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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KINGS

JAIME SANTIAGO VASQUEZ; ANTONIA BLANCO; GRACIELA BLANCO; ELOISA CASTRO; TOMAS CERVANTES AKA GUADALUPE CERVANTES; as individuals, on behalf of themselves and others similarly situated, PLAINTIFFS, v. PJ FARM LABOR, INC.; CLARKLIND FARMS; FORTUNE & SONS INC.; AND MATTOS AND SONS DAIRY; and DOES 1 thru 50, inclusive, DEFENDANTS.	CASE NO. 22C-0382 [Case Assigned for All Purposes to Hon. Valeria R. Chrissakis in Dept. 8] **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** *[Filed concurrently with Motion for Approval of Attorneys' Fees and Costs; Declarations of Liane Katzenstein Ly, Mario Martinez, and Jonathan Paul, Proposed Order and Judgment]* Date: July 17, 2024 Time: 8:15 AM Dept.: 8 Complaint Filed: October 28, 2022 FAC Filed: January 6, 2023 Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 17, 2024 at 8:15 AM in Department 8 of the above-entitled court, Plaintiffs JAIME SANTIAGO VASQUEZ; ANTONIA BLANCO; GRACIELA BLANCO; ELOISA CASTRO; and TOMAS CERVANTES AKA GUADALUPE CERVANTES ("Plaintiffs") will, and hereby does, move the Court for an Order of Final Approval of the Class Settlement in this case. Plaintiff moves the Court for an order:

1. Granting final approval of the settlement in the case pursuant to the Class Action and PAGA Settlement Agreement and Release ("Agreement"), a copy of which is attached to the concurrently-filed Declaration of Liane Katzenstein Ly as Exhibit "1";

2. Affirming Kingsley Szamet & Ly, formerly known as Kingsley & Kingsley, APC, and Martinez Aguilasocho Law, Inc. as Class Counsel;

3. Affirming Plaintiffs JAIME SANTIAGO VASQUEZ; ANTONIA BLANCO; GRACIELA BLANCO; ELOISA CASTRO; and TOMAS CERVANTES AKA GUADALUPE CERVANTES as Class Representatives and awarding an enhancement award of $25,000.00, with $5,000.00 to each Plaintiff;

4. Awarding Xpand Legal claims administration fees of $12,000.00 for its services as Administrator; and,

5. Entering judgment.

This Motion will be made pursuant to Code of Civil Procedure section 382 and California Rule of Court, rule 3.769 on the grounds that the proposed Agreement is fair, adequate, reasonable, and in the best interest of the Settlement Class Members and the parties.

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declarations of Liane Katzenstein Ly, Mario Martinez, Jaime Santiago Vasquez, Antonia Blanco, Graciela Blanco, Eloisa Castro, Tomas Cervantes aka Guadalupe Cervantes, Jonathan Paul, all other papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing on this Motion.

DATED: June 24, 2024

KINGSLEY SZAMET & LY

By: ______________________

Liane Katzenstein Ly
Attorneys for Plaintiffs and the proposed class

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<u>**MEMORANDUM OF POINTS AND AUTHORITIES**</u>

I. INTRODUCTION

Plaintiffs JAIME SANTIAGO VASQUEZ; ANTONIA BLANCO; GRACIELA BLANCO; ELOISA CASTRO; and TOMAS CERVANTES AKA GUADALUPE CERVANTES ("Plaintiffs") submit this Motion for Final Approval of Class Settlement and requests that the Court:

1. Grant final approval of the settlement in this case pursuant to the Class Action and PAGA Settlement Agreement and Release ("Agreement"), a copy of which is attached to the concurrently-filed Declaration of Liane Katzenstein Ly as Exhibit "1";

2. Award attorneys' fees and costs as detailed in the concurrently-filed Motion for Attorneys' Fees and Costs;

3. Award Xpand Legal claims administration fees of $12,000.00 for its services as Administrator;

4. Affirm named Plaintiffs JAIME SANTIAGO VASQUEZ; ANTONIA BLANCO; GRACIELA BLANCO; ELOISA CASTRO; and TOMAS CERVANTES AKA GUADALUPE CERVANTES as Class Representatives and award a cumulative Class Representatives payment of $25,000.00; and

