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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF IMPERIAL**

ISABEL SANCHEZ, individually, on
behalf of herself, all those similarly
situated, and all Aggrieved Employees,

Plaintiff,

vs.

AGRO PACK LLC, a California limited
liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: ECU002547

[Assigned to Hon. L. Brooks Anderholt]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS AND REPRESENTATIVE
ACTION SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

Concurrently filed with:

**(1) DECLARATION OF JOHN A. VAN
HOOK [INCLUDING
SETTLEMENT STIPULATION];**

(2) PROPOSED ORDER

Date: September 27, 2023

Time: 8:30 a.m.

Dept.: 9

Judge: Hon. L. Brooks Anderholt

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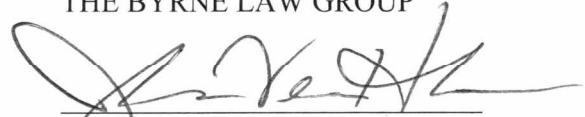
1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

2 PLEASE TAKE NOTICE THAT on September 27, 2023, at 8:30 a.m., or as soon
3 thereafter as the matter may be heard before the Honorable L. Brooks Anderholt in Department
4 9 of the above-entitled Court, located at 939 W. Main Street, El Centro, CA 92243, Plaintiff
5 and proposed Class Representative Isabel Sanchez, on behalf of herself, the Putative Class
6 Members, all those similarly situated, and the Aggrieved Employees, will and hereby does
7 move the Court for entry of an Order: (1) preliminarily approving the class and representative
8 action settlement; (2) provisionally certifying the settlement class; (3) directing distribution of
9 notice of class settlement; and (4) setting the date for the final approval hearing.

10 The Motion is based on this Notice of Motion and Motion for Preliminary Approval;
11 the accompanying Memorandum of Points and Authorities, the Declaration of John A. Van
12 Hook and exhibits thereto (including a copy of the executed Joint Stipulation for Class and
13 Representative Action Settlement); and on such further oral and documentary evidence which
14 may be submitted or the Court may receive, and on the complete files and records in this
15 action.

16
17 Dated: September 1, 2023

VAN HOOK LAW FIRM
THE BYRNE LAW GROUP



John A. Van Hook
Adrian C. Byrne
Attorneys for Plaintiff Isabel Sanchez, the
Putative Class Members, and Aggrieved
Employees

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Isabel Sanchez (“Plaintiff”) and Agro Pack, LLC (“Defendant” or “Agro
4 Pack”) (together the “Parties”) reached a class and representative action settlement after hard-
5 fought arms-length negotiations, with the assistance of an experienced mediator and retired
6 judge. The settlement provides for a \$462,500 non-reversionary settlement of this litigation on
7 behalf of approximately 6,869 proposed Settlement Class Members and an estimated 52,479
8 workweeks. The settlement covers the time period of September 13, 2018, through to the date
9 of Preliminary Approval (the “Class Settlement Period”), and resolves claims on behalf of all
10 individuals who worked for Agro Pack in the State of California as hourly or non-exempt
11 employees working at one or more of the following five growers: (1) Five Crowns, Inc., (2) E.
12 Schaffner Packing Co., (3) Bro-Quali Harvest, Inc., (4) Sunterra Produce Traders, Inc., and (5)
13 Betteravia Farms, LLC (the “Growers”).

14 Plaintiff seeks the Court’s preliminary approval of this settlement. As described
15 further herein, Plaintiff and Plaintiff’s Counsel believe that this settlement is an excellent
16 result for the proposed Settlement Class, providing substantial relief to thousands of workers.
17 The terms of the proposed settlement are described below and fully set forth in the Joint
18 Stipulation of Class and Representative Action Settlement (the “Settlement Stipulation”),
19 attached as Exhibit A to the concurrently filed Declaration of John A. Van Hook (“Van Hook
20 Decl.”).

21 The settlement is the product of extensive, arms-length negotiations between the
22 Parties, facilitated by an experienced employment law and class action mediator, and falls
23 well within the range of reasonableness for preliminary approval. The Notice of Class Action
24 Settlement (“Class Notice”) provides the Settlement Class Members with the best notice
25 practicable under the circumstances and will allow each person a full and fair opportunity to
26 evaluate the settlement and decide whether to participate in it. (See Van Hook Decl., Ex. A-
27 1). Further, the Settlement Class is appropriate for provisional certification because it meets
28 all criteria for class certification under California law.

1 For the reasons discussed herein, Plaintiff respectfully requests that this Court: (1)
2 grant preliminary approval of the Settlement; (2) provisionally certify the proposed
3 Settlement Class for settlement purposes; (3) direct distribution of the proposed Notice; and
4 (4) schedule a hearing for final settlement approval and for approval of Plaintiff's attorneys'
5 fees and costs.

6 **II. FACTUAL AND PROCEDURAL BACKGROUND**

7 **A. Plaintiff's Complaint, PAGA Notice, and First Amended Complaint**

8 On September 13, 2022, Plaintiff filed her putative class action complaint in this Court
9 ("the Complaint"), asserting various wage and hour claims on a class-wide basis. Plaintiff's
10 Complaint defined putative Class members as: "All current and former non-exempt employees,
11 whether paid on an hourly and/or piece rate basis, employed by Defendants within the State of
12 California at any time during the period from four (4) years prior to the filing of this action,
13 plus any additional time during which the statutes of limitation for the causes of action herein
14 were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the 'Emergency
15 Rules Related to COVID-19, through final judgment." (*See generally* Complaint; Van Hook
16 Decl. ¶ 3.)

