Arlo Garcia Uriarte, SBN 231764
arlo@liberationlawgroup.com
Un Kei Wu, SBN 270058
unkei@liberationlawgroup.com
LIBERATION LAW GROUP, P.C.
2760 Mission Street
San Francisco, CA 94110
Telephone: (415) 695-1000
Facsimile: (415) 695-1006

Attorneys for Plaintiffs
Brenda Landeros, Rodrigo Reyes Zavala,
and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SOLANO

Brenda Landeros and Rodrigo Reyes Zavala, on behalf of themselves and others similarly situated and the general public,

Plaintiffs,

v.

Ellensburg Lamb Company, Inc. dba Superior Farms, Transhumance Holding Company, Inc., and DOES 1 through 50,

Defendants.

Case No. FCS058926

Assigned to Hon. Stephen Gizzi
Dept. 3

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL

Date: January 7, 2025
Time: 9:00 a.m.
Dept.: 3

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I. INTRODUCTION

Plaintiffs Brenda Landeros and Rodrigo Reyes Zavala (hereinafter "Plaintiffs") respectfully request preliminary approval of the proposed class, collective, and PAGA action settlement, as set forth in the Joint Stipulation of Settlement and Release[1] (hereinafter "Settlement Agreement") executed by Plaintiffs and Defendants Ellensburg Lamb Company, Inc. dba Superior Farms and Transhumance Holding Company, Inc. ("Defendants") (collectively referred to herein as the "Parties").

Plaintiffs seek preliminary approval of a $600,000 class action settlement ("Gross Settlement Amount") on behalf of the "Settlement Class" consisting of all current and former non-exempt employees of Defendants who worked in the State of California from September 26, 2018, through the date of preliminary approval of the Settlement by the Court ("Class Period"). The class size is estimated to consist of approximately 550 class members.

The current operative class action complaint alleges that Defendant violated various provisions of the California Labor Code, Wage Orders and the California Business and Professions Code due to its failure to pay all regular, minimum, and overtime wages; failure to provide meal periods and meal period premiums; failure to provide rest periods and rest period premiums; failure to pay wages time at time of termination or resignation; failure to provide timely pay wages during employment; failure to provide complete, accurate wage statements; failure to keep required payroll records; failure to reimburse necessary business expenses; and unfair business practices.

The Parties submit that the settlement is fair, adequate, reasonable, and confers a substantial benefit to the class under the facts and circumstances of the case. The Parties reached this agreement through arm's length negotiations and investigation. By this motion, Plaintiffs request that the Court: (1) grant preliminary approval of the Settlement Agreement; (2) preliminarily certify the proposed settlement class; (3) appoint Liberation Law Group, P.C. as class counsel; (4) preliminarily approve Service Awards to Plaintiffs ($10,000); (5) preliminarily approve the

[1] The Settlement Agreement is attached as Exhibit A to the Declaration of Un Kei Wu ("Wu Decl.")

payment to the Labor and Workforce Development Agency ($50,000); (6) approve the form of Class Notice (Exhibit B to Wu Decl.); (7) confirm Simpluris, Inc. ("Simpluris") as the Settlement Administrator; (8) set a schedule for disseminating notice to Class members, as well as deadlines to comment on or object to the Settlement; and (9) schedule a final approval hearing.

II. SUMMARY OF LITIGATION

A. Factual Background

Plaintiff Landeros began working for Defendants in approximately 2001. Throughout her employment, Plaintiff Landeros worked in all three departments. Since 2009, Plaintiff Landeros has held the position of Quality Control Tech.

Plaintiff Reyes began working for Defendants in approximately 2001 as a nonexempt line worker. Throughout his employment, Plaintiff Reyes worked in all three departments. Plaintiff Reyes was employed by Defendants until November 22, 2023.

On September 26, 2022, Plaintiff Landeros, on behalf of herself and similarly situated employees, filed a class action against Defendants for meal period violation, rest break violation, wage statement violation, Private Attorney General Act (PAGA) violations and unfair business practices. During the investigation of this lawsuit, Plaintiff discovered additional claims affecting Plaintiff and the putative class members. On August 15, 2024, the Court granted Plaintiff Landeros leave to file a First Amended Class Action Complaint adding the following claims: (i) unpaid overtime, (ii) unpaid minimum wages, (iii) failure to timely pay wages, (iv) failure to keep accurate payroll records, (v) failure to reimburse business expenses, and (vi) waiting time penalties.

1. Unpaid Off-The-Clock Work

Plaintiffs and putative class members were required to follow a sanitation process of thorough hand washing and cleaning their boots, and they were also required to put on protective equipment before clocking in and entering Superior Farms' production area which consisted of an apron, coat, boots, hair net, helmet, two pairs of gloves (latex and cotton gloves), and knife glove for some employees (collectively "PPE"). Plaintiffs and putative class members allege they were not compensated for the time it took them to perform the sanitation process and to put on their PPE before their shifts and during meal periods, and for the time the employees had to line up to clock in and out. As a result, Plaintiffs and putative class members worked "off-the-clock" for approximately 20 minutes every day.

2. Meal Period and Rest Break Violations

a. Short Meal Periods and Rest Breaks: Defendants had a policy of automatically deducting 30 minutes from the worked hours regardless of whether employees took full 30-minute meal periods. Plaintiffs and putative class members were required to put on PPE before entering the production line and remove the PPE whenever they stepped out of the production line. Defendants required Plaintiffs and putative class members to remove their PPE after clocking out for meal periods, engage in the sanitation process and put on their PPE before clocking back in after their meal periods. The same protocol was required for rest breaks whereby Plaintiffs and putative class members spent a portion of their allotted time for rest breaks to remove and put on PPE and engage in the sanitation process. Thus, Plaintiffs and putative class members allege they spent a portion of their meal periods and rest breaks removing and putting on their PPE resulting in meal periods lasting less than 30 minutes and rest breaks lasting less than 10 minutes.

b. Late Meal Periods: Plaintiffs and putative class members allege they were not provided meal periods until after the end of the 5th hour after the start of their shifts.

c. No Second Meal Periods: Plaintiffs and putative class members allege they worked shifts of over 10 hours which entitled them to a second meal period.