5. Enter judgment.

II. FACTUAL BACKGROUND

A. <u>Litigation Overview and Procedural History</u>

On October 28, 2022, Plaintiffs Jaime Santiago Vasquez, Antonia Blanco, Graciela Blanco, Eloisa Castro, Tomas Cervantes, and Guadalupe Cervantes filed a Class Action Complaint seeking recovery for: (1) failure to pay wages and/or overtime under Labor Code sections 510, 1194, and 1199; (2) failure to reimburse expenses pursuant to Labor Code section 2802; (3) failure to provide accurate itemized wage statements pursuant to Labor Code section 226(a); (4) penalties under Labor Code section 203; and (5) violation of Business & Professions Code section 17200. (Declaration of Liane Katzenstein Ly ("Ly Decl.") ¶5.) Also on October 28, 2022, an in compliance with Labor Code § 2699.3(a)(1), Plaintiffs sent a notice letter to the Labor Workforce

Development Agency ("LWDA") regarding their intent to seek civil penalties for the same Labor Code violations above, under Labor Code section 2699, *et seq.* (Ly Decl. ¶6.)

On January 6, 2023, Plaintiffs filed a First Amended Class Action Complaint, adding CLARKLIND FARMS, FORTUNE & SONS, INC. and MATTOS AND SONS DAIRY as named Defendants pursuant to Labor Code § 2810.3. (Ly Decl. ¶7.)

On April 6, 2023, Plaintiffs filed a Second Amended Class and Representative Action Complaint, adding an additional cause of action for penalties pursuant to Labor Code § 2699, *et seq.,* the Private Attorneys General Act ("PAGA") based on the underlying Labor Code violations already pled. (Hereafter, the "Action".) (Ly Decl. ¶8.)

The Parties scheduled mediation on August 7, 2023 but were able to reach an agreement in principle to settle the matter before mediation. (Ly Decl. ¶9.)

Defendant informally produced time and pay data for mediation purposes only. (Ly Decl. ¶10.)

B. <u>The Discovery Process</u>

Plaintiffs and Defendants engaged in extensive informal discovery and settlement discussions in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. (Ly Decl. ¶11.) The negotiations were successful. (Ly Decl. ¶12.) By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and Defendants have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. (Ly Decl. ¶13.) By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims. (Ly Decl. ¶14.)

Prior to negotiating the Settlement, Plaintiffs obtained, through informal discovery, pertinent documents and data for the Class and PAGA Members so that the Parties could fully investigate the claims at issue and understand their strengths and weaknesses. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008)

168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes the damages and penalties claimed by Plaintiffs, and further contends that, for any purpose other than settlement, Plaintiffs' claims are not appropriate for class or representative action treatment. (Ly Decl. ¶15.) Defendants contend, among other things, that, at all times, it has complied with the California Labor Code, and the Industrial Wage Commission Orders. (*Id*.)

Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Agreement with Defendant is fair, reasonable and adequate, and in the best interest of the settlement classes in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and representative action trial on the merits, and numerous potential appellate issues. (Ly Decl. ¶16.) Although Defendant denies any liability, Defendant is agreeing to this Agreement solely to avoid the cost of litigation. (*Id*.) Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action on the terms set forth here. (*Id*.)

C. <u>Preliminary Approval</u>

On February 5, 2024, the Court issued an Order preliminarily approving the settlement in this case, approving the proposed Class Notice, ordering that the Administrator send notice to the Settlement Class, and setting a date for the Final Approval and Fairness Hearing. (Ly Decl. ¶17.)

III. THE PRELIMINARILY APPROVED SETTLEMENT

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

For purposes of Agreement, the settlement class is defined as: "all current and former non-exempt agricultural workers employed by Defendant PJ FARM LABOR, INC. who performed labor on an hourly or piece rate basis for the benefit of Defendants CLARKLIND FARMS, FORTUNE & SONS, INC., and/or MATTOS AND SONS DAIRY, LLC in the state of California from October 28, 2018 through September 24, 2023." ("Settlement Class Members" or "Class") The "Settlement Class Members" means a member of the Class, as either a Participating Class

Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee). (Ly Decl. ¶18; Agreement, Ex. 1 at ¶1.5;1.9.)

The Class Settlement Period is October 28, 2018 to September 24, 2023, or the date of preliminary approval, whichever comes first. (Ly Decl. ¶19; Ex. 1 at ¶1.12.) As of October 2023, and based on documents and other information produced by Defendant, there are approximately 315 Settlement Class Members. (Ly Decl. ¶20; Ex. 1 at § 4, ¶4.1.)