17 On October 20, 2022, Plaintiff submitted a notice to the Labor and Workforce
18 Development Agency ("LWDA") giving notice of her allegations pursuant to the California
19 Labor Code Private Attorneys General Act of 2004, Labor Code §2698, et seq. ("PAGA").
20 (*See* Van Hook Decl., ¶ 4.) On December 20, 2022, Plaintiff filed a First Amended Complaint,
21 adding a cause of action for civil penalties under PAGA. (*See generally* First Amended
22 Complaint; Van Hook Decl., ¶ 5.)

23 Plaintiff's primary theories of liability were: (1) that Defendant did not accurately
24 record the time worked by Plaintiff and the putative class members/aggrieved employees,
25 resulting in unpaid wages (including overtime wages), and (2) that Defendant did not provide
26 meal periods in compliance with California law. Based on these primary theories of liability,
27 Plaintiff sought unpaid wages, statutory penalties (including penalties for itemized wage
28 statement violations and "waiting time" penalties), and civil penalties pursuant to PAGA. (*See*

1 Van Hook Decl., ¶ 6.)

2 Defendant has vigorously contested the merits of these claims and allegations. Further,
3 Defendant has argued that, absent a settlement, Plaintiff would be unable to obtain class
4 certification on some or all of her claims, and that Plaintiff's representative PAGA claims
5 would be unmanageable. Defendant argued that any such violations were individualized, and
6 contrary to Defendant's stated policies and procedures. (*See* Van Hook Decl. ¶ 7.) While
7 Plaintiff disputes these arguments, they nonetheless highlight the uncertainty in these claims
8 and the litigation if this case had not settled.

9 **B. Litigation and Settlement Negotiations**

10 After the filing of Plaintiff's First Amended Complaint, the Parties began to explore the
11 possibility of early resolution and agreed to participate in private mediation. (*See* Van Hook
12 Decl. ¶ 8.) Prior to mediation, the Parties engaged in substantial informal discovery and
13 exchanges of information, including Defendant providing to Plaintiff data regarding the
14 putative class (*e.g.*, the number of putative class members, the number of putative aggrieved
15 employees, the number of workweeks worked during the respective claim periods, and the
16 average hourly rate, etc. Defendant also provided a class data spreadsheet containing over
17 475,000 entries, a significant sampling of documentation including wage statements and time
18 records for the putative class and putative aggrieved employees, and company policies and
19 procedures applicable to the claim periods. (*See id.*)

20 Defendant's records provided the means to readily identify the individuals that worked
21 for them and that provided labor to specific growers. To aid the settlement negotiations and the
22 manageability of a potential settlement, the Parties agreed to limit the scope of the settlement
23 negotiations to those putative class members that worked for one or more of the Growers for
24 which Plaintiff also worked. Defendant ascertained those individuals, identifying
25 approximately 6,869 current and former employees meeting the Settlement Class definition,
26 representing 52,479 total workweeks. (*See* Van Hook Decl. ¶ 9.) The average of only 7.6
27 workweeks per Settlement Class Member reflects the high turnover of the workers in the
28 Settlement Class.

1 Plaintiff's counsel also had multiple conferences with Defendant's counsel about the
2 information provided by Defendant. Plaintiff's counsel also conducted substantial investigation
3 of their own, meeting extensively with Plaintiff, and reviewing information supplied. (*See Van*
4 *Hook Decl.* ¶ 10.)

5 On July 3, 2023, the Parties participated in a full-day private mediation with
6 experienced employment and class action mediator, Hon. Patrick O'Hara (Ret.) (*See Van Hook*
7 *Decl.* ¶ 11, Ex. B.)

8 Despite the Parties' and mediator's best efforts, after a full day of intensive, arms-
9 length negotiations, the matter did not resolve on the day of the mediation. Several days later,
10 after follow-up discussions between the mediator and the Parties' counsel, the mediator made a
11 mediator's proposal, which both Parties accepted. Subsequently, the Parties negotiated a
12 Memorandum of Understanding ("MOU"). On August 31, 2023, the Parties finalized the terms
13 of the Settlement Stipulation. (*See Van Hook Decl.*, ¶ 12, Ex. A.) Concurrently, the Parties
14 resolved Plaintiff's individual claims under the Fair Employment and Housing Act for
15 retaliation and wrongful termination claims through a confidential settlement agreement. (*See*
16 *Van Hook Decl.*, ¶ 13.)

17 **III. SUMMARY OF THE SETTLEMENT TERMS**

18 The Settlement Stipulation provides that Agro Pack will pay a total of \$462,500.00 (the
19 "Gross Settlement Fund"), as a non-reversionary settlement fund to settle the claims in this
20 action. In addition to the payment of the Gross Settlement Fund, Defendant shall also
21 separately pay any employer-side payroll taxes that may be due because of the settlement
22 payments. From the Gross Settlement Fund of \$462,500, the following amounts will be paid,
23 subject to this Court's approval:

- 24 • Class Counsel's attorney's fees of \$154,000;
- 25 • Class Counsel's out-of-pocket litigation expenses, estimated to be no more than
- 26 \$4,000;
- 27 • Settlement administration expenses, estimated at \$40,000;
- 28 • Class representative enhancement award to Plaintiff of \$2,500; and

- PAGA penalties of \$25,000, of which \$18,750 shall be paid to the LWDA (75% of the \$25,000 PAGA settlement), and the remaining distributed pro rata among the Aggrieved Employees. (*See* Van Hook Decl. ¶ 14; Ex. A, ¶¶ 16, 47(a)-(e).)