B. Due Diligence and Settlement Efforts

1. Discovery

The Parties engaged in formal and informal discovery in preparation of mediation. Wu Decl. ¶ 3. Defendants produced Plaintiffs' timekeeping and payroll records, sample timekeeping and payroll data of approximately 200 putative class members, and Defendants' policies related to Plaintiffs' claims. Wu Decl. ¶ 4. The timekeeping records show that putative class members clocked in and out at the start and at the end of their shifts. Wu Decl. ¶ 5. It is apparent that prior to October 2022, putative class members did not clock out for meal periods. *Id*. Starting in October 2022 after Plaintiff Landeros's filed the instant action, putative class members began clocking out for meal periods. *Id.*

Plaintiff's counsel conducted an extensive analysis of this information and prepared a thorough damages analysis, which was presented to Defendant in anticipation of mediation. Wu Decl. ¶ 6. In addition to analyzing timekeeping and payroll records, Plaintiffs' counsel's office interviewed putative class members to corroborate Plaintiffs' claims. Wu Decl. ¶ 7.

2. Mediation and Settlement

On June 25, 2024, Plaintiffs and Defendants held a mediation session before Jeffery Owensby, Esq., who is a respected mediator with extensive experience in employment law. Wu Decl. ¶ 8. The negotiations focused on, among other things, the merits of Plaintiffs' claims and Defendants' defenses, the risks of proceeding to trial, and the implications of Defendants' employee stock ownership plan in a class action settlement. Wu Decl. ¶ 10. After extensive negotiations at mediation, the parties reached a settlement. Wu Decl. ¶ 11. By July 16, 2024, a Memorandum of Understanding was executed. Wu Decl. ¶ 14. By August 14, 2024, a formal Settlement Agreement was executed. Wu Decl. ¶¶ 15, 38, Exhibit A.

III. THE SETTLEMENT TERMS

The Settlement Agreement resolves all claims of Plaintiffs and the Class against Defendants. The details of the Settlement are contained in the Settlement Agreement attached as Wu Decl. ¶ 38, Exhibit A. A summary is provided below.

A. The Proposed Settlement Class

As part of the Proposed Class Action Settlement, the Parties have agreed, subject to Court approval, to the conditional certification of a Settlement Class. The proposed Settlement Class of approximately 550 class members consists of: all current and former non-exempt employees of Defendants employed in the state of California from September 26, 2018 and ending on the date of preliminary approval of the Settlement. Wu Decl. ¶ 38, Exhibit A, ¶ 7.

B. The Proposed Monetary Settlement

Pursuant to the terms of the Settlement Agreement, Defendant shall pay a sum of $600,000 ("Gross Settlement Amount"), which shall fully cover: (1) payments to the Class; (2) Class Counsel's fees; (3) Class Counsel's costs; (4) Settlement Administration costs; (5) Class Representative Enhancement Payment to Plaintiffs; and (6) the PAGA payment to the LWDA and PAGA Members. The Gross Settlement Fund does not include Employer Payroll Contributions on the wage portion of payments to the Class, which Defendant shall pay separately. There shall be no reversion to the Defendant. Wu Decl. ¶ 38, Exhibit A, ¶ 39.

1. Allocation of Settlement Fund

a. Individual Settlement Payments

Individual Settlement Payments will be paid from the Class Settlement Net Fund (Gross Settlement Amount less Class Counsel Award, Litigation Costs, Class Representative Service Payment, Settlement Administration Costs, and LWDA Payment) and shall be mailed to Settlement Class Members within seven (7) calendar days after Defendant deposits the settlement funds. The Settlement Administrator will calculate the total Workweeks worked for each Participating Settlement Class Member.

The respective Workweeks for each Participating Class Member will be divided by the total Workweeks for all Participating Class Members, resulting in the Payment Ratio for each Participating Class Member. Each Participating Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Settlement Class Member's estimated share of the Net Settlement Amount: (Participating Class Member's Workweeks ÷ Workweeks during Class Period) × Net Settlement Amount.

Twenty percent (20%) of this portion shall be treated as wages, which shall be subject to required state, federal and local withholdings, and reported on Form W-2; forty percent (40%) shall be allocated as interest; and twenty percent (20%) to penalties, not subject to withholding and reported on Form 1099. Employer Payroll Contributions shall be paid by Defendant on the wage portion of the Individual Settlement Payments separately and outside of the GSF.

b. Class Representatives' Service Awards

Defendants will not object to an application by Plaintiffs for an award of not more than Ten Thousand Dollars ($10,000) as their Service Award for their time and effort in bringing and prosecuting this matter and in exchange for a release of the Released Claims and a General Release.

c. Class Counsel Award

Defendant agrees not to oppose or object to any application or motion by Plaintiff for attorneys' fees not to exceed 35% of the Gross Settlement Amount ($210,000), plus the reimbursement of reasonable costs and expenses associated with the litigation and settlement of this Action, in an amount not to exceed twelve thousand dollars ($12,000), both of which will be paid from the Gross Settlement Amount.

d. LWDA Payment

The Parties shall allocate a payment to the LWDA in the amount of Fifty Thousand Dollars ($50,000) from the Gross Settlement Amount for the compromise of claims brought under the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* The Parties agree that Fifteen Thousand ($37,500) of the LWDA Payment shall be paid to the LWDA and the remaining Twelve Thousand ($12,000) of the LWDA Payment shall be distributed to PAGA members on a pro rata basis based on the total number of pay periods worked by each PAGA member during the PAGA period.

e. Settlement Administration

The Parties agreed to Simpluris, subject to the Court's approval, to act as the Settlement Administrator. The Settlement Administrator shall be paid for the costs of administration of the Settlement from the Gross Settlement Amount. The estimate of such costs of administration for the disbursement of the Gross Settlement Amount is $9,000 up to $12,310.72 if a redistribution of unclaimed funds is triggered[2].

