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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO

BRAULIO JAVIER, individually and on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

HELENA AGRI-ENTERPRISES, LLC a
Delaware Limited Liability Company;
HELENA CHEMICAL COMPANY, a
Delaware Corporation; and DOES 1-50,
inclusive,

Defendants.

Case No. 22CECG02269

[Consolidated with Case No. 22CECG03145]

CLASS AND REPRESENTATIVE ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: July 2, 2024

Time: 3:30 p.m.

Dept.: 502

Judge: Hon. Kristi Culver Kapetan

Complaint Filed: July 27, 2022

FAC Filed: November 14, 2022

Trial Date: None Set

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1 **I. INTRODUCTION**

2 Plaintiff Braulio Javier (“Plaintiff”), on behalf of himself and the putative class, seeks
3 preliminary approval of a \$600,000.00 class action and PAGA settlement (“Settlement”) reached
4 with Defendant Helena Agri-Enterprises, LLC (“Defendant” or “Helena Agri”) (collectively with
5 Plaintiff, the “Parties”). This Settlement will resolve Plaintiff’s claims, asserted on behalf of all
6 current and former non-exempt employees, employed by Defendant within the State of California
7 during the Class Period (the “Class”), for Defendant’s alleged: (1) failure to pay minimum wages,
8 (2) failure to pay overtime owed, (3) failure to provide lawful meal periods, (4) failure to authorize
9 and permit rest periods, (5) failure to timely pay wages during employment, (6) failure to timely
10 pay wages owed at separation, (7) failure to reimburse necessary expenses, (8) unlawful deductions,
11 (9) knowing and intentional failure to comply with itemized wage statement provision, (10)
12 violation of unfair competition law § 17200 et seq, and (11) violation of Labor Code § 2698 et seq.
13 (“Private Attorneys General Act” or “PAGA”)
14

15 Plaintiff respectfully requests the Court preliminarily approve the Joint Stipulation and
16 Settlement Agreement (“Settlement Agreement”), included for the Court’s review as **Exhibit 1** to
17 the Declaration of James Hawkins in Support of Preliminary Approval (“Hawkins Decl.”).
18
19

20 **II. SUMMARY OF THE LITIGATION**

21 On July 27, 2022, Plaintiff simultaneously filed a class complaint and provided notice to
22 the LWDA of his claims. (Hawkins Decl., ¶ 7.) On October 4, 2022, he subsequently filed a
23 complaint for PAGA penalties. (*Ibid.*)

24 After Defendant notified Plaintiff of a prior settlement—*Jorge Proctor v. Helena Agri-*
25 *Enterprises, LLC, et al.*, San Diego County Superior Court Case No. 37-2018-00057894-CU-OE-
26 CTL (“Proctor Settlement”)—which released class claims arising through March 1, 2020 (except
27 for the reimbursement class), Parties stipulated to extend Defendant’s deadline to file its answer,
28 pending the filing of Plaintiff’s First Amended Complaint (“FAC” and the “Operative Complaint”).

(Hawkins Decl., ¶ 8.) On November 14, 2022, Plaintiff filed his FAC, consolidating his PAGA action with his class claims, seeking remedies and PAGA penalties for: (1) failure to pay minimum wages, (2) failure to pay overtime owed, (3) failure to provide lawful meal periods, (4) failure to authorize and permit rest periods, (5) failure to timely pay wages during employment, (6) failure to timely pay wages owed at separation, (7) failure to reimburse necessary expenses, (8) unlawful deductions, (9) knowing and intentional failure to comply with itemized wage statement provision, (10) violation of unfair competition law § 17200 et seq, and (11) violation of PAGA. (Hawkins Decl., ¶ 9.)

Defendant filed its answer to the complaint on December 16, 2022, in which it denies all claims and asserts various affirmative defenses to liability. (Hawkins Decl., ¶ 10.)

III. INVESTIGATION AND MEDIATION

Early in the litigation process, the parties agreed to informal discovery and information exchange, and to attempt to settle the matter through mediation. (Hawkins Decl., ¶ 11.)