The Gross Settlement Amount, minus these payments identified above, is the Net Settlement Fund. Accordingly, assuming these amounts are approved by the Court, the Net Settlement Fund (including the PAGA penalties paid to Aggrieved Employees) would be \$243,250.00. The Net Settlement Fund would be distributed to Class Members based on their number of workweeks during the Class Settlement Period (September 13, 2018, through to the date of Preliminary Approval). (*See* Van Hook Decl. ¶ 15; Ex. A, ¶ 47(a)(i). To avoid dilution of Settlement Class Members' claims, in the event that the actual number of workweeks exceeds the 15% workweek buffer, Defendant will have the option to either increase the Gross Settlement Fund by a pro-rata amount, or modify the Class Period's end date to a date prior to the date of Preliminary Approval so that the number of Workweeks does not exceed the 15% buffer. (*See* Van Hook Decl. ¶ 16; Ex. A, ¶ 49.)

Class Members will be given notice of the settlement and will have the opportunity to object to or opt out of it. The Notice will also explain how to opt out of the settlement and how to object to the settlement. (*See* Van Hook Decl. ¶ 17; Ex. A-1 [Class Notice]; Ex. A, ¶ 46. Class Members who do nothing will be included in the settlement and shall receive payment without the need for submitting a claim form or any documentation. The Class Notice shall notify the Settlement Class Members of their number of workweeks during the Class Settlement Period according to Defendant's records and their estimated share of the settlement. The Notice will also inform Settlement Class Members how they can dispute their workweeks if they believe the information in Defendant's records is incorrect. (*See* Van Hook Decl. ¶ 17; Ex. A-1; Ex. A, ¶ 46(a)(ii)).

Settlement checks to Settlement Class Members shall be valid for 180 days from the date of issuance. In the event of voided checks, such amounts shall be remitted to the California State Controller's Office's Unclaimed Property Division. (*See* Van Hook Decl. ¶ 18; Ex. A, ¶ 47(a).)

1 The Parties have agreed to have Phoenix Settlement Administrators (“PSA”), a
2 nationally recognized settlement administrator, be selected, subject to this Court’s approval, as
3 Settlement Administrator. In the opinion of Plaintiff’s counsel, PSA’s bid for the
4 administration services in this matter was reasonable, particularly given the transient nature of
5 the workforce and consequently large number of unique Settlement Class Members. (*See Van*
6 *Hook Decl.* ¶ 19.)

7 The Settlement Class Members that do not exclude themselves from the settlement will,
8 upon final approval and entry of judgment, release their covered claims during the Settlement
9 Period, September 13, 2018, through to the date of Preliminary Approval. (*See Van Hook Decl.*
10 ¶ 20; Ex. A, ¶ 41). If any Settlement Class Members opt-out, their share would be redistributed
11 pro-rata to the participating Settlement Class Members. As a result, the average payment per
12 Settlement Class Member would increase. *Id.*

13 **IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

14 **A. Legal Standards**

15 The law favors settlement, particularly in class actions where substantial resources can
16 be conserved by avoiding the time, cost, and rigors of formal litigation. *See, e.g., Neary v.*
17 *Regents of Univ. of Cal.* (1992) 3 Cal.4th 273, 277-281; *Lealao v. Beneficial California, Inc.*
18 (2000) 82 Cal.App.4th 19, 53. If this litigation were to continue, the expenses of litigation
19 could easily outweigh the amounts at issue in the case.

20 Both class actions and representative actions, however, may not be settled without court
21 approval. California Labor Code § 2699(1)(2). The decision to approve or reject a proposed
22 settlement is committed to the trial court’s sound discretion. *Wershba v. Apple Computer, Inc.*
23 (2001) 91 Cal.App.4th 224, 234-235. In reviewing class settlements, trial courts have broad
24 powers to determine whether the proposed settlement is fair under the circumstances of the
25 case. *Id.*; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. To grant
26 preliminary approval of a class settlement, the Court need find only that the settlement falls
27 within the range of possible final approval and thus whether notice to the class of the
28 settlement’s terms and the scheduling of a fairness hearing are worthwhile. *See, e.g.,*

1 4 *Newberg on Class Actions* (“*Newberg*”) § 11.25; *Wershba*, 91 Cal.App.4th at pp. 234-235.

2 To make this fairness determination, courts consider several relevant factors, including
3 the following: “the strength of the plaintiffs’ case, the risk, expense, complexity and likely
4 duration of further litigation, the risk of maintaining class action status through trial, the
5 amount offered in settlement, the extent of discovery completed and the stage of the
6 proceedings, [and] the experience and views of counsel . . .” *Kullar v. Foot Locker Retail, Inc.*
7 (2008) 168 Cal.App.4th 116, 128, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
8 1801; *see also In re Microsoft Cases I-V* (2006) 135 Cal.App.4th 706, 723. Furthermore, courts
9 must give “due regard . . . to what is otherwise a private consensual agreement between the
10 parties.” The inquiry “must be limited to the extent necessary to reach a reasoned judgment
11 that the agreement is not the product of fraud or overreaching by, or collusion between, the
12 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to
13 all concerned.” *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
14 Cal.App.4th 1135, 1145 citations omitted).