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[2] A copy of the settlement administration quote from Simpluris is attached as Exhibit C to the Wu Decl.

C. Release of Claims

1. Release As to All Settlement Class Members

Upon the complete funding of the Gross Settlement Amount and all applicable employer-side payroll taxes, all Settlement Class Members who do not submit valid and timely written Requests for Exclusion shall fully and finally release and discharge the Defendants from all claims that are alleged, or reasonably could have been alleged, based on the facts alleged in the First Amended Complaint during the Class Period.

2. General Release as To Plaintiffs Only

Plaintiffs will fully release and discharge Defendants from any and all claims arising from or related to their employment with or separation from Defendants. Plaintiffs expressly waive and relinquishes any and all claims, rights or benefits that they may have under California Civil Code § 1542.

D. Settlement Administration

The parties agree that Simpluris will manage the administration of claims and payment, including the dissemination of the Class Notice to members of the Settlement Class, the management of requests for exclusion and objections, the determination and distribution of each Settlement Class member's settlement share, and distribution of PAGA penalties to the LWDA, Plaintiffs' service awards and attorneys' fees and costs award to Class Counsel.

1. Notice By First Class U.S. Mail

Within 21 calendar days after the date on which the Court enters an Order granting Preliminary Approval, Defendants will provide the Class List to the Settlement Administrator. The Class List shall include each Settlement Class Members': (1) full name; (2) last known home address; (3) last known telephone number; (4) social security number; and (5) dates of active employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)); (6) total Workweeks during the Class Period; (7) total Pay Periods during the PAGA Period; and (8) any other reasonable information required by the Settlement Administrator in order to effectuate the terms of the Settlement.

Within 7 calendar days after receiving the Class List from Defendants, the Settlement Administrator will mail the Notice to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

2. Undeliverable Notices

Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct any known or identifiable address changes. Any Notice returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Notice. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address telephone number and/or Social Security number of the Settlement Class Member involved and will then perform a single re-mailing. If any notice sent to a Settlement Class Member by the Settlement Administrator is returned as undeliverable to a current employee, then Defendants shall make all reasonable efforts to obtain the current address from the Settlement Class Member and provide the same within seven (7) calendar days of notice from the Settlement Administrator. Those Settlement Class Members who receive a re-mailed Notice, whether by skip-trace or by request, will have between the later of (a) an additional fifteen (15) calendar days or (b) the Response Deadline to postmark a Request for Exclusion, or an Objection to the Settlement. If the Response Deadline for any Settlement Class Member is later than the original 60-day notice period, the Settlement Administrator shall include a letter with the Notice advising the Class Member of the adjustment to the Response Deadline. It shall be presumed that each Class Member whose Notice is not returned to the Settlement Administrator as undeliverable within the 60-day notice period has actually received the Notice.

3. Class Notice

Each Settlement Class Member will be mailed a Class Notice in English and Spanish. The Class Notice shall list the number of workweeks worked by the Class Member during the Class

Period and the Estimated Individual Settlement Payment for each respective Class Member. The Class Notice shall also include instructions for submitting a written Request for Exclusion from the Settlement or objecting to the Settlement. Wu Decl., ¶ 39, Exhibit B.

4. Exclusions

The Notice shall also provide that Class Members who wish to exclude themselves (opt-out) from the Settlement must mail to the Settlement Administrator within 60 calendar days from the date the Notice is mailed a written statement requesting exclusion from the Settlement Class. The Request for Exclusion must include (a) the Class Member's name, signature, address, telephone number, dates of employment in California, and the last four digits of the Class Member's Social Security number and/or the Employee ID number; (b) the case name and number; and (c) a clear statement requesting to be excluded from the settlement of the class claims similar to the following: "*Brenda Landeros v. Ellensburg Lamb Company, Inc., et al.*, Solano County Superior Court, Case No. FCS058926, I understand that by excluding myself, I will not receive money from the settlement of my individual claims." The date of the postmark on the return mailing envelope receipt confirmation will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. To be effective, the Request for Exclusion must be post-marked by the Response Deadline and received by the Settlement Administrator.

5. Objections

To object to the Settlement, a Class Member must postmark a valid Objection to the Settlement Administrator within 60 calendar days from the date the Notice is mailed. The Objection must be signed by the Class Member and contain the Class Member's full name, address, telephone number, the last four digits of their social security number and/or Employee ID number, and the specific reason including any legal grounds for the Class Member's objection. The postmark date will be deemed the exclusive means for determining that the Notice of Objection is timely. Class Members who fail to object in the manner specified above will be foreclosed from making a written objection but shall still have a right to appear at the Final Approval Hearing in order to have their objections heard by the Court.

E. Uncashed Settlement Checks

Any checks issued by the Settlement Administrator to Class Members and PAGA Members will be negotiable for at least one hundred eighty (180) calendar days. If a Class Member or PAGA Member does not cash his or her Settlement Check or PAGA Payment check within 180 days, the uncashed funds, subject to Court approval, shall be distributed to Capitol Pro Bono. If the remaining funds exceed $30,000, there shall be a second distribution to Class Members who cashed their checks. Any remaining uncashed funds from the second distribution shall be distributed to Capital Pro Bono after 90 calendar days following the second distribution. This disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to Participating Class Members and PAGA Members, whether or not they all cash their Settlement Checks or PAGA payment checks.