Defendant provided, among other things, a sampling of schedules, time records and wage statements for the Class Members during the Class Period, and the personnel file, time records, and wage statements for Plaintiff. Plaintiff also received data including the total number of Class Members and Aggrieved Employees, the address of each of Defendant's locations and/or facilities in California where Defendant employed Class Members, the total number of Class Members and Aggrieved Employees presently employed in California, the number of workweeks and pay periods in the Class and PAGA Periods, the number of shifts worked by the Class Members and Aggrieved Employees during the Class and PAGA Periods broken down by shift length, the average number of Class Members employed during each year of the liability period, the average regular pay rate for Class Members, the average wage for each group, all schedules that communicated to Plaintiff their hours of work, and any breaks. (Hawkins Decl., ¶ 12–13.) Defendant provided Plaintiff with Defendant's employee handbooks used during the Class Period, policies and training materials related to meal periods, rest periods, the location where employees were supposed to take meals or rest periods, whether employees could leave the premises during breaks, timekeeping, timing of

1 earning and payment of overtime wages, and the calculation of the regular rate for payment of
2 overtime wages, record keeping, payment of wages during employment and at the time of
3 termination, deductions from wages, reimbursements (including any applicable forms or
4 procedures), scheduling and staffing, payment of sick leave and accrual, reporting time wages, the
5 usage of pay cards or debit cards, including any fee schedule, job descriptions for each position
6 worked by the Class Members, and any alternative workweek schedules in effect during the Class
7 Period.

8 The Parties also conducted significant investigation of the facts and law, including,
9 numerous conferences between counsel for the Parties, substantial document production, and
10 review of data necessary to calculate damages. (Hawkins Decl., ¶ 12–13.) Counsel for the Parties
11 investigated the law as applied to the facts regarding Plaintiff’s claims and potential defenses
12 thereto, and the damages and penalties claimed. (*Ibid.*) From the documentation provided, the
13 Parties conducted their own evaluations of the potential recoveries based on the alleged claims.
14 (*Ibid.*)

15 On November 7, 2023, the Parties attended mediation with Gig Kyriacou, a well-regarded
16 mediator experienced in complex wage and hour matters. (Hawkins Decl., ¶ 14.) The Parties did
17 not resolve the action at mediation but continued to negotiate with the assistance of Mr. Kyriacou
18 in the weeks following. (*Ibid.*) On November 20, 2023, with the aid of a mediator’s proposal, the
19 Parties reached an agreement to resolve the Action. (*Ibid.*)

20 Class Counsel has concluded that the terms of the Settlement are fair, reasonable, adequate,
21 and in the best interests of the Class Members, considering the sharply contested issues involved,
22 the expense and time necessary to litigate the Action through trial and any appeals, the risk of an
23 adverse outcome, the uncertainty of complex litigation, and the substantial benefits to be received
24 by Class Members. (Hawkins Decl., ¶¶ 16, 21–22, 47.)

25 Because of the substantial expense of defending against the Action, the length of time
26 necessary to resolve the issues presented herein, the inconvenience involved, and the disruption to
27 its normal business operations, Defendant has concluded that it is in their best interest to accept
28

1 the terms of the Settlement. Defendant denies each of the allegations and claims asserted against
2 it in the Action. (Hawkins Decl., ¶ 17.) However, Defendant nevertheless desires to settle the
3 Action for the purpose of avoiding the burden, expense, and uncertainty of continuing litigation
4 and for the purpose of putting to rest the controversies of the Action. (Hawkins Decl., ¶¶ 47–48.)

5 The Parties intend that this Settlement shall effectuate the final and complete resolution of
6 all Released Claims, as defined herein, of Plaintiff and Participating Class Members and, to the
7 extent permitted by law, of the State of California. (Hawkins Decl., ¶¶ 47–48.)

8 **IV. SUMMARY OF THE PROPOSED SETTLEMENT**

9 **A. Class Definition**

10 The “Class” is defined as: All current and former non-exempt employees, employed by
11 Defendant within the State of California during the Class Period. (Ex. 1, Settlement Agreement,
12 §§ I.E). The “Class Period” is defined as: For claims covered by the Proctor Settlement, the Class
13 Period is from March 2, 2020 through January 20, 2024. For claims not covered by the Proctor
14 Settlement, the Class Period is from July 29, 2018 through January 20, 2024. (Ex. 1, Settlement
15 Agreement, §§ I.I.)