15 The court, however, has an obligation to “independently satisfy . . . itself that the
16 consideration being received for the release of the class members’ claims is reasonable in light
17 of the strengths and weaknesses of the claims and the risks of the particular litigation.” *Kullar*,
18 168 Cal.App.4th at p. 129. The record before the court must contain “information sufficient
19 for the court to intelligently evaluate the adequacy of the settlement.” *Id.*; *see also Clark v.*
20 *American Residential Services LLC* (2009) 175 Cal.App.4th 785, 801 (citing *Kullar*). The
21 *Kullar* Court stated further that “it is the court that bears the responsibility to ensure that the
22 recovery represents a reasonable compromise, given the magnitude and apparent merit of the
23 claims being released, discounted by the risks and expenses of attempting to establish and
24 collect on those claims by pursuing the litigation.” *Id.*

25 The *Manual for Complex Litigation (Fourth)* (“*Manual*”) § 21.632, characterizes the
26 preliminary approval stage as a “preliminary evaluation” of the fairness of the proposed
27 settlement made by the court on the basis of written submissions and informal presentation
28 from the settling parties. *See also 4 Newberg*, § 11.25. The settlement here offers a beneficial

1 resolution to this case, and a reasonable compromise of these claims, warranting the Court's
2 preliminary approval and Notice so the Settlement Class Members may consider its terms.

3 Preliminary approval is warranted if a settlement falls within the "range of
4 reasonableness." *See North County Contractors' Assn., Inc. v. Touchstone Ins. Services* (1994)
5 27 Cal.App.4th 1085, 1089-90. The Settlement here provides substantial monetary relief,
6 totaling \$462,500, inclusive of fees and costs and the costs of administration. As explained
7 below, the relief provided under the Settlement is reasonable and adequate, and the Court
8 should grant preliminary approval of this Settlement.

9 In addition, a "presumption of fairness exists where (1) the settlement is reached
10 through arms-length bargaining; (2) investigation and discovery are sufficient to allow counsel
11 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
12 percentage of objectors is small." *Kullar*, 168 Cal.App.4th at p. 128. *See also Cellphone*
13 *Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389-1390.

14 While Plaintiff cannot determine the percentage of any objectors until Settlement Class
15 Members have had the opportunity to object, the other factors in support of preliminary
16 approval are already satisfied. First, the settlement was reached through extensive, arm's-
17 length bargaining, using an experienced class action mediator. (*See Van Hook Decl.*, ¶¶ 11-12.)
18 Second, Plaintiff's counsel conducted a thorough investigation and evaluation of this case,
19 including independent investigation, extensive interviews with Plaintiff and reviews of her
20 records, informal exchanges of class and representative data, and exchange and review of
21 Defendant's applicable employment policies. (*See Van Hook Decl.*, ¶¶ 9-10). Finally,
22 Plaintiff's counsel has extensive experience in class and PAGA representative action litigation,
23 and in litigating the wage and hour claims at issue in this case. (*See Van Hook Decl.*, ¶¶ 24-
24 26). For the reasons set forth below, all of these factors weigh in favor of preliminary approval.

25 **B. The Settlement Is The Product Of Serious, Informed, Arms-Length**
26 **Negotiations Conducted by Experienced Counsel.**

27 As noted above, "[a] presumption of fairness in a class action settlement agreement
28 exists where: (1) the settlement is reached through arm's length bargaining." *Dunk*, 48

1 Cal.App.4th at p. 1802. Arm's-length negotiations conducted by competent counsel constitute
2 *prima facie* evidence of fair settlements. *M. Berenson Co., Inc. v. Faneuil Hall Marketplace,*
3 *Inc.* (D. Mass. 1987) 671 F.Supp. 819, 822.

4 The Settlement Stipulation is the result of intensive, arm's-length negotiations between
5 experienced attorneys who are familiar with class and representative action litigation in general
6 and with the legal and factual issues of this case in particular. The Parties participated in a full-
7 day private mediation with experienced class and representative action mediator, Hon. Patrick
8 O'Hara (Ret.) (*See* Van Hook Decl., ¶ 11; Ex. B.) Based on their experience litigating similar
9 cases, Plaintiff's Counsel fully support this settlement as fair and as providing reasonable relief
10 to the Class Members. (*See* Van Hook Decl., ¶ 28.)

11 **C. The Risks of Further Litigation Are Substantial and the Settlement**
12 **Provides Reasonable Compensation for the Class Members' Claims.**

13 The Settlement here is fair and in the best interests of the Class. In considering the
14 reasonableness of the Settlement Stipulation, it is necessary to consider: (1) Defendant would
15 vigorously oppose class certification if this litigation were to continue; and (2) Defendant
16 would vigorously defend each of the claims on the merits. Although Plaintiff and Plaintiff's
17 counsel believe that the claims asserted are properly certified as class claims, and that Plaintiff
18 and the Class would ultimately prevail if this case were litigated through trial, further litigation
19 poses substantial risks and delay for the proposed Settlement Class. (*See* Van Hook Decl., ¶¶
20 21-22.)

21 Defendant also provided substantial data and documents regarding its relevant
22 employment policies and practices. Defendant continues to contend that its policies are facially
23 lawful, and that any violations were contrary to Defendant's policies. As a result, Plaintiff
24 faces a challenge not only in proving that violations occurred, notwithstanding Defendant's
25 policies, but also that such claims are appropriate for class treatment.

