstance” of the case under the term’s ordinary meaning. The weight given to that circumstance is greater in this case because Plaintiffs’ PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs’ individual claims except for one. As a general matter, it would be excessively punitive for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed the damages caused by that injury or set of injuries.

Id., fnnt. 9. The district court further stated, “Virgin ‘has not presented any evidence that the full penalty would be excessive in relation to its ability to pay,’ the weight of this factor is lessened.” *Id.*

In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court awarded approximately \$102 million in damages, primarily based on the defendant’s failures to comply with the requirements of California Labor Code section 226.

⁵ In 2012, Plaintiff’s Counsel tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. The plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under the PAGA.



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1 to approve a class settlement. These factors include: (1) the strength of plaintiff's case; (2) the
2 risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining
3 class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery
4 completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence
5 of a governmental participant; and (8) the reaction of the class members to the proposed
6 settlement. 168 Cal.App.^{4th} at 128. As demonstrated herein, the Settlement satisfies each of these
7 factors.

8 **1. Evaluation of Plaintiff's Case**

9 **a. Risks Associated with the Arbitration Agreements**

10 The arbitration agreements entered into between Defendant on the one hand, and the Class
11 Members, on the other, present a significant risk to the success of Plaintiff's class action litigation.
12 DS ¶ 41. According to Defendant, the majority of the Class entered into arbitration agreements
13 with Defendant. *Id.* As the arbitration agreements in question restrict potential litigants from
14 bringing class actions against Defendant, Plaintiff would be effectively barred from pursuing
15 claims on behalf of the Class in Court. *Id.* Thus, there is a significant risk the Court could
16 determine that those Class Members who have not entered into arbitration agreements with
17 Defendant do not constitute a sufficiently numerous class to justify class action treatment. As
18 such, by continuing to trial on class-wide claims, Plaintiff would run the high risk of suffering
19 defeat due to the existence of the arbitration agreement. Moreover, the arbitration agreements
20 would pose danger to any class certification motion brought by Plaintiff. Because different
21 defenses would apply to some Class Members and not others – i.e., the existence of signed
22 arbitration agreements – there is a risk that the Court could determine that Plaintiff's claims
23 present too many individualized inquiries to justify class certification. *Id.*

24 **b. Risks Associated with the Unpaid Wages Claim**

25 There is a risk that Plaintiff's recovery for unpaid wages would be extremely limited at
26 best, largely because Defendant's written policies throughout the relevant time period prohibited
27 off-the-clock work. DS, ¶ 42. Off-the-clock claims are difficult where a defendant requires in its
28 written policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation*
Hospital (2014) 226 Cal.App.^{4th} 391 (employer must have notice of off-the-clock work for it to
be compensable). *Id.* In its written employment policies, Defendant mandates that employees
must record all time worked accurately on their time records and strictly prohibits employees
from performing any work off-the-clock. DS, ¶ 42. Moreover, while Defendant disputes that off-



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1 the-clock work occurred, it contends that any time spent off the clock was *de minimis*. The
2 California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested
3 that irregular and minute periods of time may still be subject to a *de minimis* defense even if
4 compensable. (Stating: “We do not decide whether there are circumstances where compensable
5 time is so minute or irregular that it is unreasonable to expect the time to be recorded.”). Following
6 *Troester*, Defendant contends that the *de minimis* doctrine may apply here because the time spent
7 off the clock was minute and insignificant. Accordingly, a large award of penalties seems unlikely
8 with respect to this claim. *Id.*

9 The difficulty inherent in proving that off-the-clock work occurred poses a significant
10 hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove this claim.
11 Generally, a court will not certify a class unless it can determine an appropriate classwide
12 methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiff
13 may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given
14 the lack of records indicating when such off-the-clock work may have taken place. Individualized
15 inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual
16 in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there is a significant
17 risk that the Court would consider this evidentiary showing insufficient as a classwide
18 methodology. DS, ¶ 43.