16 All Class Members who do not submit a valid and timely request to exclude themselves
17 from the Settlement will be deemed Participating Class members and will be bound by all its terms.
18 (Ex.1, § I.AA, III.K.4.a.)

19 **B. Gross Settlement Amount and Net Settlement Amount**

20 Defendant has agreed to pay a Gross Settlement Amount (“GSA”) of \$600,000.00 to settle
21 the Action. (Ex.1, § I.U.) The Net Settlement Amount (“NSA”) is the amount remaining after
22 subtracting from the GSA (subject to Court approval): (1) Class Representative Service Award
23 Payment of \$10,000.00 to Plaintiff Braulio Javier (*Id.* at § I.K.); (2) Administration Costs of up to
24 \$15,000 (*Id.* at § I.A.); (3) Attorney Fee Award to Class Counsel of up to 35% of the GSA
25 (estimated \$210,000) (*Id.* at § I.C.); (4) Cost Award to Class Counsel of up to \$20,000.00 (*Id.* at §
26 I.M.); and (5) the PAGA Payment of \$16,000, allocated 75% to the LWDA and 25% to the
27 aggrieved employees (*Id.* § I.Z.)
28

1 If the actual number of workweeks exceeds 56,321 by ten percent (10%) or greater, by the
2 end date of the Class Period, the GSA shall be subject to a pro-rata increase (Ex.1, § III.O.19.)

3 **C. Individual Settlement Shares**

4 Defendant will provide the full GSA to the Settlement Administrator, who in turn will
5 distribute the entire NSA to Participating Class Members. (Ex.1, § III.K.9–9.a.) Each Participating
6 Class Member will receive a proportionate share of the NSA as an “Individual Settlement Share”
7 calculated based on (i) the number of points he or she earned during the Class Period based on the
8 Class data provided by Defendant, divided by (ii) the total number of points earned by any and all
9 Participating Class Members collectively, during the Class Period based on the same Class data,
10 which is then multiplied by the NSA. (*Id. at* § III.G.1.a.) For each pay period a Participating Class
11 Member worked during the period from July 29, 2018 through March 1, 2020, they will receive
12 one (1) point, and for each pay period a Participating Class Member worked during the period from
13 March 2, 2020 through January 20, 2024, they will receive three (3) points. (*Ibid.*)

14 Individual Settlement Shares shall be allocated as 20% wages (to be reported on an IRS
15 Form W2); and 80% interest and penalties (to be reported on an IRS Form 1099). (*Id. at* § III.G.2.)
16 The employees’ share of taxes and withholdings (the wage-portion) will be withheld from the
17 Individual Settlement Share. (Ex. 1, § III.G.2.) All Employer payroll taxes will be paid by
18 Defendant separately from the GSA. (*Id. at* § III.K.9).

19 **D. Notice Procedure**

20 The proposed Class Notice provides information regarding the nature of the Action, a
21 summary of the Settlement’s terms, the Class and Class Period definitions, the Class Member’s
22 Workweeks during the Class Period, the estimated Individual Settlement Payment, and the formula
23 for calculating the Payment, instructions to submit Requests for Exclusion or Objections and the
24 deadlines and released claims. (Ex.1, Ex. A, Class Notice). Defendant will provide the Class List
25 to Settlement Administrator within fifteen (15) calendar days after entry of the Preliminary
26 Approval Order. (Ex.1, § III.K.2.a.) Before mailing, the Settlement Administrator will search the
27 National Change of Address Database for updated contact information. (*Id. at* § I.HH.)
28

1 Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, the
2 Settlement Administrator will mail a Class Notice to all Class Members via First-Class USPS.
3 (Ex.1, § III.K.2.b.). Any Class Notice returned as non-deliverable on or before the Response
4 Deadline will be sent via First-Class USPS to the forwarding address, and the Settlement
5 Administrator will indicate the on the envelope whether the Class Notice has been re-mailed. (*Id.*
6 at § III.K.2.c.) If no forwarding address is provided, the Settlement Administrator will attempt to
7 determine the correct address using a skip-trace, or other search, and will perform a single re-
8 mailing (*Ibid.*) The “Response Deadline” is forty-five (45) calendar days from the initial mailing.
9 (*Id.* at § I.GG). Class Members to whom Class Notice is re-mailed shall have ten (10) additional
10 calendar days beyond the Response Deadline to submit a Request for Exclusion, an Objection, or
11 a dispute. (*Id.* at § III.K.2.c.)