The final Settlement Class contained 279 individuals. (Paul Decl. ¶4.)

B. Aggrieved Employees

For purposes of Agreement, the Aggrieved Employees are defined as: "all of Defendants' current and former non-exempt agricultural workers who performed labor on an hourly or piece-rate basis for Defendants in the state of California from October 28, 2021 through September 24, 2023. (Ly Decl. ¶21.)

The PAGA Settlement Period means the October 28, 2021 through September 24, 2023. (Ly Decl. ¶22.)

C. Settlement Payments

As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross Settlement Amount of $650,000.00, which includes the sum of the Individual Class Payments, the Class Representatives service award, the Class Counsel Award, PAGA Payment, and the Settlement Administration Costs. (Ly Decl. ¶23; Ex. 1 at ¶1.22.)

The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel Award, Class Representatives Enhancement, PAGA Payment, and Settlement Administration Costs. (Ly Decl. ¶24; Ex. 1 at § ¶1.28.)

The Parties estimate the amount of the Net Settlement Amount as follows:

Gross Settlement Amount:	$	650,000.00
Less Class Representatives Enhancements:	$	25,000.00
Less Class Counsel's Fees:	$	216,666.67
Less Class Counsel's Costs:	$	9,138.37[1]

[1] The Agreement provided for counsel to receive cost reimbursement up to $10,000.00. However, counsel's final costs come to $9,138.37, which includes the anticipated cost of $600 for filing the instant motion. (Ly Decl. ¶24, Ex. 5). The extra $861.63 will remain in the net settlement

Less	PAGA Payment:	$	15,000.00 *($11,250.00 to the LWDA and $3,750.00 to remain in the Net Settlement Amount)*
Less Administrator Costs:		$	12,000.00
Anticipated Net Settlement Amount		$	375,944.96

(Ex. 1 at § 3.)

D. Individual Settlement Payments

The Individual Class Payment amount of each Participating Class Member is an individualized amount that is based on the number of Workweeks worked by the Participating Class Member during the Class Settlement Period. (Ex. 1 at ¶1.23; *see also* Ex. A to the Agreement [Class Notice].) Specifically, Individual Class Payments will be paid from the Net Settlement Amount and shall be paid pursuant to the settlement formula as follows: (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Settlement Period and (b) multiplying the result by each Participating Class Member's Workweeks. (Ex. 1 at ¶3.2.4).

Fifteen percent (15%) of the Gross Settlement Amount to each Participating Class Member shall be deemed payment for settlement of claims for wages will be subject to appropriate deductions and withholdings calculated and made by the Administrator. (Ex. 1 at § 3, ¶3.2.4.1.) Eighty-five percent (75%) of the Gross Settlement Amount to each Participating Class Member shall be deemed payment for settlement of claims for penalties and interest and other non-wage payments not subject to withholdings. (*Id.*)

The Agreement provides for a specific and detailed dispute process regarding Individual Class Payments. (*See* Ex. 1 at § 8.)

The Individual PAGA Payment will be an equal payment to all PAGA Settlement Group members calculated as follows: twenty-five percent (25%) of the PAGA Penalties (or $3,750) calculated according to the number of Workweeks worked during the PAGA Settlement Period. (*See* Ex. 1 at § ¶1.24.)

Based on these calculations, the average potential recovery is $1,310.11 per Settlement

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fund, causing the net distribution to the Class Members to be slightly higher than the $375,083.33 contemplated in the settlement agreement (*Id.*, Ex. 1 §3, ¶3.2.1)

Class Member. (Paul Decl. ¶17.)

E. Class Notice

The Court approved the proposed Class Notice, and directed the mailing of the Notice by first-class mail to Settlement Class Members in accordance with the proposed implementation schedule. (Ly Decl. ¶25) The procedures for giving notice to the Settlement Class Members, as set forth in the Agreement and Plaintiffs' Motion for Preliminary Approval and approved by the Court, have been fully and properly carried out. (Paul Decl. ¶¶4-5.)

To date, Xpand Legal received zero (0) requests to be excluded ("opt-outs") from the proposed Agreement and zero (0) objections. (Paul Decl. ¶¶9-10.)