IV. PRELIMINARILY APPROVAL SHOULD BE GRANTED

A. Legal Standard for Approval of Class Action Settlements

A class action may not be dismissed, compromised, or settled without the approval of the Court. *See* Civ. Code section 1781(f); Cal. Rules of Court 3.769. The purpose of the preliminary evaluation of a proposed class action settlement is to determine only whether the settlement is within the range of possible approval, and thus whether notice to the class of the terms and conditions and the scheduling of a formal fairness hearing are warranted. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 251.

A class settlement will be approved if the settlement is found to be fair, adequate, and reasonable. *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801. To make the fairness determination, the court must consider several factors, including (1) the strength of plaintiffs' case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 (quoting *Dunk* at 1801).

The trial court has broad discretion in determining whether a settlement is fair, *see In re Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 504-05 (2009), but the court must "independently satisfy itself that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." *Kullar*, 168 Cal. App. 4th at 129. This requires a record that "allows 'an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.'" *Munoz v. BCI Coca-Cola Bottling Co. of L.A.*, 186 Cal. App. 4th 399, 409 (2010) (quoting *Kullar*, 168 Cal. App. 4th at 120).

In *Munoz v BCI Coca Cola Bottling Company* (2010) 186 Cal. App. 4th 399 at page 404, the Court of Appeal affirmed overruling the objector's argument of lack of information finding that *Kullar* does not demand more, instead it requires record that allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Id*. The court found that the trial court had enough information because the record included the number of class members, payroll data, declarations with information on overtime and meal and rest breaks, along with information from a related case. Such information constituted "an adequate basis from which to garner a reasonably adequate understanding of the amount that is in controversy within the meaning of *Kullar*." *Id.*

B. The Settlement is Fair, Reasonable, and Adequate

1. The Settlement Amount is Within the Range of Reasonableness

In general, a settlement is not to be judged against what might have been recovered had plaintiff prevailed at trial, nor must the settlement provide 100% of the damages sought to be fair and reasonable. *Wershba*, at 246-50. "Compromise is inherent and necessary in the settlement process …. Even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Id*. (internal quotations and citations omitted.) Given the chance of zero recovery and the uncertainties of litigation, the settlement payments to Class Members agreed to as a result of negotiations are well within the range of reasonableness.

The $600,000 non-reversionary settlement is within the range of reasonableness. Prior to mediation, Plaintiffs' counsel analyzed a significant amount of timekeeping and payroll data produced by Defendants. Wu Decl., ¶ 16. Plaintiffs' counsel assigned an estimated full value of $11,379,550 to the core class claims broken down as follows: meal period violations ($4,550,000); rest period violations ($4,550,000); and unpaid off-the-clock hours ($2,279,550). This estimated value assumes a meal period violation for each shift over 5 hours and rest period violation for each shift over 3.5 hours; and 20 minutes of unpaid off-the-clock work per day. Wu Decl., ¶ 17. During the mediation, Plaintiffs' counsel adjusted the violation rate from 5 days to 3 days per week to account for Defendants' defenses lowering the estimated value of Plaintiffs' core claims by 40% to $6,827,730. Wu Decl., ¶ 18. The $600,000 settlement represents almost a 9% recovery when compared to the adjusted value of Plaintiffs' core claims. Wu Decl., ¶ 19.

The full value of Plaintiffs' derivative claims of the meal and rest period violations and unpaid hours amounts to $4,120,000, which accounts for wage statement violations ($2,200,000) and waiting time penalties ($1,920,000). Wu Decl., ¶ 20. The adjusted value of Plaintiffs' derivative claims is $2,472,000 (60% of $4,120,000). *Id.*

Plaintiffs recognize that their best-case scenario recovery would also include additional money for penalties, interest, and attorneys' fees. However, courts have not required a focus on escalated damages that accompany core violations (for example "treble damages" in antitrust cases) when evaluating the value of specific claims for settlement approval purposes. Instead, the manner in which the settlement compensates for "actual injuries" is the greater concern. *Rodriguez v. West Publ'g Corp.,* 563 F.3d 948, 964-965 (9th Cir. 2009). Thus, Plaintiffs believe the settlement amount of $600,000 represents a reasonable result, especially when considering the fact that we are at a pre-certification stage and Defendants maintain an employee stock ownership plan whereby employees are awarded company stock as part of their employee benefits.

C. Estimated Net Recovery for the Settlement Class

Settlement Class Members expect to receive a Net Settlement Fund of approximately $308,189.28 after attorney fees, costs, administration costs, PAGA penalties, and service award are paid. Applying the formula in Section III.B.1.a. above and at 100% participation rate, settlement class member with one to four years of service, or 52 to 208 weeks to claim, is expected to receive $352.22 (one year of service), $704.43 (two years of service), $1,056.65 (three years of service), and $1,408.87 (four years of service), which is equivalent to approximately 10 to 39 hours of pay at the class average hourly rate of $36.21. Wu Decl., ¶ 21. When compared to putative class members' average rate of pay, the settlement confers a reasonable benefit to the Settlement Class.

D. Plaintiffs' Investigation and the Risks of Further Litigation Support the Well-Informed Settlement

Defendants produced a significant amount of putative class members' timekeeping and payroll records. Wu Decl., ¶ 4. Plaintiffs' counsel completed an extensive and detailed analysis of Plaintiffs' claims and Defendants' potential liabilities by analyzing these timekeeping and payroll records of the putative class members. Wu Decl., ¶ 5. In addition, Plaintiffs' counsel and staff reached out to putative class members and conducted interviews of putative class members and obtained 5 signed declarations supporting the class claims. Wu Decl., ¶ 7.

