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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF KINGS**
16 **(UNLIMITED JURISDICTION)**

17 JUAN C. SOLANO, on behalf of himself and
18 others similarly situated,

19 Plaintiff,

20 vs.

21 DAVID BAKKER DAIRIES; DAVID
22 BAKKER, individually; JOSEPH BAKKER,
23 individually; and DOES 1 through 50,
24 inclusive,

25 Defendants.

Case No. 23C-0048

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR (1)
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT; (2)
PROVISIONAL CERTIFICATION OF
CLASS AND APPOINTMENT OF CLASS
COUNSEL; (3) APPROVAL OF FORM
AND METHOD OF CLASS NOTICE;
AND (4) THE SCHEDULING OF A
FINAL FAIRNESS HEARING**

Hon. Robert Shane Burns

Date: January 14, 2025

Time: 08:15 a.m.

Dept: 2

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Juan C. Solano (“Named Plaintiff”) seeks preliminary approval of a proposed class
4 action settlement (“Settlement”) with Defendants DAVID BAKKER DAIRIES DBA
5 COUTRYSIDE DAIRY; DAVID BAKKER, individually; JOSEPH BAKKER, individually
6 (collectively “Defendants”).

7 The underlying lawsuit, filed by Plaintiff on February 17, 2023 on behalf of himself and
8 other similarly situated dairy workers alleges a failure to pay overtime wages, provide meal and
9 rest breaks and reimbursement for work-related expenses as required by law. The action also seeks
10 penalties, interest, injunctive and other relief based on the California Labor Code, California
11 Business & Professions Code section 17200, et seq., and the California Private Attorney General
12 Act, Labor Code section 2698, et seq. (“PAGA”). Plaintiff seeks relief for a class of 119 non-
13 exempt dairy workers who were employed by Defendants any time from between February 17,
14 2019 to June 7, 2024 (“Settlement Class”). The claims of all members of the Settlement Class are
15 based on identical provisions of the Labor Code and Industrial Welfare Commission (IWC) Wage
16 Orders.

17 After conducting extensive discovery, including the exchange of thousands of records (e.g.
18 payroll and time cards) for 77 class members, constituting approximately 65% of the putative class,
19 the parties engaged in mediation. Subject to final approval by this Court, the parties have agreed to
20 settle this action for Four Hundred Ten Thousand Dollars (\$410,000.00). The total sum will be
21 paid to a common fund for distribution to the Settlement Class, the payment of the costs of claims
22 administration, payment of class representative service awards, litigation costs, and attorneys’ fees.
23 The employer’s share of payroll taxes will be paid separately by Defendants. The \$410,000 is to
24 be paid on an “all in” basis, meaning that none of the funds will revert to the Defendants, even if
25 not all class members can be located. Should any portion of the class member common fund
26 remain in the trust account after the final distribution, said amount shall be distributed to
27 Community Services Employment Training (CSET)-Family Resources Centers, a non-profit
28 organization assisting Central Valley residents, as a *cy pres* recipient. The settlement was the result

1 of arms-length, non-collusive negotiations between the parties, including mediation with
2 experienced employment mediator Honorable Patrick J. O'Hara. The settlement is a fair result for
3 the Settlement Class.

4 By this motion, the Named Plaintiff seeks preliminary approval of the proposed settlement
5 reached with Defendants ("Settlement Agreement"), a copy of which is attached as Exhibit 1 to the
6 accompanying Declaration of Enrique Martinez in Support of Motion for Preliminary Approval of
7 Class Action Settlement ("Martinez Decl."). Plaintiff also seeks conditional certification of the
8 proposed Settlement Class under California Rules of Court, rule 3.769; appointment of the Named
9 Plaintiff as class representative; appointment of Plaintiff's Counsel as Counsel to the Class;
10 approval of the proposed form and method of class notice and claims process; and the scheduling
11 of a Final Approval hearing to be held after the notice and claims process has been completed.

12 **II. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE—**

13 ***DUNK/KULLAR ANALYSIS***

14 **A. The Standard for Preliminary Approval**

15 A class action settlement requires Court approval. (See Cal. Rules of Court, rule 3.769.)
16 The decision to approve or reject a proposed settlement is committed to the sound discretion of the
17 Court. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235.) However, the law
18 favors the settlement of lawsuits, particularly in class actions and other complex cases where
19 substantial resources can be conserved by avoiding the time, expense, and rigors of protracted
20 litigation. (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 53; see also *Neary v. Regents*
21 *of Univ. of Cal.* (1992) 3 Cal.4th 273, 277-281.)