19 **c. Risks Associated with the Meal Period Claims**

20 There are risks to Plaintiff’s meal period claim. DS, ¶ 44. Plaintiff does not attribute any
21 value to this claim in view of Plaintiff’s investigation, which shows Defendant provided meal
22 periods as required by law. Defendant contends that, to establish a violation for missed meal
23 periods, a plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th
24 at 1004. So long as an employer provides employees with a “reasonable opportunity” to take a
25 duty-free meal period, it has no further duty to “police meal breaks and ensure no work thereafter
26 is performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded,
27 discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release
28 the employee of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the
reason that a particular employee may have failed to take a meal break.” *Washington v. Joe’s
Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

Defendant contends it did not impede or discourage Plaintiff, or any other employees,



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1 from taking their meal or rest periods. DS, ¶ 45. Defendant's policies mandate that employees
2 take at least a 30-minute, uninterrupted meal period and record the beginning and ending time of
3 their meal breaks each day on their time records. *Id.* The time records that comprise the random
4 sample Defendant produced to Plaintiff for purposes of mediation show that meal periods were
5 taken the vast majority of the time. *Id.* Of the time records that show a late, short, or no lunch,
6 individualized evidence may be necessary to determine whether they occurred due to conduct of
7 the Defendant or each of the employees concerned. Accordingly, there is a significant risk that
8 the value of Plaintiff's meal period claim would be substantially reduced at trial. *Id.*

9 **d. Risks Associated with the Rest Break Claims**

10 There are risks to Plaintiff's rest period claim. DS, ¶ 46. Plaintiff does not attribute any
11 value to this claim in view of Plaintiff's investigation, which shows Defendant provided rest
12 periods as required by law. Employers are not required to record rest periods, and such periods
13 are paid. *Id.* Defendant contends it provided non-exempt employees the opportunity to take rest
14 periods in accordance with California law. Further, Defendant's written policies on meal and rest
15 periods are consistent with the Wage Order. *Id.* Thus, unlike meal periods, where there are often
16 records showing whether an employee clocked out or not, there is no such evidence to prove a
17 missed rest period or that the employer refused to authorize and permit one. *Id.* Managing such
18 claims at trial has become exceedingly difficult. *Id.* Plaintiff will depend on sample witness
19 testimony and surveys to prove the claims. *Id.* While a victory with such evidence is certainly
20 possible, relevant caselaw makes such claims risky from a trial management and due process
21 perspective. *Id.*, *See Duran v. U.S. Bank National Assn.*, (2014) 59 Cal. 4th 1, 31 (explaining, "[I]f
22 sufficient common questions exist to support class certification, it may be possible to manage
23 individual issues through the use of surveys and statistical sampling."); *Tyson Foods, Inc. v.*
24 *Bouphakeo* (2015) 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

25 **e. Risks Associated with the Waiting Time Penalty Claims**

26 Plaintiff also asserts claims for wage statement violations, untimely wage violations, and
27 PAGA penalties. Under Labor Code section 226, wage statements must include various
28 information, including the applicable rates of pay, corresponding hours worked, and gross pay.
DS, ¶ 47.

Here, Plaintiff's wage statement claim has the same underlying risks as the above claims,
as it is derivative of them. *Id.* On their face, the wage statements issued by Defendant comply
with the requirements of Labor Code § 226. DS, ¶ 47.



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1 **f. Further Risks Associated with the Waiting Time Penalty**
2 **Claims**

Without proof of willful behavior, Plaintiff will be unable to recover these penalties.

3 **g. Risks Associated with the PAGA Claim**

4 Regarding PAGA, a court has discretion to award a lesser amount than the maximum
5 penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
6 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendant has posed valid
7 defenses to the Labor Code claims underlying Plaintiff's PAGA allegations. Thus, the PAGA
8 claims likewise face significant uncertainty. DS, ¶ 50. There is a risk that the Court would
9 consider the maximum civil penalty available to be confiscatory. *Id.* Moreover, the impact of the
10 COVID-19 pandemic could motivate the Court to further reduce the penalty award to avoid what
11 it may consider a confiscatory taking. *Id.*

12 This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and required a
13 significant discount for settlement purposes. DS, ¶ 51. For mediation purposes, Plaintiff's counsel
14 estimated a maximum possible exposure of approximately \$6,343,100.00 in civil penalties. This
15 estimate did not take into account any of the risks discussed above and assumed a violation for
16 every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same pay
17 period for the same alleged violations of different Labor Code provisions and derivative
18 violations. *Id.* Although two federal district court decisions held that "stacking" PAGA penalties
19 in this fashion may be appropriate to determine the amount in controversy for purposes of removal
20 jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs
21 multiple PAGA penalties for the same violation for the same pay period under different Labor
22 Code provisions. *Id.* This may be because the PAGA does not provide for what many employers
23 characterize as claim splitting and not merely stacking. *Id.*

24 **h. Risks Associated with a Pick Up Stix Campaign**

25 An employer enjoys the right to settle a putative class member's disputed wage claims
26 individually, without the consent or involvement of class counsel. DS, ¶ 54. (*See Chindarah v.*
27 *Pick Up Stix, Inc.* (2009) 171 Cal. App. 4th 796. *Id.* As discussed above, Defendant may launch a
28 "pick off" settlement campaign to pursue individual release agreements from the Class Members,
thereby potentially narrowing the size of the Settlement Class – 126 members – until it is no
longer numerous enough for class certification. *Id.* Plaintiff, then, may not have a sufficient
number of employees to represent. This led to a significant reduction of claim value in settlement