F. Check Mailed Settlement – No Reversion

The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement without the possibility of reversion of settlement funds to Defendant. Under the Agreement, every Settlement Class Member will receive a settlement check and Settlement Class Members do not need to submit a claim in order to receive a settlement check. Any funds that remain uncashed after the void date shall be turned over by the Administrator, with information for each Settlement Class Member who failed to timely cash his/her settlement check, to the State of California Controller's Office Unclaimed Property Fund. (Ex. 1 at § 4, ¶4.4.3.)

IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT

Pursuant to California Code of Civil Procedure § 1781(f), "a class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the Class in such manner as the court directs . . . ." In deciding whether to grant final approval to a proposed class action settlement under Code of Civil Procedure § 382, the court's overriding concern is whether the proposed settlement is "fair, adequate, and reasonable." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

A. The Settlement is Entitled to a Presumption of Fairness

"A presumption of fairness exists where: (1) the 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." (*Dunk*, *supra*, 48 Cal.App.4th at p. 1802.) The proposed Settlement in the present case meets all of the *Dunk* factors and is therefore entitled to a presumption of fairness.

As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and arm's-length negotiations. All settlement discussions were made by experienced and informed counsel, who believe that this settlement represents a favorable resolution for the Settlement Class Members. (Ly Decl. ¶26.) The settlement negotiations have been, at all times, adversarial and non-collusive, and no self-dealing or other type of misconduct by either side has taken place. (Ly Decl. ¶27.)

Second, the Parties engaged in informal discovery that permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Ly Decl. ¶28.) In addition, Defendant produced additional data and documents informally for purposes of settlement. This included Defendant's invoices and reports, timesheets, and Plaintiffs' pay stubs. (Ly Decl. ¶29.) Receipt of appropriate discovery allowed Class Counsel to fairly evaluate the exposure and risks associated with each claim alleged in the lawsuit. (Ly Decl. ¶30.)

Third, Class Counsel have significant experience in cases of this type, including several years prosecuting wage, hour, and working condition violations. (Ly Decl. ¶31.) Class Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel believes that the settlement is fair, reasonable, adequate, and in the best interests of the class and that the average recovery for each Settlement Class Member of over $1,310.11 is substantial, given the risks inherent in litigation and the defenses asserted. (Ly Decl. ¶32.)

Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there were zero (0) requests to be excluded and no objectors. (Paul Decl. ¶¶9-10). As all of the *Dunk* factors are satisfied, this settlement is entitled to a presumption of fairness.

B. <u>The Court Should Approve This Class Action Settlement Because it Satisfies Each of the *Kullar* Factors</u>

In *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, the court set forth several factors that should be analyzed in determining whether to approve a class action settlement. These factors include: (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 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.

In *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles (2010) 186 Cal. App. 4th 399, 409*, the court clarified that a Kullar showing does not require the parties to submit the outer reaches of maximum possible recovery without taking into account the actual risks of certification, decertification, dispositive motions, and trial, so long as there is a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Munoz, 186 Cal. App. 4th at 409.*

The proposed settlement satisfies each of these factors. (Ly Decl. ¶33.) Class Counsel conducted extensive informal discovery before entering into meaningful settlement negotiations in this matter. (*Id* at Ly Decl. ¶¶10-11.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Ly Decl. ¶34.) Additionally, Class Counsel has spoken to dozens of Class Members about the allegations and their experiences. (Ly Decl. ¶35.) Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Agreement. (Ly Decl. ¶36.)

1. <u>The Strength of Plaintiffs' Case</u>

a) Defendant Failed to Pay Wages and/or Overtime

"California employees are entitled to compensation for all hours worked, which means "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." (Title 8 Cal. Code of Regs., § 11080(2)(G); *See Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 845, <u>as modified on denial of reh'g (Aug. 29, 2018)</u>.) Time is compensable if an employee is "*subject to the control* of an employer" even if not working, or if an employee "is *suffered or permitted to work*" even if not "under the employer's control, provided the employer has or should have knowledge of the employee's work." (*Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038, 1046, <u>reh'g denied (May 13, 2020)</u> (citations omitted.) An employer controls an employee if the employer directs an employee and the employee is unable to use their time how they wish. (*Id.* at p. 1047.) Other factors courts may consider include whether the activity is required, "the location of the activity, the degree of the employer's control, whether the activity primarily benefits the employee or employer, and whether the activity is enforced through disciplinary measures." (*Id.* at p. 1056; *Cf. Gibbs v. TWC Administration, LLC* (S.D. Cal., Jan. 3, 2020, No. 17CV01513DMSAGS) 2020 WL 42768, at *9 (denying Defendant's motion for summary judgment when plaintiff-employees conducted off-the-clock pre-shift activity in preparation to start work right when they clocked in).)