22 This motion for preliminary approval is the first in a two-step process for determining
23 whether the proposed class settlement should ultimately be approved. The purpose of preliminary
24 approval is to make an initial determination as to whether the settlement is within the range of
25 possible approval as fair. If so, the court should order notice of the settlement to the class and
26 schedule a final fairness hearing. (*Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th
27 322, 336.) In determining whether a class action settlement is fair, a trial court "consider[s] factors
28 such as the strength of plaintiffs' case; the risk, expense, complexity and likely duration of further

1 litigation; the risk of maintaining class action status through trial; the amount offered in settlement;
2 the extent of discovery completed and the stage of the proceedings; the experience and views of
3 counsel; the presence of a governmental participant; and the reaction of the class members to the
4 proposed settlement.” (*Id.*; accord, *Wershba*, *supra*, 91 Cal.App.4th at pp. 244-245.) “The list of
5 factors is not exclusive and the court is free to engage in a balancing and weighing of the factors
6 depending on the circumstances of each case.” (*Wershba*, at p. 245.)

7 Ultimately, in determining whether a proposed settlement is fair, the inquiry is designed to
8 ensure that “the agreement is not the product of fraud or overreaching by, or collusion between, the
9 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
10 concerned.” (*In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 505,
11 citation and internal quotation marks omitted.)

12 **B. The Terms of the Proposed Settlement Are Beneficial for the Class**

13 This Court should begin with the presumption that the proposed class settlement is fair.
14 “[A] presumption of fairness exists where: (1) the settlement is reached through arm’s-length
15 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
16 intelligently; (3) counsel is experienced in similar litigation” (*Dunk v. Ford Motor Co.* (1996)
17 48 Cal.App.4th 1794, 1802; *see also Wershba*, *supra*, 91 Cal.App.4th at p. 245.)¹ The Court must
18 satisfy itself that the class settlement is within ‘ballpark’ of reasonableness.” (*Kullar v. Foot Locker*
19 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) The Settlement Agreement in this case satisfies all
20 these factors.

21 First, this proposed Settlement Agreement is the result of arm’s-length bargaining, reached
22 partly with the help of mediator Honorable Patrick J. O’Hara, a highly experienced and respected
23 employment mediator. (Martinez Decl. ¶ 5.)

24 Second, the settlement was based on a substantial amount of information. Defendants
25 produced most of class member documents—including payroll data, timecards, and dates of
26 employment pertaining to class members—that allowed Plaintiff’s counsel to confidently evaluate

27
28 ¹ A fourth factor, whether the “percentage of objectors is small,” should also be considered at the final approval stage,
after the class has been given notice and the opportunity to object. (*Dunk*, *supra*, 48 Cal.App.4th at p. 1802.)

1 the strengths and weaknesses of the case and to calculate estimated damages owed to the proposed
2 Settlement Class. Defendants produced records for 77 class members or approximately 65% of the
3 putative class. (Martinez Decl. ¶ 6.) Plaintiff's counsel also obtained information from class
4 members to reasonably evaluate the alleged violations. They gathered documents and interviewed
5 many class members concerning unpaid premiums for meal and rest periods, unpaid overtime
6 wages and work-related expenses (boots and aprons). (*Id.* ¶ 6.)

7 According to Plaintiff counsel's estimates, the maximum potential recovery for the primary
8 claims of meal and rest period violations is approximately \$1.5 million assuming the class was
9 certified, and certification was maintained through trial and judgment, all defense challenges to
10 potential liability were defeated, and plaintiffs recovered one hundred percent on this claim. The
11 proposed \$410,000 settlement constitutes over 27% of this maximum amount for these underlying
12 claims, not including unreimbursed business expenses and overtime damages. The estimated
13 amount owed for the derivative claims of waiting time penalties, inaccurate paystubs, and for
14 PAGA penalties is approximately \$490,000. (*Id.*)

15 Third, Plaintiff's counsel has substantial litigation experience in wage and hour class
16 actions. They are fully familiar with the legal and factual issues in this case, having handled
17 dozens of wage and hour class actions as well as other types of class action and complex litigation.
18 In their opinion, the settlement is fair and adequate, especially considering the significant recovery
19 for the class members and the relatively small sizes of the employer and the proposed class.
20 (Martinez Decl. ¶¶ 10-15.)