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1 negotiations. *Id.*

2 While the evidence gathered through Plaintiff's discovery supports the merits of the
3 claims asserted in this lawsuit, Plaintiff and his counsel recognize that continued litigation
4 presents significant risks that support a downward departure from Defendant's estimated liability
5 exposure. DS, ¶ 55. In view of the risks, the Settlement reflects Plaintiff's estimate of the total
6 amount of damages, monetary penalties, or other relief that the Class could reasonably expect to
7 be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. *Id.*
8 It also represents a fair, adequate, and reasonable compromise amount for these claims and
warrants preliminary approval.

9 **2. Allocation of the PAGA Payment**

10 The settlement of PAGA penalties in the sum of \$4,000.00, of which 75% (\$3,000.00)
11 will be paid to the LWDA and 25% (\$1,000.00) will be distributed to the Class, is reasonable and
12 appropriate under the circumstances. DS, ¶ 57. The Parties negotiated a good faith amount for
13 PAGA Penalties to be paid to the LWDA and to the Class. *Id.* The portion to be paid to the LWDA
14 was not the result of self-interest at the expense of other Class Members. *Id.* Where settlements
15 "negotiate[] a good faith amount" for PAGA penalties and "there is no indication that this amount
16 was the result of self-interest at the expense of other Class Members," such amounts are generally
17 considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844
18 EDL, 2009 WL 928133, at *9. Likewise, where the employer did not act willfully, and made good
19 faith attempts to comply with wage and hour laws, a reduction or lesser penalty is warranted
20 because imposing the maximum PAGA penalty for each violation would have been unjust,
21 arbitrary, and oppressive. *Id. Carrington v. Starbucks Corp.* (2018) 30 Cal.App.^{5th} 504, 528-529
22 (affirming trial court's award of only 10% of maximum PAGA penalty for meal break violations).
23 *Id.* The amount to be paid to the LWDA comports with PAGA settlement amounts approved by
24 other courts. *See, e.g., Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL
25 67245, 81 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common fund);
26 *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA
27 payment of \$7,500 to LWDA out of \$1.25 million common fund settlement); *Hopson v.*
28 *Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving PAGA
settlement of 0.3% or \$1,500); *Nordstrom Com. Cases* (2010) 186 Cal.App.^{4th} 576, 589
(approving PAGA settlement and release that allocated \$0 to PAGA claim). Courts have also



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1 approved settlements for \$20,000 or less. *See, e.g., Hicks v. Toys ‘R’ Us–Delaware, Inc.*, (C.D.
2 Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in a case
3 involving \$4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012)
4 2012 WL 5941801 at *14 (approving PAGA penalties of \$10,000 as part of \$2.5 million
5 settlement); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3
6 (approving PAGA payment of \$10,000 as part of \$3.7 million common-fund settlement). *Id.*

7 **3. Presence of Governmental Participant**

8 As required under Labor Code section 2699(1)(2), Plaintiff will provide notice of this
9 settlement to the LWDA with the filing and service of this motion. DS, ¶ 106, Ex. 23.

10 **4. Reaction of Class Members to Proposed Settlement**

11 If the settlement is preliminarily approved, Class Members will be provided with the
12 Notice Packet (attached as **Exhibits A-D** to the Settlement) and an opportunity to object. DS, ¶
13 86. The Parties’ proposed notice fully complies with California Rules of Court 3.766(d) and
14 3.769(f) and will allow Class Members to make informed responses to the proposed settlement.
15 *Id.*

16 **VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY**
17 **COMPENSATES CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS**
18 **MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY**
19 **COMPARED TO OTHER CLASS MEMBERS**

20 The Individual Settlement Payments will be paid to each Class Member based on his or
21 her eligible Pay Periods compared to the total Pay Periods. DS, ¶ 76, Settlement §§ 1.23, 3.2.4.
22 Because this method compensates Class Members based on the extent of their potential injuries,
23 in that Class Members who worked for Defendant longer would have been subject to more alleged
24 violations, it is fair, adequate, and reasonable. *Id.*