12 Any Class Member who disputes the accuracy of the number of Pay Periods or points set
13 forth in the Class Notice must provide written notice by the Response Deadline and submit all
14 evidence relating to the dispute to the Settlement Administrator. (Ex.1, § III.K.2.d.)

15 Class Members who wish to opt-out from the Settlement must mail a written request for
16 exclusion to the Settlement Administrator by the Response Deadline. (*Id.* at § III.K.4.). If more
17 than five percent (5%) of the Class Members submit Exclusion Forms, Defendant may, at their
18 election, withdraw from the Settlement, making the agreement null and void. (*Id.* § III.K.4.c.) This
19 right must be exercised within thirty (30) days after the expiration of the Response Deadline. (*Id.*)

20 To object to the Settlement, a Class Member must not submit a Request for Exclusion and
21 must mail a written objection containing all the required information to the Settlement
22 Administrator before the Response Deadline. (Ex.1, § III.K.3.)

23 **E. Processing of Payments**

24 Within fourteen (14) days of Defendant depositing the GSA as set forth above, the
25 Administrator will issue payments as provided for in the Settlement. (Ex.1, § III.K.9.b.) Any
26 amount attributable to settlement checks that remain uncashed for more than one hundred eighty
27 (180) calendar days after issuance shall be tendered to the California State Controller’s Office
28

Unclaimed Property Division to be held in the name of the Class Member. (*Id.* § III.K.10.)

F. Release of Claims

The following releases will become effective upon entry of the Final Approval Order and Judgment and contingent upon payment by Defendant:

Every Participating Class Member, shall be deemed to have fully released the “Released Parties” of and from all the following claims during the Class Period:

[A]ll claims, demands, rights, liabilities and causes of action that were asserted in the operative Complaint or that could have been asserted based on the factual allegations in the operative Complaint. (Ex.1, §§ I.EE, III.L.)

Likewise, each Eligible Aggrieved Employee, shall be deemed to have fully released the “Released Parties” of and from all the following claims:

[A]ll claims seeking civil penalties under the California Labor Code predicated on the PAGA Claims asserted in the Action, during the PAGA Period against Defendant and/or any other Released Party. (Ex.1, § III.M.)

In addition to the releases above, Plaintiff also executed the following release:

[A]ll charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, arising from the beginning of time through the date Plaintiff executes this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to their employment with Defendant or the remuneration for, or termination of, such employment. (Ex.1, § III.N.)

Plaintiff’s release also includes the release of the rights and benefits of Section 1542 of the California Civil Code. (Ex.1, § III.N.)

G. Individual Plaintiff Settlement Payment and Class Counsel’s Fees and Costs Requests

Plaintiff Braulio Javier will request a Class Representative Service Award in the amount of \$10,000. (*Id.* § III.H.1.) Courts routinely approve service awards to “compensate class

1 representatives for work done on behalf of the class, to make up for financial or reputational risk
2 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private
3 attorney general.” (*Cellphone Termination Fee Cases*, (2010) 186 Cal.App.4th 1380, 1394
4 (approving an award of \$10,000).) Importantly, these awards “are fairly typical in class action
5 cases.” (*Ibid.*) In light of the substantial amount of time and effort Plaintiff dedicated to litigating
6 this action and the significant risks Plaintiff undertook in order to represent the Class, the requested
7 sum is both reasonable and justified.