21 **C. The Strength of Plaintiff's Case and the Risk, Expense, Complexity and Likely**
22 **Duration of Further Litigation**

23 The next consideration in determining the reasonableness of a proposed settlement is an
24 assessment of the strength of Plaintiff's case, both in terms of class certification and on the merits,
25 weighed against the risk, expense, complexity, and likely duration of further litigation. (*7-Eleven*
26 *Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146; *Dunk, supra*,
27 48 Cal.App.4th at p. 1801.)

1 With respect to the certification issue, Plaintiff’s counsel believes that the class would have
2 been certified, and should be conditionally certified for settlement purposes, as more fully argued
3 in section III. below. The Labor Code section 226.7 claim, in particular, is of a type typically
4 subject to class certification and, as the California Supreme Court has noted, “ ‘this state has a
5 public policy which encourages the use of the class action device,’ ” particularly with regard to
6 unpaid wages. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340, citation
7 omitted.) Indeed, “[c]ourts regularly certify class actions to resolve wage and hour claims.” (*Bufile*
8 *v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1208-1209 [holding that the trial
9 court should have certified a class of employees who asserted claims for wage violations].)

10 Having noted that, however, it is also true that Defendants intended to vigorously contest
11 class certification based on several arguments. Issues that would have been litigated in connection
12 with class certification include whether individual questions—such as whether putative class
13 members were not provided with rest periods and the amount each individual class member was
14 owed—predominated over common issues. While, again, Plaintiff disputes these arguments, their
15 existence demonstrates the risks and complexity of this case and must be considered in assessing
16 the value of an early settlement. (Martinez Decl. ¶ 7.)

17 In addition to the risks inherent in the litigation, delay would not be in the interests of the
18 class. An appeal would have led to further delay, meaning that the case could have lasted for
19 another three or more years. (*Id.*) The length of time is always significant, as memories fade and
20 witnesses can be difficult to find. It is especially significant in a case such as this one, which
21 involves low-wage immigrant workers who are more difficult to find in an industry characterized
22 by frequent turnover. As a practical matter, the longer it takes to resolve the case, the more
23 difficult it could be to locate class members to testify at trial and to compensate them for their
24 losses once the case has concluded. Thus, the avoidance of delay, as well as the immediate
25 financial needs of these class members, weighs in favor of settlement.

26 **D. Amount Offered in Settlement**

27 The total settlement of Four Hundred Ten Thousand Dollars (\$410,000) includes payments
28 to class members, PAGA payment of \$10,000 (\$2,500 going to aggrieved workers), claims

1 administration payment, the Named Plaintiff's service award, attorneys' fees, and costs of
2 litigation. (Settlement Agreement ¶¶ 33, 35.) Plaintiff's counsel will apply for 33.33%
3 (\$167,666.67) in attorney's fees, and for reimbursement of \$24,000 in costs. (*Id.* ¶ 38.1.) The
4 Named Plaintiff is requesting a service award of \$10,000. (*Id.* ¶ 38.2.) In addition, the \$7,500 costs
5 of notice and claims administration will be paid from the settlement fund. (*Id.* ¶ 38.3.) This means
6 that 119 class members will share in the sum of \$221,833.33 resulting in an average recovery of
7 approximately \$1,864.15 per person. (Martinez Decl. ¶¶ 8, 14.) The Distribution of the Settlement
8 Awards to the class members will be 30 days after Defendants make the complete payment to the
9 Class Settlement Fund.

10 **E. Service Award to the Named Plaintiff**

11 The Settlement provides for a service award to the Named Plaintiff in the amount of
12 \$10,000. Courts acknowledge that active litigants are entitled to be compensated for bearing the
13 risks and time to represent others, (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)
14 186 Cal.App.4th 399, 334-35), and “ ‘incentive awards are fairly typical in class action cases.’ ”
15 (*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393, quoting *Rodriguez v.*
16 *West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958; 4 Newberg on Class Actions (4th ed.
17 2002) § 11:38, p. 81].) These awards “ ‘are intended to compensate class representatives for work
18 done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the
19 action, and, sometimes, to recognize their willingness to act as a private attorney general.’ ”
20 (*Cellphone Fee Termination Cases*, at pp. 1393-1394, quoting *Rodriguez*, at pp. 958-959.)