In *Troester*, employees spent four to ten minutes completing tasks to close up the store, such as setting the alarm and locking the door. (*Troester*, 5 Cal.5th 829 at p. 843.) The Court held that California law prohibits employers from requiring employees to work off the clock, even for minutes, without compensation. (*Id.* at p. 848.) The Court explained:

> An employer that requires its employees to work minutes off the clock on a regular basis or as a regular feature of the job may not evade the obligation to compensate the employee for that time by invoking the de minimis doctrine. As the facts here demonstrate, a few extra minutes of work each day can add up. . . . . What Starbucks calls "de minimis" is not de minimis at all to many ordinary people who work for hourly wages.

(*Id.* at p. 847.)

Additionally, California workers are statutorily entitled to overtime compensation, unless they are properly classified as falling within one of the narrow exemption categories. Under California law, "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek…shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." (Lab. Code, § 510, subd. (a).) Furthermore, "[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee." (Lab. Code, § 510, subd. (a).)

Here, Defendants have had a consistent policy of failing to pay wages and/or overtime to Plaintiffs and all aggrieved employees. Plaintiffs and other aggrieved employees were not properly compensated for all hours worked over eight (8) hours in one day or forty (40) hours in one week.

Plaintiffs and the Proposed Class were not properly compensated for all hours worked because Defendants failed to pay Plaintiffs and the Proposed Class for each and every hour worked.

Plaintiffs and the Proposed Class routinely worked “off the clock” and performed compensable activities before working each shift for which no pay was provided. (Ly Decl. ¶37.) Plaintiffs and the Proposed Class are not paid any wages for these pre-shift activities. (Ly Decl. ¶38.) Plaintiffs and the Proposed Class were not properly compensated for all hours worked at the beginning of their shift due to the fact that Defendants required Plaintiffs and the Proposed Class to report to the job site and perform work before the scheduled start of each shift. (Ly Decl. ¶39.) Specifically, Plaintiffs and the Proposed Class would have to attend the “escuelita” or school before working each shift, with no pay provided by Defendants. (Ly Decl. ¶40.) The time spent was “clocked out” and as such, Plaintiffs and the Proposed Class are not compensated for this time worked even though this time is compensable.

Additionally, Defendants had a consistent policy of failing to compensate Plaintiffs and all Proposed Class for their time spent traveling from field to field. Plaintiffs and the Proposed Class were not properly compensated for their travel time between fields, despite performing compensable activities. (Ly Decl. ¶41.) This time was spent “clocked out” and as such, Plaintiffs and the Proposed Class are not compensated for this time worked even though this time is compensable.

Furthermore, Defendants had a consistent policy of failing to pay for wages and/or overtime in compliance with California law when an employee worked over eight hours in a day.

The off the clock claims could be difficult to certify given that the Class worked for different growers with different policies, however, the failure to pay overtime for hours worked about eight was the strongest claim. (Ly Decl. ¶42.)

b) Defendant Failed to Reimburse Necessary Business Expenditures

Under California Labor Code§ 2802(a) an employer "shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." An employee acts in "discharge of his duties," for purposes of this Section when the employee acts within the "course and scope of employment." See *O'Hara v. Teamsters Union Local No. 856,* C.A.9 (Cal.)1998, 151 F.3d 1152.

Plaintiffs allege that Defendant required employees to incur business expenditures for which they were never reimbursed, including the costs of using protective gloves and other tools that were not provided by Defendants but were necessary for the performance of Plaintiffs and the Proposed Class's job duties. (Ly Decl. ¶43.)

Defendant argues that all tools were provided. (Ly Decl. ¶44.)

c) Defendant Failed to Issue Lawful Itemized Wage Statements

California Labor Code §226(a) requires Defendants to provide its employees with an accurate, itemized written wage statement that shows, in relevant part, total hours worked by the employee, the name and address of the legal entity that is the employer, and all applicable hourly rates and the corresponding number of hours worked.

Defendants issued wage statements that violate Labor Code §§ 226(a)(2), (8) and (9). Labor Code § 226(a) specifically requires that the employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Defendants furnish Plaintiffs and the Proposed Class itemized wage statements that do not accurately show total hours worked or all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of the Labor Code. (Ly Decl. ¶45.) As a result of Defendant's failure to pay wages as described above, Defendant has failed to accurately show total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee on itemized wage statements issued to Plaintiffs and the Proposed Class. Defendants' failure to provide accurate itemized wages statements according to Labor Code § 226(a) was all done on a regular and consistent basis.