8 In connection with the Settlement, Class Counsel will request an award of reasonable
9 attorneys’ fees and costs incurred in connection with the litigation. (Ex.1, § III.H.2.) Class Counsel
10 will request attorneys’ fees up to 35% of the GSA equal to \$210,000.00 (Ex.1, §§ I.C, III.H.2;
11 Hawkins Decl., ¶ 65) and litigation costs up to \$20,000.00. (Ex.1, §§ I.M, III.H.2; Hawkins Decl.,
12 ¶ 70.)

13 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

14 **A. Class Action Settlements Are Subject to Court Review and Approval Under the**
15 **California Rules of Court.**

16 The law favors settlements. (*Bush v. Superior Court* (1992) 10 Cal.App.4th 1374, 1382.)
17 This is particularly true in class actions. However, a class action may not be dismissed,
18 compromised or settled without Court approval. (Cal. Civ. Code § 1781(f); Cal. R. Ct. 3.769 (a).)
19 A class action may be settled only after the parties (1) obtain preliminary approval of the settlement
20 from the Court; (2) give notice to Class Members as directed by the Court; and (3) undergo a final
21 approval hearing to inquire into the fairness of the settlement. (Cal. R. Ct. 3.769(c), (e)-(f).)

22 The decision to approve a proposed settlement lies within the Court’s discretion. (*Kullar*
23 *v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 128; *Wershba v. Apple Computer, Inc.*,
24 (2001) 91 Cal. App. 4th 224, 234-25.) Nevertheless, in considering a settlement for approval, a
25 court is not to turn the approval hearing “into a trial or rehearsal for trial on the merits...[or] to
26 reach any ultimate conclusions on the contested issues of fact and law which underlie the merits
27 of the dispute.” (*Officers for Justice v. Civil Serv. Comm’n*, (9th Cir. 1992) 688 F.2d 615, 625.)
28

1 The Court’s duty is to determine whether the settlement is fair, adequate, and reasonable. (*Dunk*
2 *v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801.) The Court should consider factors
3 including:

4 [T]he strength of plaintiff’s case, the risk, expense, complexity and likely duration
5 of further litigation, the risk of maintaining class action status through trial, the
6 amount offered in settlement, the extent of discovery completed and the stage of
7 the proceedings, the experience and views of counsel...and the reaction of the class
members to the proposed settlement. (*Id.* at p. 1801.)

8 Furthermore, the Court must give “[due] regard to what is otherwise a private consensual
9 agreement between the parties.” (*Wershba, supra*, 91 Cal. App. 4th at p. 245.) The inquiry must be
10 limited “to the extent necessary to reach a reasoned judgment that the agreement is not the product
11 of fraud or overreaching by, or collusion between, the negotiating parties.” (*Ibid.*)

12 A “presumption of fairness exists where: (1) the settlement is reached through arm’s-length
13 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
14 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
15 small.” (*Dunk, supra*, 48 Cal. App. 4th at p. 1802.) As shown below, the settlement falls well
16 within the range of approval because there are no grounds to doubt its fairness.

17 **B. The Settlement is Fair, Reasonable, and Adequate**

18 **1. The Settlement is the Result of Arm’s-length Negotiations.**

19 This Settlement was the product of extensive arm’s length bargaining by the Parties and a
20 full day of mediation. (Hawkins Decl., ¶¶ 14–17.) At all times, the negotiations were adversarial
21 and non-collusive. The information exchanged between the Parties allowed them to assess the
22 merits of the claims and defenses and reach a compromise. (*Ibid.*) Plaintiff and Class Counsel have
23 considered the uncertainty and risk of further litigation and the potential outcome, and in light of
24 those considerations, Plaintiff and Class Counsel have conducted extensive settlement
25 negotiations, including the above-mentioned mediation. (*Id.* at ¶¶ 14–17, 20.) Plaintiff and Class
26 Counsel believe the Settlement is fair, adequate, and reasonable, and it is in the best interests of
27 the Class Members. (*Id.* at ¶¶ 16, 21.)