21 Service or enhancement payments are especially appropriate in employment litigation,
22 where “the plaintiff is often a former or current employee of the defendant, and thus, by lending his
23 name to the litigation, he has, for the benefit of the class a whole, undertaken the risk of adverse
24 actions by the employer or co-workers.” (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228
25 F.R.D. 174, 187.) Courts around the country have approved substantial incentive payments in
26 employment-related class and collective actions. (See, e.g., *Bredbenner v. Liberty Travel, Inc.*
27 (D.N.J. Apr. 8, 2011) 2011 WL 1344745, *22-23 [approving incentive payments of \$10,000 to
28 eight named plaintiffs, and citing 2006 study referenced in 4 Newberg on Class Actions § 11.38, at

1 11-80, that showed \$16,000 was the average incentive award per class representative]; *Clark v.*
2 *Ecolab, Inc.* (S.D.N.Y. May 11, 2010) 2010 WL 1948198, *9 [approving \$10,000 service awards
3 to seven named plaintiffs in hybrid class/collective action involving unpaid overtime]; *In re Janney*
4 *Montgomery Scott LLC Financial Consultant Litigation* (E.D. Pa. Jul. 16, 2009) 2009 WL
5 2137224, *12 [approving incentive payments of \$20,000 each to three named plaintiffs].)

6 Here, the service award is justified by the Named Plaintiff's level of participation in this
7 lawsuit and the risks he took to pursue the interests of the class. The Named Plaintiff assisted in
8 the investigation, attended meetings with counsel, gathered wage information for himself and other
9 Settlement Class members, contacted other Settlement Class members to seek their participation in
10 the case, and prepared for and participated in mediation. (Martinez Decl. ¶ 9; and Declaration of
11 Juan C. Solano in Support of Motion for Preliminary Approval of Class Action Settlement).

12 Moreover, the Named Plaintiff believes he has undertaken personal risks in serving as the
13 driving force behind this lawsuit. (*Id.*) He understands work opportunities are scarce and that the
14 proceedings in this case are a matter of public record. He reasonably fears that he could be labeled
15 a troublemaker for challenging his employers, and he was willing to run this risk for the benefit of
16 not only himself, but his co-workers. Finally, he participated in a class action, despite the economic
17 difficulties he and his family faced, because he wanted to pursue relief for the entire class, not just
18 himself. Accordingly, the requested service payment of \$10,000 to the Named Plaintiff is fair and
19 reasonable considering all the circumstances.

20 **F. The Extent of Discovery Completed, Stage of the Proceedings, and Experience**
21 **and Views of Counsel**

22 As set forth above, by the time of the mediation, the parties had engaged in significant
23 formal discovery to assess the scope of the class and nature of the class claims, and to calculate the
24 damages with precision. (Martinez Decl. ¶¶ 3, 6.) This information provided the parties with
25 ample information about the relative strengths and weaknesses of each other's positions to
26 negotiate a fair settlement.

27 Although it occurred in this case, extensive formal discovery is not required to evaluate the
28 value of a class case and to negotiate the terms of a fair and adequate settlement. (*7-Eleven*

1 *Owners for Fair Franchising, supra*, 85 Cal.App.4th at p. 1150.) On the contrary, “[i]n the context
2 of class action settlements, ‘formal discovery is not a necessary ticket to the bargaining table’
3 where the parties have sufficient information to make an informed decision about settlement.”
4 (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1239.) Accordingly, the
5 Settlement Agreement should be preliminarily approved as fair, reasonable, and adequate.

6 **III. CONDITIONAL CLASS CERTIFICATION IS APPROPRIATE**

7 Class actions are statutorily authorized “when the question is one of a common or general
8 interest, of many persons, or when the parties are numerous, and it is impracticable to bring them
9 all before the court” (Code Civ. Proc., § 382.) “The certification question is ‘essentially a
10 procedural one that does not ask whether an action is legally or factually meritorious.’ ” (*Sav-On*,
11 *supra*, 34 Cal.4th at p. 326.) “ ‘[T]his state has a public policy which encourages the use of the
12 class action device.’ ” (*Id.* at p. 340, citation omitted; *see Aguiar v. Cintas Corp. No. 2* (2006) 144
13 Cal.App.4th 121, 132.)

14 Litigation by class action has long been recognized as a superior method of resolving wage
15 and hour claims in California (see *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
16 1004, 1033), including those seeking redress for unpaid overtime wages. The central question in
17 determining whether use of the class mechanism is appropriate is “whether the theory of recovery
18 advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to
19 class treatment.” (*Sav-On, supra*, 34 Cal.4th at p. 327; accord, *Duran v. U.S. Bank National Assn.*
20 (2014) 59 Cal.4th 1, 28). The Court has broad discretion to certify a class for purposes of
21 settlement. (*Dunk*, 48 Cal.App.4th at p. 1807 n.19 [holding that certification for a settlement class
22 is subject to a “lesser standard of scrutiny” than for a litigation class].)