This is a derivative wage statement claim, and its success hinges on the other claims. (Ly Decl. ¶46.)

d) Defendant Failed to Provide All Wages Due at the Time of Termination

This claim alleges that Defendants failed to pay all wages due and owing upon termination or resignation. Labor Code § 203(a) provides:

> If an employer willfully fails to pay … any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

Under Labor Code § 203, a "'willful' failure to pay wages … occurs when an employer intentionally fails to pay wages to an employee when those wages are due." Cal. Code Regs., tit. 8, § 13520; *see also Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859 ("willful" simply means that "the employer intentionally failed or refused to perform an act which was required to be done[.] Willful … does not necessarily imply anything blameable, or any malice or wrong toward the other party").

Here, Plaintiffs contend that Defendants failed to properly pay overtime for any work in excess of eight (8) hours per day and/or any work in excess of forty (40) hours per week. (Ly Decl. ¶47.) The risk analysis for the section 203 claim flows from the risk analysis for the underlying wage claim discussed above. (Ly Decl. ¶48.) If Defendants could prove, as they contend, that class members were paid for all hours worked, there would be no recovery of wages and no waiting time penalties that flow therefrom. (Ly Decl. ¶49.)

Further, to establish liability for waiting time penalties, Plaintiffs would have to establish not only that the underlying violations occurred, but also that Defendant's conduct was "willful." Labor Code § 203.

e) Defendants are Liable for Penalties Pursuant to the Private Attorneys General Act of 2002 ("PAGA")

California's Private Attorneys General Act ("PAGA"), Labor Code § 2698, *et seq*., permits private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of $100 per employee per pay period for the initial violation and $200 for subsequent violations.

The Parties discounted the PAGA claim for multiple reasons. First, the aggrieved employees' PAGA claims are derivative of all the foregoing class claims. (Ly Decl. ¶50.) Second, a court has discretion to award less than the maximum penalty. (Ly Decl. ¶51.) Labor Code § 2699(e)(2) ("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"). *See e.g.*, *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty). Finally, the settlement Class is compensated for these violations in the proposed Agreement, and thus any PAGA recovery for these same violations would be duplicative. (Ly Decl. ¶52.) As such, the Agreement's contemplated PAGA payment of $15,000.00 is appropriate. (Ly Decl. ¶53.) *See Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating $0 of $6.4 million settlement to PAGA penalties).

2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Agreement now. (Ly Decl. ¶54.) If the Court did eventually certify a class, trial of a case involving approximately 315 Settlement Class Members would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties. (Ly Decl. ¶55.) Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (Ly Decl. ¶56.) An appeal would result in further delay for the Settlement Class Members who are waiting for a resolution in this matter. (*Id.*)

3. The Risk of Maintaining Class Action Status through Trial

This case has not been certified to be tried as a class action. (Ly Decl. ¶57.) While Plaintiffs believe there is strong evidence to support certification of several possible subclasses, certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need to conduct multiple depositions, including of the Class Representatives and of several person(s) most knowledgeable regarding Defendant's wage policies. (*Id.*) There is a risk for both sides as to what these depositions will reveal and whether they will support class certification to the extent expected. (*Id.*)

4. The Amount Offered in Settlement

It was very difficult for the Parties to reach this Settlement of $650,000.00. (Ly Decl. ¶58.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Ly Decl. ¶59.) The Parties arrived at it after extensive investigation and discovery, careful evaluation of the law, risks, and all information substantiating the amount of penalties reasonably likely to be awarded to the class were the trier of fact to find Defendant liable. (*Id.*)

a) Plaintiffs' Assessment of Defendant's Maximum Exposure

Plaintiffs assessed full value of the Minimum Wage/Overtime claim, without any discount, at approximately $315,000. (Ly Decl. ¶60.) This calculation accounted for the instances where overtime was incorrectly paid and also estimated 30 minutes of "off the clock" work per week and utilized an average hourly rate of $14.00 an hour. (Ly Decl. ¶61.)

With regard to the Reimbursement Claim analysis, Plaintiffs believed that it was reasonable to value the potential reimbursement at $5.00 per work weed for reimbursement of tools. This brought the damages for this claim to $15,000.00. (Ly Decl. ¶62.)