1 **2. The Extent of Discovery and the Early Stage of the Proceedings Support**
2 **Settlement.**

3 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of
4 their respective claims and defenses before reaching the Settlement. (*Id.* at ¶¶ 22–26). The Parties
5 reached this Settlement after extensive investigation and research, substantial exchanges of
6 documents, and a thorough evaluation of class-wide data produced to Class Counsel. (*Id.*) As such,
7 this litigation has reached the stage where “the Parties certainly have a clear view of the strengths
8 and weaknesses of their cases” sufficient to support the settlement. (*In re Warner Commc’ns Sec.*
9 *Litig.* (S.D.N.Y. 1985); Hawkins Decl., ¶ 26.)

10 **3. The Settlement is a Reasonable Compromise of Claims.**

11 This Settlement compares favorably to other similar class settlements in terms of potential
12 recovery. (See *In re MyFord Touch Consumer Litig.*, (2019) WL 1411510, at p. 10 (citing cases
13 where settlement ranges from 5% to 10% of potential recovery).) While Plaintiff believes in the
14 strength of his allegations and that his claims are appropriate for class certification, certification
15 was far from certain given Defendant’s defenses and the state of the law regarding certification.
16 (Hawkins Decl., ¶¶ 20, 51.) The risks that Defendant could defeat certification and Plaintiff’s
17 representative claims, and prevail on its defenses, were substantial enough to warrant a
18 compromise. (*Id.* at ¶ 47, 51.) Following arms-length negotiations between experienced and
19 informed counsel and with the assistance of a mediator, the Parties accepted the mediator’s
20 proposal and agreed on a GSA of \$600,000.00. (*Id.*, ¶¶ 11–16). As the court in *Glass* held:

21 In light of the above-referenced uncertainty in the law, the risk, expense,
22 complexity, and likely duration of further litigation likewise favors the settlement.
23 Regardless of how this Court might have ruled on the merits of the legal issues, the
24 losing party likely would have appealed, and the parties would have faced the
25 expense and uncertainty of litigation an appeal. “The expense and possible duration
26 of the litigation should be considered in evaluating the reasonableness of [a]
 settlement.” (*Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2007) 2007 WL 221862,
 at *9 (quoting *In re Mego Financial Corp. Securities Litigation* (9th Cir. 2000) 213
 F.3d 454, 458.)

27 “Generally, unless the settlement is clearly inadequate, it is acceptable and approval are preferable
28 to lengthy and expensive litigation with uncertain results,” (*Ching v. Siemens Indus, Inc.*, (N.D.

1 Cal. June 27, 2014) 2014 WL 2926210, at *4 (quotation omitted).) At approximately 20% of the
2 estimated realistic liability, the GSA is well beyond adequate and will provide certain, meaningful
3 relief to the Plaintiff and to the class. (Hawkins Decl., ¶ 52.) This factor weighs in favor of
4 approval.

5 **4. The Risks Inherent in Continued Litigation Are Great.**

6 In its assessment of a class action settlement, the Court should consider “[t]he strength of
7 plaintiff’s case, the risk, expense, complexity, and likely duration of further litigation, [and] the
8 risk of maintaining class action status.” (*Dunk, supra*, 48 Cal. App. 4th at p. 1801.)

9 Defendant presented strong defenses to Plaintiff’s claims, particularly asserting that they
10 maintained facially lawful policies and that Plaintiff, and the class, contributed to the harms
11 experienced. These defenses create a possibility that the claims might not be certified or might fail
12 on the merits. (Hawkins Decl., ¶¶ 47, 52.) Counsel recognized the expense and length of
13 proceedings necessary to continue the litigation through trial and any appeals. Counsel also
14 considered the uncertainty and risk of further litigation, and the difficulties and delays inherent in
15 such litigation (*Id.* at ¶ 54.)

16 Plaintiff and Class Counsel have balanced their evaluation of the validity and merit of the
17 asserted claims against potential problems of proof, the legal standards governing litigation of
18 class claims, uncertainty of obtaining and maintaining class certification, the potential for appeals,
19 and the expense and burden of prolonged litigation. (*Id.* at ¶ 20.) Based on Class Counsel’s
20 evaluation, the Settlement is fair, adequate, and reasonable and in the best interest of the Class,
21 including Plaintiff. (*Id.* at ¶ 21.) This factor also weighs in favor of approval.