As such, the investigation and discovery conducted in this case have allowed both parties to act intelligently in coming to a settlement. Wu Decl., ¶ 12. Prior to mediation, Defendant identified 550 putative class members that are part of the class as defined by the complaint, and they identified 45,500 workweeks during the Class Period. Wu Decl., ¶ 22. At the time of settlement, the Parties had sufficient information and extensive knowledge about the strengths and weaknesses of each other's cases to allow for negotiation of a fair settlement. Wu Decl., ¶ 23.

Plaintiffs' counsel believes that the proposed settlement is in the best interest of the class based on the negotiations and a detailed knowledge of the issues present in this action. The length and risks associated with class certification, trial, and other normal perils of litigation were weighed in reaching the proposed settlement. Wu Decl. ¶ 24. In addition, the affirmative defenses asserted by Defendants, the presence of an employee stock ownership plan, the prospect of a potential adverse summary adjudication ruling, uncertainty on certification issues, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals, were also carefully considered by Plaintiffs' counsel in agreeing to the proposed settlement. *Id.*

1. The Difficulty of Certifying Meal and Rest Break Claims Since Brinker

Under *Brinker Rest. Corp. v. Superior Court*, 53 Cal.4th 1004, 1033-1034 (2012) California law only requires that an employer "authorize and permit" meal periods. Employers are not obligated to enforce employees' taking of their meal periods. *Id.* Rather, "an employer must relieve the employee of all duty for the designated [meal] period but need not ensure that the employee does not work." *Id.*

In re Walgreen Company Overtime Cases (2014) 231 Cal.App.4th 437, the Court of Appeal denied the trial court's denial of a motion for class certification in an action involving meal periods. The Court of Appeal determined the trial court correctly predicted *Brinker's* holding in that the employer must make breaks available for its employees, but the employer need not ensure employees actually take the meal breaks. *Walgreen* at 442.

The appellate court explained:

> Meal break classes are harder to certify under a *make available* test because the fact of a missed break does not dictate the conclusion of a violation (and thus employer liability). Rather, under the *make available* standard you additionally must ask *why* the worker missed the break before you can determine whether the employer is liable. If the worker was free to take the break and simply chose to skip or delay it, there is no violation and no employer liability. This *make available* test thus can make analysis of break violations more complex than under the *ensure* standard. *Id.* (emphasis added)

Here, Plaintiffs would be faced with difficulty in certifying the meal period and rest break claims after the *Brinker* decision because the fact of a short or late meal period does not automatically dictate the conclusion of a violation. Under the *make available* standard, the trial court would require an additional inquiry into why the employee took a short or late meal period before determining whether the employer is liable.

Moreover, unless an employer‘s uniform policy or consistent practice violates wage and hour laws (see, e.g., *Brinker*, supra, 53 Cal.4th at p. 1033), California courts have been reluctant to certify class actions. (See *Arenas v. El Torito Restaurants, Inc*. (2010) 183 Cal.App.4th 723-734; *Dunbar v. Albertson's, Inc.* (2006) 141 Cal.App.4th 1422, 1431; *see also Soderstedt v. CBIZ Southern California, LLC* (2011) 197 Cal.App.4th 133, 153-154 [certification denied, despite employer‘s uniform policies, due to variations in how the policies were implemented with different employees].) Here, Plaintiffs argue putative class members were not able to take all full 30-minute meal periods and 10-minute rest breaks because they were required to put on and take off protective gear within their allotted break time. Nonetheless, Plaintiffs risk the need for individualized inquiries as to how long it took putative class members to put on and take off protective gear and whether they completed the process within or outside of their allotted break times. Further, there are special risks and uncertainties in proving damages as it would involve questions as to what extent extrapolation can be used to prove individual claims. (See, e.g., *Duran v. U.S. Bank Nat'l Assn.* (2014) 59 Cal.4th 1, 38-40, 49 [noting that extrapolation to prove class wide liability and damages involve issues that are far from settled and must account for case-specific deviations in the evidence even if there is more tolerance of uncertainty as to damages than as to liability].) Here, Plaintiffs faces risks and uncertainties in proofing class damages because the class must rely on extrapolation to prove the amount of time it took putative class members to put on and take off protective gear since it was not recorded.

In light of the above risks and weaknesses of Plaintiffs' claims, the proposed settlement is well within the realm of reasonableness and should be granted preliminary approval.

E. Presumption of Fairness

The requirements giving rise to a "presumption of fairness" exist here, justifying a preliminary determination that the Settlement is fair. As noted above, this presumption applies when: (1) a settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Wershba*, 91 Cal. App. 4th at 245.

1. The Settlement Was Reached Through Arm's Length Bargaining

The settlement is the result of arm's-length negotiations between the Parties. Wu Decl. ¶ 11. After Plaintiff filed suit, Defendants changed certain policies relating to the allegations in the complaint. Wu Decl., ¶ 25. For instance, starting in October 2022 after Plaintiff Landeros's filed the instant action, putative class members began clocking out for meal periods. *Id.*

Defendant agreed to produce substantial information in connection with mediation. Plaintiffs detailed the factual and legal support for their and the class's claims in a detailed mediation statement supported by Plaintiffs' analysis of the class's timekeeping records and putative class members' declarations. Defendants likewise detailed their positions in a detailed mediation statement, and the Parties exchanged mediation statements. Wu Decl., ¶ 9. The mediation lasted a full day before respected and experienced employment mediator Jeffery Owensby. After extensive negotiations during the mediation, the Parties reached an impasse, and the mediator made a mediator's proposal to which the Parties accepted and reached a settlement. Wu Decl., ¶ 11. Plaintiffs' counsel is aware of no facts that would call into question the presumption of fairness of this settlement. Wu Decl., ¶ 13.