26 While Plaintiff and Plaintiff's counsel believe that class certification would be
27 appropriate, either in a settlement context or in a contested motion for class certification, there
28 is a great risk that the court might deny class certification, particularly on the grounds that

1 questions of liability would turn on individualized evidence.

2 Further, based on information provided by Defendant, there is substantial uncertainty
3 whether Defendant would be financially able to pay a substantial judgment in the event this
4 case were to proceed to trial and Plaintiff were to prevail on class-wide claims. As a result,
5 Plaintiff and Plaintiff's counsel reasonably factored these financial risks in assessing the
6 reasonableness of the settlement.

7 **1. Unpaid Wages and Overtime**

8 Plaintiff alleges claims for unpaid wages, including overtime wages, principally on a
9 theory that Defendant's time records for Plaintiff and the Settlement Class members did not
10 reflect all time worked. In response, Defendant contends that it did accurately record all time
11 worked, consistent with its written policies to record and pay for all time worked, and that
12 employees had the opportunity to report any instances of underpayment. Defendant contends
13 that given its written policies and practices, any unrecorded or "off the clock" hours were
14 subject to individualized inquiry and, therefore, not proper for class certification. (*See Van*
15 *Hook Decl.*, ¶ 21.) These issues remain hotly contested and support the reasonableness of this
16 settlement.

17 **2. Meal Periods**

18 Plaintiff alleges meal period claims, asserting that Plaintiff and Settlement Class
19 Members were not provided legally compliant meal periods, and that the time records
20 reflecting meal periods are inaccurate. Defendant counters that Plaintiff and other Settlement
21 Class Members were provided with the opportunity to take proper meal periods, were provided
22 opportunities to report missed or denied meal periods, and that Defendant had no obligation to
23 "police" meal periods. Defendant further argues that these claims involve individualized
24 inquiries not suitable for class treatment. (*See id.*)

25 **3. Failure to Pay Final Wages Due Upon Separation**

26 Plaintiff also alleges that Defendant failed to pay all wages due to Plaintiff and the
27 Settlement Class Members upon their separation. This claim is largely derivative of the
28 underlying claims for unpaid wages, overtime, and meal period claims. In addition to its

1 defenses on the underlying wage claims, Defendant argues that Plaintiff cannot meet the
2 willfulness requirement for “waiting time” penalties under Labor Code § 203. (*See id.*)

3 **4. Wage Statements**

4 Plaintiff also alleges that Defendant failed to provide accurate itemized wage
5 statements. This claim is also derivative of the underlying claims for unpaid wages and meal
6 period violations. In addition to the defenses on the underlying claims, Defendant argues that
7 there were no “knowing and intentional” violations, and no “injury” from any violations, as
8 required under Labor Code § 226(e). (*See id.*)

9 **5. PAGA Penalties**

10 Plaintiff further sought the recovery of penalties under the Private Attorneys General
11 Act 2004 (“PAGA”). The Parties attributed a settlement value of \$25,000.00 to Plaintiff’s
12 PAGA claims. Several factors were considered in arriving at this settlement value: (1) as stated
13 elsewhere, Defendant denies any liability in this matter; (2) Defendant argues that the PAGA
14 claims, while they are not required to satisfy the same requirements as class claims, would be
15 found unmanageable by the Court; (3) Defendant denies any violations of the wage and hour
16 laws which would have entitled Plaintiff to recover penalties under PAGA; (4) the case law
17 interpreting PAGA, including on issues such as the meaning of “initial” and “subsequent”
18 violations and penalty rates, and the appropriateness of “stacking” penalties, is largely still
19 developing; and (5) any award of penalties under PAGA is within the discretion of the trial
20 court, and the court could exercise its discretion to reduce PAGA penalties, particularly where
21 those penalties might be viewed as duplicative of the underlying predicate Labor Code claims.
22 *See* Labor Code § 2699 (e)(2). Defendant will likely argue that its financials would further
23 justify a substantial reduction under Section 2699(e)(2). (*See* Van Hook Decl., ¶ 22.)

24 Here, the PAGA allocation represents 5.4% of the Gross Settlement Fund, which is
25 comparable to what many courts regularly approve as appropriate in a class/PAGA hybrid
26 settlement context. In fact, similar wage and hour class action settlements have used a lower
27
28

percentage of the total settlement amount.¹

Thus, the settlement of the PAGA claims in this case provides a reasonable benefit to the State of California. Concurrent with the filing of this Motion, Plaintiff's Counsel will submit a copy of the Settlement Stipulation to the LWDA pursuant to Labor Code § 2699 (1)(2). (*See* Van Hook Decl., ¶ 30.)

D. The Settlement Provides Substantial Relief for Class Members.

Although Plaintiff would face substantial opposition in certifying a class and proving the merits of the claims on a class-wide basis, this settlement requires Defendant to pay a total of \$462,500 to settle this case, in addition to the amounts to be paid by Defendant as the employer's share of payroll taxes. Based on the estimated 52,479 workweeks, the settlement would pay an estimated gross settlement of \$8.81 per workweek.) (*See* Van Hook Decl., ¶ 14.)

The Settlement Stipulation allows Settlement Class Members to achieve a significant recovery, quickly and without the risk that claims may not prevail. The Settlement Stipulation permits the Settlement Class Members to avoid the delay of continued litigation and possible appeals. Further, given the fact that the vast majority of Settlement Class Members would have small individual claims, they likely would not have the incentive to pursue their claims absent this settlement.