22 **5. The Fairness of the Distribution to Class Members Also Supports**
23 **Approval.**

24 The Settlement treats all Class Members equally, providing no preferential treatment for
25 the named Plaintiff or any segment of the Class. The Parties have allocated Settlement Payments
26 to the Class Members according to the number of points earned based on the number of pay periods
27 that each Class Member worked during the Class Period versus the total points earned by all Class
28 Members during the Class Period. (Ex.1 at § III.G.1.a.) This allocation is fair because it ensures

1 that the distribution of the NSA is proportional to the harm experienced by each member of the
2 class and takes into account that some Class Members were already compensated for the same
3 claims in the Proctor Settlement. This factor favors approval.

4 **6. Class Counsel Are Experienced in Similar Litigation.**

5 The opinion of the attorneys actively conducting the litigation “is entitled to significant
6 weight” in deciding whether to approve the settlement. (*Fisher Bros. v. Cambridge-Lee Indus, Inc.*
7 (E.D. Pa. 1985) 630 F. Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D.Cal. 1980) 87
8 F.R.D. 15, 18, affd. (*9th Cir. 1981) 661 F.2d 939; *Boyd v. Bechtel Corp* (N.D. Cal. 1979) 485 F.
9 Supp. 610, 616-17.) Lead Class Counsel, James Hawkins APLC are experienced in wage-and-
10 hour class actions. (Hawkins Decl., ¶ 64.)

11 Counsel negotiated this Settlement at arm’s length and believe this is a fair and reasonable
12 settlement in light of the complexities of the case, the state of the law, and uncertainties of class
13 certification and litigation. Given the risk inherent in litigation and the defenses asserted, this
14 settlement is fair, adequate, and reasonable and in the best interests of the Class Members and
15 should be preliminarily approved. (Hawkins Decl. ¶¶ 54–55, 66.)

16 **VI. CONDITIONAL CERTIFICATION OF THE CLASSES IS APPROPRIATE**

17 California Rule of Court 3.769(d) provides that the Court may issue an order approving
18 certification of a provisional class at the preliminary approval stage. Trial courts should use a
19 “lesser standard of scrutiny” for determining the propriety of certifying a settlement class, as
20 opposed to a litigation class. (*Dunk, supra*, 48 Cal.App.4th at p. 1807 n.19.) Because no trial is
21 anticipated in a settlement, case management issues inherent in determining if the class should be
22 certified need not be confronted, and the trial court’s fairness review of the settlement protects the
23 interests of the class members. (*Id.*) Here, for the purposes of this settlement, the Parties ask this
24 Court to provisionally certify the Class.

25 **A. Numerosity and Ascertainability**

26 Numerosity is met if a proposed class is so large that joinder of all members would be
27 impracticable. (Cal. Code Civ. Proc. § 382.) A proposed class is ascertainable if the class members
28

1 can be objectively identified and given notice of the litigation without unreasonable time or
2 expense. (*Medraza v. Honda of N. Hollywood* (2008) 166 Cal. App. 4th 89, 101.) The class size
3 of approximately 678 Class Members is sufficiently numerous to warrant conditional class
4 certification. (Hawkins Decl., ¶ 58). The proposed Class is ascertainable as all of the Class
5 Members worked for Defendant and can be identified through employee files and payroll records.
6 (Id. ¶ 60).

7 **B. Well-Defined Community of Interest**

8 **1. Commonality**

9 To justify certification, the class proponent must show that questions of law or fact
10 common to the class predominate over the questions affecting the individual members. (*Arenas v.*
11 *El Torito Rests, Inc.* (2010) 183 Cal. App. 4th 723, 732.) The claims of Plaintiff and the Class
12 Members all flow from the same facts and legal claims; i.e., Defendant's policies, practices, and
13 procedures resulted in Defendant's failure to pay minimum wages and overtime wages, failure to
14 provide meal periods, failure to provide rest periods, failure to timely pay wages during
15 employment, failure to timely pay all wages due at the time of separation from employment, failure
16 to provide accurate wage statements, and engaging in unfair competition. Under these
17 circumstances, the commonality requirement is satisfied. (Hawkins Decl., ¶¶ 55-56.)