2. Investigation And Discovery Are Sufficient to Allow Counsel and The Court to Act Intelligently

As discussed at length above, Defendants produced, and Plaintiffs' counsel evaluated substantial information in connection with Plaintiffs' claims. The information obtained from Plaintiffs' counsel's investigation of the case informed their assessment of the strengths and weaknesses of the case and the benefits of the proposed Settlement under the circumstances of this case.

3. Counsel Is Experienced in Similar Litigation

The view of "qualified and well-informed counsel" that a class action settlement is fair, adequate, and reasonable "is entitled to significant weight." *Richison v. Am. Cemwood Corp.*, No. CIV.A 005532, 2003 WL 23190948, at *5 (San Joaquin Cnty. Super. Ct. Nov. 18, 2003); *see also Kullar*, 168 Cal. App. 4th at 133 (trial court "may and undoubtedly should continue to place reliance on the competence and integrity of counsel"); *Dunk*, 48 Cal. App. 4th at 1802.

Plaintiffs' and Defendants' counsel have substantial experience prosecuting class actions, specifically those that involve the application of the wage and hour provisions of California law. Wu Decl., ¶ 26.

The fourth factor can be assessed only after the Class Notice is distributed.

F. The Proposed Service Award to Plaintiffs is Fair and Reasonable

Named Plaintiffs in class action litigation are eligible for reasonable service awards. *See Staton v. Boeing Co*. (9th Cir. 2003) 327 F.3d 938, 977. The settlement agreement provides for a service award of up to $10,000 to Plaintiffs subject to the Court's approval, in recognition of their efforts and work in prosecuting the class action. If approved, the $10,000 service award would constitute 1.67% of the total Gross Settlement Fund.

In counsel's experience, the service award will be reviewed at the Final Approval stage, and Plaintiffs will submit a declaration at that time which details their participation in the litigation and the risks they faced by their involvement in it. Wu Decl., ¶ 30. Plaintiffs placed themselves in the spotlight, incurring the risk that future potential employers will learn of their role in this case and look unfavorably on it. See *Does I thru XXIII v. Advanced Textile Com.*, 214 F.3d 1058, 1073 (9th Cir. 2000) ("fear of employer reprisals will frequently chill employees' willingness to challenge employers' violations of their rights"); *see also Rivera v. NIBCO, Inc.,* 364 FJd 1057, 1064 (9th Cir. 2004) *See NLRB v. Robbins Tire &Rubber Co.*. 437 U.S. 214,240 (1978) ("Not only can the employer fire the employee, but job assignments can be switched, hours can be adjusted, wage and salary increases held up, and other more subtle forms of influence exerted.") *Mitchell v. Robert DeMario Jewelry, Inc.* 361 U.S. 288, 292 (1960) ("[I]t needs no argument to show that fear of economic retaliation might often operate to induce aggrieved employees quietly to accept substandard conditions."); *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620,625 (5th Cir. 1999) (recognizing that current employees "might be unwilling to sue individually or join a suit for fear of retaliation at their jobs").

Plaintiffs will also execute a broader release than the rest of the class. Wu Decl., ¶ 31. In sum, the requested service award to Plaintiffs is reasonable, particularly in light of the substantial benefits Plaintiffs have generated for the class members. See e.g. *Rogers* v. *Kindred Healthcare, Inc.,* No. RG14729507, Order Granting Final Approval (Alameda Cnty. Super. Ct. Oct. 7,2016) (Smith, J) (granting $10,000 service awards to named plaintiffs in similar wage and hour case); *Castellanos* v. *Pepsi Bottling Grp.,* No. RG07332684 (Alameda Cnty. Super. Ct. Mar. 11, 2010) (approving service award of $12,500 in a wage and hour class action settlement); *Novak* v. *Retail BrandAlliance, Inc.,* No. RG 05223254 (Alameda Cnty. Super. Ct. Sept. 22, 2009) (approving service award of $12,500 each to four class representatives in wage and hour class action).

G. The Attorneys' Fees and Costs Award Request is Fair and Reasonable

The Settlement Agreement provides for attorneys' fees of up to thirty-five percent (35%) of the Gross Settlement Fund and up to twelve thousand dollars ($12,000) of litigation costs[3] incurred by Plaintiffs' counsel. Plaintiffs' request for attorneys' fees is fair and reasonable because fee awards of 33% or more are well-established by California law and practice. The California Supreme Court upheld a 33% common fund fee award and confirmed that trial courts do not abuse their discretion by applying the common fund doctrine to make fee awards. *Laffitte v. Robert Half Int'l* 2016 Cal. LEXIS 6387, at *45. *See also, e.g. Lusby v. Gamestop, Inc.*, 2015 U.S. Dist. LEXIS 42637, *9-13 (N.D. Cal. Mar. 31, 2015) (fees amounting to 33% of the common fund were requested and awarded due in large part to (1) the results achieved…[and] (2) "the diversity of job positions and issues present…[posed] challenges for class certification."); *Barnes v. Equinox Group, Inc.*, 2013 U.S. Dist. LEXIS 109088, *13-14 (N.D. Cal. Aug. 1, 2013) (33% of the common fund was awarded here because of the results achieved, and because "Counsel assumed substantial risk, litigated risk on a contingent basis, and are receiving fees that are fair considering those factors."); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 491-92

[3] Plaintiffs' counsel has incurred less than $6,000 in litigation costs to date.

($100,000 in attorneys' fees, or 33.3% of the total recovery obtained, was awarded due to the good result achieved, the risk undertaken by counsel, and the skill exhibited in prosecuting the case.)