25 Plaintiff estimates that there are 14,193 Pay Periods for the Class Period. So, each Pay
26 Period has a value of approximately \$4.51 (\$64,000.00 Net Settlement Amount / 14,193 Pay
27 Periods = \$4.51). Plaintiff had 79 Pay Periods during the Class Period. Based on this, it is
28 anticipated that Plaintiff Genaro Reyes Villagra will receive an Individual Class Payment of
approximately \$356.29 as a participating Class Member (79 Pay Periods x \$4.51 = \$356.29) while
the average estimated Individual Class Payment to participating Class Members will be
approximately \$507.94. Some Class Members – those who worked more Pay Periods during the
Class Period – will receive more, and some less. The highest possible Individual Class Payment
to a participating Class Member (i.e., to those who qualify for all Pay Periods in the Class Period)



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1 will be approximately \$643.06. The lowest possible Individual Class Payment to a participating
2 Class Member (i.e., to those who qualify for only one Pay Period in the Class Period) will be
3 approximately \$4.51. *See* DS, ¶ 75.

4 It is anticipated that the average Aggrieved Employee Individual PAGA Payment will
5 be \$14.93. *Id.*, ¶ 77. Plaintiff's Individual PAGA Payment, his individual share of 25% of the
6 PAGA Penalties, will be less than that of some absent Aggrieved Employees. Under the
7 Settlement, each Aggrieved Employee will receive a *pro rata* distribution of 25% of the PAGA
8 Penalties proportionate to the number of paychecks he or she had with Defendant during the
9 PAGA Period, compared to the total of all paychecks of all Aggrieved Employees during the
10 PAGA Period, as reflected by Defendant's records. Plaintiff estimates that there are 4,093
11 Aggrieved Employee paychecks for the PAGA Period. So, each Aggrieved Employee
12 paycheck from the PAGA Period has a value of approximately \$0.24 (25% of \$4,000.00 in PAGA
13 Penalties / 4,093 Aggrieved Employee paychecks = \$0.24). It is anticipated that Plaintiff Genaro
14 Reyes Villagra will receive an Individual PAGA Payment of approximately \$0.48 as an
15 Aggrieved Employee (2 paychecks during the PAGA Period x \$0.24 paycheck value = \$.48)
16 while the average estimated Individual PAGA Payment to an Aggrieved Employee will be
17 approximately \$14.93 (\$1,000.00, 25% of PAGA Penalties / 67 Aggrieved Employees = \$14.93
18 average Individual PAGA Payment). Some Aggrieved Employees – those who had more
19 paychecks during the PAGA Period – will receive more, and some less. The highest possible
20 Individual PAGA Payment to an Aggrieved Employee (i.e., to those who qualify for all paychecks
21 in the PAGA Period) will be approximately \$15.77. The lowest possible Individual PAGA
22 Payment to an Aggrieved Employee (i.e., to those who qualify for only one paycheck in the
23 PAGA Period) will be approximately \$0.24. *See* DS, ¶ 77.

24 **VII. ALLOCATION FOR CLASS COUNSEL'S FEE AWARD AND ATTORNEYS'**
25 **FEEES AND COSTS AWARD FOR LITIGATION EXPENSES IS APPROPRIATE**

26 The Settlement states Class Counsel may seek attorneys' fees of up to one-third of the
27 GSA and up to \$12,000.00 for actual reasonable litigation costs and expenses incurred in
28 prosecuting the Action. Settlement, para. 3.2.2. These amounts are reasonable, given the facts and
circumstances of the case. DS, ¶¶ 58-61.

Trial courts have "wide latitude" in assessing the value of attorneys' fees, and their
decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
Beneficial Cal., Inc. (2000) 82 Cal. App. 4th 19, 41. Indeed, it is long settled that the "experienced



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1 trial judge is the best judge of the value of professional services rendered in his court.” *Ketchum*
2 *v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney fee awards should
3 be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
4 incurred. *Laffitte v. Robert Half Intl, Inc.* (2016) 1 Cal. 5th 480, 503 (citing *Lealao, supra*, 82
5 Cal.App.4th at p. 48-49). The Supreme Court has recently approved fees equal to one-third (1/3)
6 of the common fund. *Laffitte, supra*, 1 Cal. 5th 480. Many courts have similarly approved fee
7 awards equal to or greater than the percentage requested here. *See, e.g., In re Pacific Enterprises*
8 (9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of the common fund); *In re Activision* (N.D.
9 Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the common fund); *In re Ampicillin Antitrust*
10 *Litig.* (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of settlement fund).