Moreover, in contrast to class action settlements that require class members to submit claim forms or other documentation, which impose obstacles to obtaining payment, the Settlement Stipulation does not require any action by Class Members in order to obtain their recovery. Class Members do not need to do anything to receive payment. The settlement also does not permit any reversion to Defendant of unclaimed funds or uncashed checks. The amount of the settlement does not decrease, regardless of the participation or opt-outs from the

¹ *See Ruch v. Am Retail Grp., Inc.* (N.D. Cal. Sep. 28, 2016, No. 14-cv-05352-MEJ) 2016 U.S. Dist. LEXIS 13383 (approving PAGA allocation of \$10,000 out of a \$1.15 million settlement); *Nen Thio v. Genji, LLC*, (N.D. Cal. 2014) 14 F. Supp.3d 1324 (PAGA allocation of \$10,000 in \$1.25 million settlement); *Cruz v. Sky Chefs, Inc.* (N.D. Cal. 2014) 2014 WL 7247065 *3 (PAGA allocation of \$10,000 in \$1.75 million settlement); *Tijero v. Aaron Brothers, Inc.*, (N.D. Cal., Dec. 29, 2013) 301 F.R.D. 314 (PAGA allocation of \$10,000 for \$800,000 settlement); *Fuentes v. Macy's West Stores, Inc.*, (C.D. Cal., June 29, 2015) 2015 U.S. Dist. LEXIS 174857, *4 (PAGA allocation of \$25,000 in \$4 million settlement).

1 settlement, meaning settlement payments can only increase in the event of exclusions.

2 Moreover, the absence of any potential reversion to Defendant removes any concern that

3 Defendant might have a financial motive to pressure employees not to participate.

4 Given the risks in certifying a class through trial, the risks in not being able to prevail
5 on some or all of the claims asserted, the delays and costs of further litigation, the recovery
6 provided by the Settlement Stipulation is fair, adequate, and reasonable. (*See* Van Hook Decl.,
7 ¶ 27-28.)

8 **E. The Proposed Service Payment To the Class Representative Is Reasonable.**

9 Plaintiff intends to move the Court for a service payment of \$2,500 to the named
10 Plaintiff and class representative. This requested payment is intended to recognize her
11 willingness to step forward, to pursue these claims on behalf of her fellow current and former
12 hourly, piece-rate or other non-exempt employees, and for undertaking the inherent risks of
13 litigation. This payment also is intended to acknowledge the time and effort Plaintiff spent
14 assisting Plaintiff’s Counsel with the investigation, litigation, and mediation of the case. (*See*
15 Van Hook Decl. ¶ 29.) “Courts routinely approve service awards to compensate named
16 plaintiffs for the services they provide and the risks they incurred during the course of the class
17 action litigation.” *Ingram v. The Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694. Trial
18 courts have considered a number of factors in approving service awards, including the
19 plaintiff’s actions in protecting the class, the degree to which the class benefited from such
20 actions, the time and effort expended, and the risk of stepping forward to litigate on behalf of
21 the class. *Stanton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 977.

22 As named Plaintiff and class representative, Plaintiff participated in numerous meetings
23 and telephone conferences with counsel—preparing for litigation, and gathering and reviewing
24 documents. Plaintiff also actively participated in the full-day mediation. *Id.* Without the
25 extensive time and effort expended by Plaintiff, and the risks she assumed in bringing this case,
26 this settlement would not have occurred. Plaintiff’s efforts were instrumental in settling the
27 case. (*See* Van Hook Decl., ¶ 29.)

1 **V. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

2 Plaintiff respectfully requests that the Court provisionally certify the proposed
3 Settlement Class. Provisional class certification is appropriate at the preliminary approval
4 stage where, as here, the proposed Class has not previously been certified by the Court, and the
5 Class meets the certification requirements. 4 *Newberg* § 11.22. The purpose of provisional
6 class certification is to facilitate distribution to all Class Members notice of the terms of a
7 proposed settlement and the date and time of the final approval hearing. *See Manual*
8 §§ 21.632-33. It is well established that trial courts should use different standards to determine
9 the propriety of a settlement class as opposed to a litigation class certification. Specifically, a
10 lower standard of scrutiny is used for settlement cases, in part because the settlement of the
11 case means that a class trial will not need to be conducted. *See Global Minerals & Metals*
12 *Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859 (citation omitted).

13 **A. The Requirements For Provisional Class Certification Are Met Here.**

14 Plaintiff seeks certification of the following Settlement Class for settlement purposes:
15 means all individuals who worked for Defendant in the State of California as hourly or non-
16 exempt employees at any time during the Class Period, and who worked at one or more of the
17 following five growers: (1) Five Crowns, Inc., (2) E. Schaffner Packing Co., (3) Bro-Quali
18 Harvest, Inc., (4) Sunterra Produce Traders, Inc., and (5) Betteravia Farms, LLC (collectively,
19 the “Growers”) (*See* Ex. A-1, ¶ 36.)

20 Defendant stipulates to the certification of this Class for settlement purposes only so
21 that the litigation may be fully resolved efficiently and in the interests of all Parties. In doing
22 so, Defendant does not waive its arguments regarding class certification should the Settlement
23 Stipulation not become final.