A review of California state court decisions provides many examples of fee awards of one-third (or more) of a common fund in wage and hour class actions. *See, e.g., Parker v. City of L.A.*, 44 Cal. App. 3d 556,567-68 (1974) (affirming fee award to counsel of one-third of recovery achieved); *Longstreth v. P A Q, Inc.*, 15-cv-0206, 2016 WL 7163981, at *2 (San Luis Obispo Cnty. Oct. 20, 2016) (awarding one-third of $6 million common fund in wage-and-hour case); *Penaloza v. PPG Indus. Inc.*, No. BC471369, 2013 WL 2917624 (L.A. Cnty. Super. Ct. May 20, 2013) (approving fee of 33.3% of $1.3 million common fund in wage-and-hour action); *Saberi v. BFS Retail & Commercial Operations, LLC*, No. RG0806555, 2010 WL 5172447 (Alameda Cnty. Super. Ct. Sept. 19, 2010) (approving fee of one-third of $14 million common fund in wage and hour class action); *Barrett v. St. John Cos*., No. BC 354278 (L.A. Cnty. Super. Ct. July 10, 2008) (33% award in wage and hour class action); *Tokar v. GEICO*, No. GIC 810166n (San Diego Cnty. Super. Ct. July 9, 2004) (same); *Davis v. Money Store, Inc*., No. 99AS01716 (Sacramento Cnty. Super. Ct. Dec. 26, 2000) (same, in $6,000,000 settlement). Plaintiff's counsel will address that request at the final approval stage.

H. This Court Has Jurisdiction to Approve PAGA Penalties Sought as Part of The Settlement

The parties seek the Court's approval of the civil penalties allocated to Plaintiffs' PAGA claims per the Parties' executed Settlement Agreement. Pursuant to Labor Code § 2699(l)(2), "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part."

Parties have agreed that $50,000 shall be allocated to the Plaintiffs' PAGA claims. Wu Decl. ¶¶ 32, 38, Exhibit A, Settlement Agreement ¶ 45). PAGA does not require any minimum nor maximum amount for recovery of civil penalties, but instead leaves to the "superior court" the power to review and approve any penalties sought as part of a proposed settlement agreement. Labor Code § 2699(l). Moreover, the PAGA statute does not set forth the criteria on which a PAGA settlement is to be judged. The California Court of Appeal recently held that “a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Here, as a subsequent remedial measure in response to the instant class action, Defendants began to require putative class members to begin clocking out for meal periods. Wu Decl., ¶ 25.

When the parties have "negotiated a good faith amount" for PAGA penalties, and “there is no indication that this amount was the result of self-interest at the expense of other Class Members,” such an amount is generally considered reasonable. See Hopson v. Hanesbrands Inc., No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009); see also, e.g., Bararsani v. Coldwell Banker Res. Brokerage Co., No. BC495767, 2016 WL 1243589, at *5 (L.A. Cnty. Super. Ct. Jan. 13, 2016) (granting final approval to settlement with PAGA allocation of $10,000 from a gross settlement of $4.5 million); Garcia v. Gordon Trucking, Inc., No. 1:10-CV-0324 AWl SKO, 2012 WL 5364575, at *3 (E.D. Cal. Oct. 31, 2012) (approving PAGA allocation of $10,000 in gross settlement of $3.7 million).

V. THE PROPOSED SETTLEMENT CLASS SHOULD BE CONDITIONALLY CERTIFIED FOR SETTLEMENT PURPOSES

The court has broad discretion to certify a class for purposes of a class action settlement. *Dunk*, 48 Cal.App.4th 1807 n. 19 (holding that class certification in settlement cases is subject to a “lesser standard of scrutiny”) CRC, rule 3.769 (d) provides: “The court may make an order approving … certification of a provisional settlement class after the preliminary settlement hearing.”

Under California law, a settlement class must meet the following criteria for certification: (1) the individuals in the settlement class are so numerous that joinder would be impractical; (2) there is a commonality of interest between the plaintiff and the members of the settlement class; (3) plaintiffs’ claims are typical of the claims of the absent settlement class members; and (4) plaintiffs and their counsel will fairly and adequately represent the interests of the absent settlement class members. *See* California Rule of Court 3.769 (d) Cal. Civ. Proc. § 382; *see also Sav-On Drug Stores, Inc.* at 326-27. In the present case, for the reasons explained below, all of these factors are met, and conditional certification of a settlement class is appropriate.

A. The Class Is Ascertainable and Sufficiently Numerous

A class is ascertainable if it "identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description. *See Aguirre v. Amscan Holdings, Inc.,* 234 Cal.App. 4th 1290, 1299-1300 (2015); *Aguiar v. Cintas Corp. No.2,* 144 Cal. App. 4th 121, 136 (2006) ("The members of plaintiffs' proposed class are ascertainable from Cintas's payroll records, which identify each employee by name, job code, dates of employment and rate of pay."). A class is sufficiently numerous if joinder of all class members would be impracticable. *See Hendershot v. Ready to Roll Transp., Inc.,* 228 Cal. App. 4th 1213 (2014).

Here, Defendants have ascertained the approximately 550 Settlement Class Members. Wu Decl., ¶ 22. Joinder of so many parties would be impracticable.

B. Commonality of Interest is Met

"Commonality focuses on the relationship of common facts and legal issues among class members." *Dukes v. Wal-Mart, Inc*., 509 F.3d 1168, 1177 (9th Cir. 2007). "Plaintiffs may demonstrate commonality by showing that class members have shared legal issues by divergent facts or that they share a common core of facts but base their claims for relief on different legal theories." *Id.* Further, the element of commonality is to be interpreted permissively. *See Parra v. Bashas, Inc*., 536 F.3d 975, 978 (9th Cir. 2008). The commonality requirement is satisfied here. Plaintiffs' claims and the claims of the proposed Class Members are legally and factually identical. Plaintiffs asserts that they and the proposed Class Members' claims stem from the same alleged conduct, a failure to compensate for certain work-related activities.