11 The amount of fees and costs requested are commensurate with (1) the risk Class Counsel
12 took in bringing the case, (2) the extensive time, effort, and expense dedicated to the case, (3) the
13 skill and determination Class Counsel have shown, (4) the results Class Counsel achieved, (5) the
14 value Class Counsel achieved for the Class, and (6) the other cases Class Counsel turned down to
15 devote time to this matter. DS, ¶ 59. Class Counsel interviewed and obtained information from
16 putative class members, met and conferred with Defendant’s counsel on numerous occasions,
17 reviewed and analyzed hundreds of pages of data and documents provided by Defendant and
18 obtained through other sources, researched applicable law, and provided estimates of “damages”
19 for purposes of settlement discussions, among other tasks. *Id.*

20 Class Counsel have borne all the risks and costs of litigation and will receive no
21 compensation until recovery is obtained. DS, ¶ 60. Class Counsel are well-experienced in wage-
22 and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.*
23 Considering the amount of the attorney fees requested, the work performed, and the risks incurred,
24 the requested fees and costs are reasonable and should be awarded. *Id.*

25 **VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENT TO PLAINTIFF**
26 **SHOULD BE PRELIMINARILY APPROVED BECAUSE IT IS FAIR,**
27 **ADEQUATE, AND REASONABLE**

28 Courts routinely approve incentive awards to compensate named plaintiffs for the services
they provide and the risks they incur during class action litigation, often in much higher amounts
than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726
(upholding “service payments” to named plaintiffs for their efforts in bringing the case); *Van*
Vranken v. Atlantic Richfield Co. (N.D.Cal. 1995) 901 F.Supp. 294 (approving \$50,000



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enhancement award). The Settlement provides that Plaintiff may seek a Class Representative Service Payment of up to \$10,000.00. This amount is entirely reasonable given Plaintiff's efforts in this action and the risks he undertook on behalf of Class Members. DS, ¶ 62. Plaintiff has devoted many hours advancing the interests of the Settlement Class. Plaintiff has done this by, among other things, retaining experienced counsel, providing them with information about his work history with Defendant and Defendant's policies and practices with respect to the wage and hour claims at issue, participating in mediation, and being actively involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay Defendant's attorneys' fees and costs if this action had been unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class Representative Service Payment is fair, adequate, and reasonable, and thus warrants preliminary approval. DS, ¶ 62.

IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE, AND REASONABLE

With regard to the settlement administration costs ("Administration Expenses Payment") provision, it is reasonable. Before agreeing to ILYM Group, Inc. and its bid of \$6,650.00, the Parties sought and reviewed bids from other reputable third-party administrators, which provided higher bids. DS, ¶ 100, Exs. 19, 20, and 21. Thus, the settlement administration costs provision should be given preliminary approval.

X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED TO GIVE ACTUAL NOTICE TO CLASS MEMBERS AND SUFFICIENT TIME TO EXERCISE THEIR RIGHTS

This Court should approve the proposed plans for giving notice to the Settlement Class and administering the Settlement. The standard for determining the adequacy of notice is whether the notice has "a reasonable chance of reaching a substantial percentage of the class members." *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple measures to ensure that as many Class Members as practicable receive actual notice of the Settlement and have enough time to exercise their rights. The Settlement requires distribution of the Notice by First Class U.S. mail only. Settlement, ¶ 4.1.5. Although there are current employee Class Members, it is uncertain whether Defendant's records of their contact information include



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1 email addresses, and Class Members, who perform all of their work away from a desk, are not in
2 a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable.
3 DS, ¶ 86.

4 With respect to its content, “[The] notice given to the class must fairly apprise the class
5 members of the terms of the proposed compromise and of the options open to dissenting class
6 members.” *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152.
7 The purpose of the notice in the class settlement context is to give class members sufficient
8 information to decide whether they should accept the benefits offered, opt out and pursue their
9 own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Settlement) provides
10 Class Members with all pertinent information that they need to fully evaluate their options and
11 exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among
12 other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how
13 Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the
14 Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how
15 payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the
16 individual Settlement Class Member’s estimated payment. Additionally, the Class Notice will
17 include the number of Pay Periods a Class Member had during the Class Period. Accordingly, the
18 Notice should be approved because it describes the Settlement with sufficient clarity and
19 specificity to explain to Class Members what this action is about, their rights under the Settlement,
20 and how to exercise those rights. DS, ¶ 86.

21 **XI. CONCLUSION**

22 For the reasons stated above, this Court should grant Plaintiff’s Motion in its entirety and
23 adopt the proposed order submitted concurrently herewith.

24 Respectfully submitted,

25 THE SPIVAK LAW FIRM

26 Dated: April 25, 2024

27 By:



28 DAVID G. SPIVAK and LAUREN R.
DAVIS, Attorneys for Plaintiff,
GENARO REYES VILLAGRA, and all
others similarly situated



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