24 Class certification is appropriate when the class is ascertainable and there is “a well-
25 defined community of interest in the questions of law and fact involved affecting the parties to
26 be represented.” Code Civ. Proc. § 382; *Dunk, supra*, 48 Cal.App.4th at p. 1806. Section 382’s
27 requirements effectively mirror those of FRCP 23: numerosity, typicality of the class
28 representatives’ claims, adequacy of representation, predominance of common issues, and

superiority. *See* Fed. R. Civ. P. 23(a); *Hanlon v. Chrysler Group* (9th Cir. 1998) 150 F.3d 1011, 1019. Each of these requirements of certification for settlement purposes are met.

B. The Proposed Settlement Class is Ascertainable.

The proposed Settlement Class is easily ascertainable. Defendant's employment records provided the means to readily identify the individuals who worked as hourly-paid, piece-rate or non-exempt employees in the State of California during the relevant time period. As such, Defendant already has ascertained those individuals, identifying 6,869 current and former employees meeting the Settlement Class definition. (*See* Van Hook Decl., ¶ 9).

Thus, this meets the definition for an ascertainable class. *See Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932 ("class members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records").

C. The Proposed Settlement Class Is Sufficiently Numerous.

The numerosity requirement is met if the proposed class is so large that joinder of all members would be impracticable. Code Civ. Proc. § 382. Defendant's records show that the Settlement Class is composed of approximately 6,869 members. (*See* Van Hook Decl., ¶ 9.) A potential class of this size would be impracticable to join without the class action device. As a result, the numerosity requirement is satisfied. *See Collins v. Rocha* (1972) 7 Cal.3d 232, 234.

D. The Commonality Requirement Is Met.

The commonality requirement is met if there are questions of law or fact common to the class. *See Sav-On v. Superior Court* (2004) 34 Cal.4th at 326-27. Commonality requires only that common legal or factual questions predominate, not that all issues in the litigation are identical. *Id.* at 328, 332-33. Common questions here include, without limitation:

- Whether Defendant failed to pay the class members for all hours worked;
- Whether Defendant knew or should have known that the class members worked over eight (8) hours per day or forty (40) hours per week, but failed to pay them for those overtime hours;
- Whether Defendant failed to provide the class members with legally compliant meal periods;

- Whether Defendant paid the class members all wages owed at the time of separation;
- Whether Defendant's conduct was willful; and
- Whether Defendant "knowingly and intentionally" failed to provide class members with accurate itemized wage statements.

Particularly in the settlement context, class resolution is superior to other available methods of adjudication. *See Hanlon*, 150 F.3d at p. 1023; *Dunk*, 48 Cal.App.4th at p. 1807, fn. 19. Here, the only alternative methods of adjudication would be to resort to repetitive individual cases relying on the same facts and legal argument, amounting to a waste of judicial resources. *See Sav-On Drug Stores*, 34 Cal.4th at 340; *Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 745. Moreover, use of the class device here will provide relief for many of Defendant's hourly or non-exempt employees who are unwilling or unable to file individual suits, including those whose claims may be too small to warrant an individual suit.

E. The Typicality Requirement is Satisfied.

The typicality requirement is met if the claims of the named representatives are similar to those of the Class, though "they need not be substantially identical." *See Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. The claims of the Plaintiff are typical of the Class because they arise from the same factual bases and are based on the same legal theories. *See Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 644, 663-64 (typicality equates to membership in the proposed class). Plaintiff, who worked as a piece-rate employee for Defendant, providing services to the various Growers at issue, had similar work experiences and suffered the same alleged violations as the Settlement Class Members. (*See Van Hook Decl.*, ¶ 29.) Plaintiff's claims arise from the same set of facts and legal theories as the Settlement Class Member's claims, and as such, satisfy the typicality requirement.

F. Common Issues Predominate.

Certification is appropriate when common questions of law and fact predominate over individual questions and when the use of the class device is superior to individual litigation. *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. When assessing predominance and superiority, courts may consider whether the class will be certified for settlement purposes

only, rendering trial manageability irrelevant. *Amchem Products v. Windsor* (1997) 521 U.S. 591, 620. The analysis of predominance focuses on whether the proposed class is sufficiently cohesive to warrant adjudication on a class-wide basis. *Hanlon*, 150 F.3d at p. 1022.

The proposed Class here is sufficiently cohesive because Class Members share a “common nucleus of facts and potential legal remedies.” *Id.* The numerous common issues identified above far outweigh potential individualized claims or defenses.

G. Class Adjudication Is the Superior Means to Resolve These Claims

Particularly in the settlement context, class resolution is superior to other available methods of adjudication. *See Hanlon*, 150 F.3d at p. 1023; *Dunk*, 48 Cal.App.4th at p. 1807, fn. 19. As discussed *infra*, the alternative methods of adjudication are repetitive individual cases relying on the same facts and legal argument, amounting to a waste of judicial resources. *See Sav-On Drug Stores v. Superior Court* (2004) 34 Cal.4th 319, 340; *Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 745. Use of the class device here will provide class-wide redress for many of Defendant’s hourly paid or non-exempt employees who are unwilling or unable to file individual suits, including those whose claims may be too small to warrant an individual suit. For these reasons, a class action settlement is the preferred method of resolution of the Settlement Class Members’ claims.

H. The Adequacy Requirement is Met.

The class representative, through qualified counsel, must be able to “vigorously and tenaciously” protect class interests. *Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846. The adequacy requirement is met here because: (1) Plaintiff is represented by counsel who is qualified to conduct this litigation; and (2) Plaintiff’s interests are aligned with those of the class. *See McGhee v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 487.