Plaintiffs' meal period, rest break, unpaid hours and business expense reimbursement claims are susceptible to class treatment because common issues are shared by the putative class. Defendants' policies were uniformly applied to all putative class members. Specifically, Plaintiff alleges that Defendant required employees to put on protective gear before clocking in and after clocking out resulting in off-the-clock hours without compensation and non-compliant meal periods and rest breaks that were cut short due to this policy. This policy is a universal failure that supports class certification because it creates a point of commonality between plaintiff and putative class members.

C. Typicality of Claims is Satisfied

Typicality requires only that the proposed class representative's interests in the action be significantly similar to those of the other members of the proposed class. The proposed representatives' claim need not be identical to the claims of other members of the class; it is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of all class members. *Classen v. Weller,* 145 Cal.App.3d 27, 46 (1983).

The typicality requirement is satisfied here. Plaintiffs' claims are typical of the claims of the proposed class members because they arise from the same factual basis and are based on the same legal theory. The class representatives were subject to the same employment practices as the remaining of the proposed class members.

D. Class representatives and Class Counsel will Fairly and Adequate Represent the Class

Fed. R. Civ. P. 23(a)(4), which is commonly applied as a standard in CCP § 382 cases, requires that the class representative "fairly and adequately protect the interests of the class." In order to fairly and adequately protect the class, named Plaintiffs must (1) be represented by counsel qualified to conduct the litigation, and (2) not have interest that are antagonistic to those of the class. *McGhee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976).

The adequacy of representation requirement is satisfied here. Liberation Law Group, P.C. is experienced in litigating employment actions such as this and has successfully litigated a number of class action cases. Wu Decl., ¶ 27.

Plaintiffs are adequate class representatives because they raised claims that are similar to the claims of the other class members. Wu Decl., ¶ 28. Plaintiffs and the other class members suffered the same working conditions as alleged in the operative complaint and seek to recover from the same alleged violations. *Id.* Further, Plaintiffs have no apparent interests antagonistic to those of the Class Members. *Id.*

Importantly, Plaintiffs understand that class representatives represent the interests of all members of their class in litigation and that class representatives always consider the interests of the class just as they would consider their own interests, and in some cases, must put the interests of the class before their own interests. Wu Decl., ¶ 29.

E. Class wide Settlement is Superior to Other Available Methods of Resolution

In the settlement context, class resolution is superior to other available methods for the fair and efficient adjudication of the controversy. In the present case, the individual Settlement Class members have relatively small amount of damages. Thus, their claims would be uneconomical to pursue on an individual basis because the litigation costs would greatly exceed potential recovery. *Daar v. Yellow Cab Co., (1967) 67 Cal. 2d 695, 714-15*. Accordingly, a class action is superior to other available methods of resolution.

VI. THE PROPOSED CLASS NOTICE SHOULD BE APPROVED

A court order preliminarily approving a class settlement must detail the notice to be given to the class. CRC 3.769 (e). According to CRC 3.766 (d), the notice must include the following:

(1) A brief explanation of the case, including the basic contentions or denials of the parties;

(2) A statement that the court will exclude the member from the class if the member so requests by a specified date;

(3) A procedure for the member to follow in requesting exclusion from the class;

(4) A statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and

(5) A statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel.

The class notice "must fairly apprise the class members of the terms of compromise and the options open to dissenting class members." *Trotsky v. Los Angeles Fed. Sav. & Loan Assoc.* (1975)

48 Cal.App.3d 134, 151-52; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. An appropriate notice is one that has a reasonable chance of reaching class members. *Cartt*, 50 Cal.App.3d at 974. Class notice should strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice and confusing class members. *Wershba*, 91 Cal.App.4th at 252. "Notice is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" *Churchill Village, LLC v. General Electric* (9th Cir. 2004) 361 F.3d 566, 575, quoting *Mendoza v. Tucson Sch. Dist. No. 1* (9th Cir. 1980) 623 F.2d 13381352.

The proposed Class Notice meets these criteria. It fully, clearly, and neutrally apprises Class Members of the essential terms and conditions of the settlement. It describes the nature of the claims in suit and the Parties' respective positions. It properly advises Class Members that they have the right to exclude themselves from or object to the settlement, and the procedures for doing so. Lastly, it advises Class Members of the consequences of remaining a member of the Settlement Class, including the fact that one will be bound by the judgment. Wu Dec., ¶ 39, Exhibit B. In short, the proposed Class Notice "communicate[s] the essentials of the proposed settlement in a sufficiently balanced, accurate and informative way to satisfy due process concerns." *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 963; *see also Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1373-74.

Further, the method of notice is more than adequate, in that the Class Notice will be mailed to Settlement Class members at their last known address and there are procedures in place to make reasonable efforts to locate Settlement Class members who no longer live at their last known address.

VII. THE FINAL APPROVAL HEARING SHOULD BE SCHEDULED

The last step in the settlement approval process is a final approval hearing. Pursuant to California Rules of Court, rule 3.769 (e), should the Court grant preliminary approval, its order must state the time, date, and place of the final approval hearing. This hearing allows the Court to hear all evidence and the arguments necessary to determine whether the settlement is fair, adequate, and reasonable. Plaintiff requests that the Court grant preliminary approval and set the date, time, and place for a final approval hearing.

VIII. CONCLUSION

For the reasons set forth above, and pursuant to Cal. Code Civ. P. § 382, the Plaintiffs respectfully request that the Court grant preliminary approval of the proposed settlement, grant conditional certification of the Settlement Class, approve the proposed Notice, approve the PAGA allocation, appoint Liberation Law Group, P.C. as class counsel, appoint Simpluris as the Settlement Administrator, and set the matter for final approval hearing.

Respectfully submitted,

Dated: September 5, 2024

LIBERATION LAW GROUP, P.C.

Un Kei Wu

By: ________________________________

Arlo Garcia Uriarte
Un Kei Wu
Attorneys for Plaintiffs Brenda Landeros, Rodrigo Reyes Zavala, and the Proposed Class