Plaintiffs valued the Wage Statement Claim, without discount, at $130,000 (for the one year period). (Ly Decl. ¶63.) This figure is overstated because Labor Code §226(e)(1) uses $50 for the initial pay period (not $100) and puts a $4,000 cap on wage statement penalties per employee. (Ly Decl. ¶64.) Due to the risk discussed above that 226(a) liability wouldn't attach under *Naranjo* and *Maldonado*, Plaintiffs determined that a steep discount of this claim was fair for settlement purposes. (Ly Decl. ¶65.)

Plaintiffs valued the Waiting Time Claim, tied to the Wage/Overtime claim, at $1,058,400.00 (each employee is a former employee). (Ly Decl. ¶66.) Considering the derivate nature of Labor Code §203 and the dispute over whether class members were owed any wages, Plaintiffs determined that accepting a discount on this claim was appropriate. (Ly Decl. ¶67.)

Finally, Plaintiffs calculated the value of the PAGA claim at $130,000.00 for Settlement Class Members (using $100 per pay period). (Ly Decl. ¶68.) The main risk taken into account with PAGA is the discretionary nature of the penalty award. (Ly Decl. ¶69.) A judge can award the statutory maximum of $100 for the initial violation and $200 thereafter or – in theory – one cent per wage statement. (Ly Decl. ¶70.) While there is a dearth of available authority, in Plaintiffs' view, were they to succeed on any of the underlying Labor Code violations, it is not likely that a Judge would also award a large amount of penalties of top of any damages recovered. (Ly Decl. ¶71.)

Per Plaintiffs' assessment, the maximum potential value of all of Plaintiffs' and the Settlement Class Members' claims was approximately $1,648,400.00. (Ly Decl. ¶72.) If you eliminate penalties and simply look at the value of the underlying claims, it comes to $330,000.00. As a result of the forgoing risks on the merits, Class Counsel believes the Gross Settlement Amount of $650,000.00 is fair and reasonable. (Ly Decl. ¶73.)

5. The Extent of Discovery Completed and Stage of the proceedings

As outlined above, Class Counsel conducted a thorough investigation into the facts of the claims. (Ly Decl. ¶74.) The agreement to settle did not occur until Class Counsel exchanged and possessed sufficient information to make an informed judgement. (*Id*.)

6. The Experience and Views of Counsel

Kingsley Szamet & Ly, formerly known as Kingsley & Kingsley, APC is very experienced in prosecuting employment litigation, and the firm has focused its practice since 2000 on wage, hour, and working condition violations. (Ly Decl. ¶¶75-77.) The firm is well versed in class action litigation and has diligently and aggressively pursued this action. (*IbId*.) Kingsley Szamet & Ly currently serves as Class Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California. (*Ibid*.) A list of representative cases that Kingsley Szamet & Ly has handled is included in the accompanying declaration of Liane Katzenstein Ly. (Ly Decl. ¶¶75-76.) After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable. (Ly Decl. ¶77.)

7. The Presence of a Governmental Participant

There is no governmental participant in this action. (Ly Decl. ¶78.)

8. The Proposed Plan of Allocation Is Fair and Reasonable

Plans of allocation are subject to the same standard of review as class action settlements;

they must be "fair, adequate and reasonable." (*See, e.g.*, *Officers for Justice v. Civil Service Comm'n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation compensates Settlement Class Members pro rata based on the number of Workweeks worked by the Settlement Class Member during the Class Settlement Period. The lump sum payment to each member of the settlement Class not excluding him/ herself will be determined by dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Settlement Period and (b) multiplying the result by each Participating Class Member's Workweeks. This allocation distributes Settlement funds proportionally to each class member's damages, and should therefore be approved as fair, adequate, and reasonable. (Ly Decl. ¶79; Ex. 1 at § 3, ¶3.2.4.)

9. <u>The Reaction of the Class Members to the Proposed Settlement</u>

To date, there are zero (0) requests to be excluded from the proposed Agreement and zero (0) objections. (Paul Decl. ¶¶9-10.) Such indicates that the reaction of Settlement Class Members on the whole is positive and weighs in favor of approval.