First, proposed Class Counsel, John A. Van Hook of Van Hook Law Firm and Adrian C. Byrne of The Byrne Law Group, have extensive experience with class and representative PAGA litigation, and with the litigation of the wage and hour issues in this case. (*See Van Hook Decl.*, ¶¶ 24-26). Proposed Class Counsel is therefore “qualified, experienced and generally able to conduct the proposed litigation.” *Miller v. Woods* (1983) 148 Cal.App.3d 862,

1 875.

2 Second, Plaintiff's interests are co-extensive with those of the Settlement Class. Given
3 the near identical nature of their claims, Plaintiff's interests in obtaining the best recovery
4 possible for the Settlement Class are fully aligned with the Settlement Class' interests. Plaintiff
5 has agreed to serve as Class Representative, despite the risks and burdens associated with this,
6 and has no claims inconsistent with the interests of the class. (*See* Van Hook Decl., ¶ 29.)
7 Plaintiff has also substantially assisted Plaintiff's counsel at every stage, including before the
8 commencement of the litigation, the investigation and analysis of these claims, in preparation
9 and following the mediation, and in the negotiation of the terms of the Settlement Stipulation.
10 *Id.* The proposed Class Representative and proposed Class Counsel are adequate.

11 **VI. THE PROPOSED CLASS NOTICE IS APPROPRIATE**

12 **A. The Method of Class Notice Satisfies Due Process.**

13 California law vests courts with broad discretion in fashioning an appropriate notice
14 program. *See* Civil Code § 1781. Notice must "have a reasonable chance of reaching a
15 substantial percentage of the class members." *Cartt v. Superior Court* (1975) 50 Cal.App.3d
16 960, 974. The Settlement Stipulation provides for the mailing of an individualized Class Notice
17 to each Settlement Class Member to their last-known home addresses by first class mail. To the
18 extent Notices are returned to the Settlement Administrator, reasonable efforts, including skip-
19 tracing, will be made to determine a valid address, and re-mail the Notice. (*See* Van Hook
20 Decl., Ex. A, ¶ 46(a)(i)). Personal notification (rather than by publication) is the method
21 preferred by the California Rules of Court. *See* Cal. R. Ct. 3.766(f).

22 **B. The Proposed Settlement Notice is Accurate and Informative.**

23 The proposed Notice fairly apprises the Class of the Settlement's terms and the options
24 open to Class Members to participate in, object to, or exclude themselves from the settlement.
25 (*See* Ex. A-1). The proposed Notice informs the Settlement Class Members of the details of the
26 relief the settlement will provide, as well as the claims that are being released through the
27 settlement. The Notice also describes the Gross Settlement Fund, the amounts to be requested
28 for Class Counsel's attorney's fees and costs, the amount to be requested for the Class

Representative service award, the amounts to be paid for Settlement Administration expenses, the PAGA penalty amount, the method of calculating the settlement awards, and the date and time of the final approval hearing. *Id.* In addition, each Settlement Class Member will receive individualized information regarding their estimated settlement payment and their relevant workweeks according to Defendant's records, along with information as to how to contest their number of workweeks. *Id.* Through the Notice, therefore, Settlement Class Members will be informed as to what it means for them to remain in the Settlement Class, how to object to the terms of the Settlement Stipulation, and how to exclude themselves from the settlement. Thus, the Notice complies with the standards of adequacy and fairness required of a class notice. *See* Cal. Rule of Ct. 3.767(d); 3.769(f); Fed. R. Civ. P. 23(c)(2), 23(e); 4 *Newberg*, §§ 8.21, 8.39.

VII. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED

The last step in the settlement approval process is the final approval hearing, at which the Court may hear evidence and argument necessary to evaluate the proposed Settlement. Cal. R. Ct. 3.769(e). At that hearing, proponents of the settlement may explain its terms and offer argument in support of settlement approval. Settlement Class Members (including their own counsel, if they have them), may also be heard in support of or in opposition to the settlement. To assist the Court in scheduling a final approval hearing, the following is an estimated schedule of settlement events to be conducted prior to that hearing.

Settlement Event	Estimated Completion Date
Order granting preliminary settlement Approval	September 27, 2023
Class Database to be provided to Settlement Administrator	October 11, 2023 [14 days after preliminary approval order]
Class Notice to be Mailed to Settlement Class Members	October 25, 2023 [14 days after receipt of Class Database]
Expiration of deadline to object or request exclusion from settlement	November 24, 2023 [30 days after mailing of Class Notice]
Settlement Administrator to provide final	December 8, 2023

class list and any objections to settlement	[14 days after objection/exclusion deadline]
Final Approval Hearing	On or after January 4, 2024 [16 court days' notice for motion for final approval, assuming motion filed by December 1, 2023]

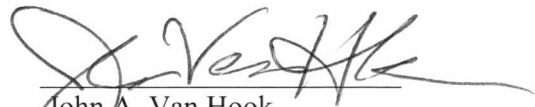
Concurrently with its motion for final approval, Plaintiff will also submit a motion for approval of Class Counsel's attorney's fees and costs, and Plaintiff's class enhancement payment.

VIII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement Stipulation, provisionally certify the Settlement Class, approve the form of Class Notice, and schedule the final approval hearing.

Dated: September 1, 2023

VAN HOOK LAW FIRM
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