18 **2. Typicality**

19 Typicality "focuses on whether there exists a relationship between the plaintiff's claims
20 and the claims alleged on behalf of the class." (*Newberg*, § 3.13.) Here, the typicality requirement
21 is met, because the proposed Class Representative and Class Members all claim Defendant
22 committed similar violations based upon similar conduct, policies and practice and they seek the
23 same remedies. Plaintiff's claims are typical of the Class because they arise from the same factual
24 basis and legal theories as those of the Class Members. (Hawkins Decl. ¶ 57.)

25 **3. Adequacy of Representation**

26 The proposed class representative must establish that he or she will adequately represent
27 the proposed class. (*See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal. App. 4th 540,
28 546.) Class Counsel is not aware of any interests of the Class Representative which are adverse to

1 the interests of the Class. (Hawkins Decl. ¶ 63.) Adequacy of counsel may be established by the
2 fact that counsel are experienced practitioners. (See *Local Joint Exec. Bd. Of Culinary/Bartender*
3 *Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001). 244 F.3d 1152, 1162. Here, Class Counsel
4 James Hawkins, APLC are experienced in wage-and-hour litigation. (Hawkins Decl. ¶ 64.)

5 **VII. THE COURT SHOULD APPOINT ILYM GROUP, INC. AS SETTLEMENT**
6 **ADMINISTRATOR AND APPROVE THE CLASS NOTICE**

7 The parties propose that the Court appoint ILYM Group, Inc. (“ILYM”) to serve as the
8 Claims Administrator. ILYM has estimated its fees and costs for this settlement at \$11,000 and
9 will not exceed \$15,000. (Hawkins Decl. ¶ 41; Ex.1, § I.A.)

10 **A. The Notice to be Provided to Class Members Is Sufficient.**

11 California statutory and case law grants courts broad discretion in fashioning an
12 appropriate notice program. What constitutes adequate notice will depend on the circumstances of
13 each case, and such efforts and their costs must be proportional to the magnitude of the claims.
14 The notice plans here satisfies all due process requirements.

15 **B. The Content of The Notice Provided to Class Members Is Sufficient.**

16 The Class Notice identifies the Parties, describes the action and classes, summarizes the
17 proceedings and the terms and conditions of the Settlement in an informative and coherent manner,
18 and is accurate, objective, and understandable to Class Members (Hawkins Decl., ¶¶ 61-62; Ex.1,
19 Ex. A.) It clearly states the Settlement is not an admission of liability by Defendant and that the
20 Court has not ruled on the merits and that the final settlement approval decision has yet to be made
21 (*Id.*). The Class Notice meets the applicable legal standards since it apprises the Class Members
22 “of the terms of the proposed compromise and of the options open to dissenting class members.”
23 (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 251 [citation omitted]; see Cal. R.
24 Ct., Rule 3.766, subd. (d).)

25 **C. The Manner of Supplying Notice to Class Members Is Sufficient.**

26 There is no statutory or due process requirement that all class members actually receive
27 notice of the settlement. Rather, “[t]he notice given should have a reasonable chance of reaching
28 a substantial percentage of the class members...” (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960,

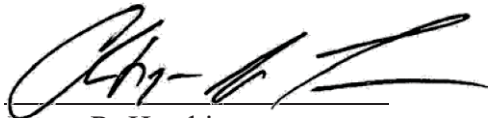
1 973.) This is satisfied by mailing the Notice of Class Action Settlement by First-Class USPS to all
2 Class Members on the Class list (Ex.1, § I.HH).

3 **VIII. CONCLUSION**

4 For all these reasons, Plaintiff respectfully requests that the Court preliminarily approve the
5 Settlement, approve the Class Notice, and conditionally certify the Class for settlement purposes.

6
7 Dated: May 8, 2024

JAMES HAWKINS APLC

8
9 

10 James R. Hawkins
11 Christina M. Lucio
12 Mitchell J. Murray
13 Eric Tims

14 Attorneys for Plaintiff Braulio Javier,
15 individually and on behalf of all others
16 similarly situated
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