V. ENHANCEMENT TO PLAINTIFFS

Plaintiffs' Counsel request an enhancement of $25,000.00 to the Class Representatives for their work on behalf of the Settlement Class. (Ly Decl. ¶124.) "Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation." *Ingram v. The Coca-Cola Company*, 200 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations omitted); *see also Van Vranken v. Atlantic Richfiled Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). In *Coca-Cola*, the Court approved service awards of $300,000 to each named plaintiff in recognition of the services they provided to the class by responding to discovery, participating in the mediation process, and taking the risk of stepping forward on behalf of the class. *Coca-Cola*, 200 F.R.D. at 694; *see also*, *e.g. Van Vranken*, 901 F. Supp. at 299 (approving $50,000 participation award to plaintiffs); *Glass v. UBS Financial Services, Inc.*, Case No. C-06-4068 MMC, 2007 WL 227862, at *17 (N.D. Cal. Jan. 26, 2007) (approving $25,00 enhancement to each named plaintiff).

The Plaintiffs are adequate class representatives because they have diligently, adequately and fairly represented the Settlement Class and have not placed their interests above any member of the Settlement Class. (*see* Declarations of Jaime Santiago Vasquez, Antonia Blanco, Graciela Blanco, Eloisa Castro, and Tomas Cervantes aka Guadalupe Cervantes ("Client Decls.") ¶¶4-9.)

Here, Class Counsel requests an enhancement for Jaime Santiago Vasquez; Antonia Blanco; Graciela Blanco; Eloisa Castro; and Tomas Cervantes aka Guadalupe Cervantes' valiant efforts and time expended in this matter. The time spent by Jaime Santiago Vasquez; Antonia Blanco; Graciela Blanco; Eloisa Castro; Tomas Cervantes; and Guadalupe Cervantes is significant and includes researching and retaining competent counsel; providing information to Class Counsel regarding the nature of the work at Defendant; compiling relevant documents; working closely with Class Counsel to develop the theories of liability and martial relevant evidence; regularly discussing the status of the case with Class Counsel; discussing the case via telephone with many Settlement Class Members; providing informal discovery responses; and responding promptly to Class Counsel's communications regarding settlement. (Ly Decl. ¶125; Client Decls. ¶¶6-9.) Thus, in addition to the sums paid to Settlement Class Members, Plaintiffs request a proposed litigation enhancement in the amount of $5,000.00 each to be paid from the Gross Settlement Amount. (Ex. 1 at § 3, ¶3.2.1.) As set forth in the Agreement, Plaintiffs will also be entering into a general release of liability pursuant to Civil Code Section 1542. (Ly Decl. ¶126; Ex. 1 at § 6, ¶6.1.)

Class Counsel considers this to be a fair and reasonable enhancement. (Ly Decl. ¶127.) The enhancement takes into consideration the time, effort, and expense incurred by Plaintiffs in coming forward to litigate this matter on behalf of all Settlement Class Members. (*Id.*) Additionally, the Class Representatives were at risk for paying for Defendant's legal fees and costs in the event that Defendant prevailed at trial. (Ly Decl. ¶128.)

VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

As indicated on the Proof of Service, Plaintiffs' Motion for Final Approval of Class Action Settlement ("Motion") will be concurrently uploaded to the Labor and Workforce Development Agency's ("LWDA") website as required by statute. Proof of submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA confirming receipt is attached to the Declaration of Liane Katzenstein Ly as Exhibit "6." (Ly Decl. ¶133.)

VII. CONCLUSION

Plaintiff respectfully submits that the proposed Agreement is fair, adequate, reasonable, and in the best interest of the Settlement Class Members. Therefore, Plaintiff respectfully requests that the Court (1) grant Final Approval of the Agreement and all of its terms; (2) award attorneys' fees and costs in the amount detailed in the concurrently filed Motion for Attorneys' Fees and Costs; (3) award Xpand Legal claims administration fees of $12,000.00; and (4) award the Class Representatives an enhancement of $25,000.00; and (5) enter judgment.

DATED: June 24, 2024

KINGSLEY SZAMET & LY

By: ______________________

Liane Katzenstein Ly
Attorneys for Plaintiffs and the proposed class

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On June 24, 2024, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (https://dir.tfaforms.net/315) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] BY ELECTRONIC MAIL TRANSMISSION: I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 24, 2024, at Woodland Hills, California.

Michelle Tanzer

PROOF OF SERVICE LIST
JAIME SANTIAGO VASQUEZ ET AL. V. PJ FARM LABOR, INC. ET AL.
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KINGS
Case No. 22C-0382

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