23 The party seeking class certification must establish (1) “the existence of an ascertainable
24 and sufficiently numerous class;” (2) “a well-defined community of interest;” and (3) “substantial
25 benefits from certification that render proceeding as a class superior to the alternatives.” (*Brinker*,
26 *supra*, 53 Cal.4th at p. 1021.) Those requirements are met here.

27 **A. The Proposed Settlement Class is Ascertainable and Numerous**

1 The proposed settlement class is defined as follows: All non-exempt employees who were
2 employed by Defendants any time between February 17, 2019 to June 7, 2024, excluding all of
3 Defendants' family members, office workers, and salaried employees. The Parties anticipate a class
4 size of approximately 119 class members. (Settlement ¶ 22; Martinez Decl. ¶ 2.)

5 This proposed class definition of 119 persons satisfies numerosity; it is both objective and
6 narrowly defined, and the class is readily ascertainable from Defendants' payroll data and dates of
7 employment.

8 **B. The Community of Interest Requirement is Met**

9 The community of interest requirement involves three inquiries: (1) whether common
10 questions of law or fact predominate; (2) whether the class representatives have claims or defenses
11 typical of the class; and (3) whether the class representatives can adequately represent the class.
12 (*Sav-On, supra*, 34 Cal.4th at p. 326; accord, *Fireside Bank v. Superior Court* (2007) 40 Cal.4th
13 1069, 1089.) “ ‘[T]his means “each member must not be required to individually litigate numerous
14 and substantial questions to determine his [or her] right to recover following the class judgment;
15 and the issues which may be jointly tried, when compared with those requiring separate
16 adjudication, must be sufficiently numerous and substantial to make class action advantageous to
17 the judicial process and to the litigants.” ’ ” (*Lockheed Martin Corp. v. Superior Court* (2003) 29
18 Cal.4th 1096, 1108.)

19 **1. Common Questions Predominate**

20 Issues of law or fact common to the Settlement Class predominate, because all members
21 were treated identically under Defendants' uniform policies and practices with regard to
22 Defendants' failure to pay overtime wages, failure to permit and authorize adequate rest and meal
23 periods and failure to reimburse work-related expenses.

24 The “ ‘ultimate question’ ” for predominance is whether “ ‘the issues which may be jointly
25 tried, when compared with those requiring separate adjudication, are so numerous or substantial
26 that the maintenance of a class action would be advantageous to the judicial process and to the
27 litigants.’ ” (*Duran, supra*, 59 Cal.4th at p. 28, *quoting Collins v. Rocha* (1972) 7 Cal.3d 232, 238.)
28 “The answer hinges on ‘whether the theory of recovery advanced by the proponents of certification

1 is, as an analytical matter, likely to prove amenable to class treatment.”’ (*Id.*, quoting *Sav-On*,
2 *supra*, 34 Cal.4th at p. 327.)

3 Here, common questions include:

- 4 • Whether class members received the meal periods to which they were entitled under
5 Labor Code sections 226.7 and 512;
- 6 • Whether class members’ time records, which showed that they did not receive such
7 meal breaks, were accurate;
- 8 • Whether class members received the rest breaks to which they were entitled under the
9 applicable Wage Order;
- 10 • Whether class members were unlawfully denied reimbursement for work-related
11 expenses under Labor Code section 2802;
- 12 • Whether class members were entitled to overtime compensation under Labor Code
13 section 1194 and applicable Industrial Wage Commission Wage Order after working a
14 certain number of hours per day and, if so, whether they were paid in compliance with
15 that requirement;
- 16 • Whether class members who are former employees are entitled to waiting time penalties
17 for Defendants’ failure to pay all wages due on termination pursuant to Labor Code
18 section 203; and
- 19 • Whether Defendants provided class members with accurate itemized statements in
20 accordance with Labor Code section 226.

21 The answers to these and other legal and factual questions would resolve the claims of all
22 class members in a single proceeding. Thus, the proposed Settlement Class satisfies the
23 commonality requirement.

24 **2. The Named Plaintiff’s Claims Are Typical and He Will Adequately** 25 **Represent the Class**

26 The purpose of the typicality requirement is to ensure that, as here, the interest of the
27 Named Plaintiff aligns with the interests of the class. “The test of typicality is whether other
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1 members have the same or similar injury, whether the action is based on conduct, which is not
2 unique to the named plaintiffs, and whether other class members have been injured by the same
3 course of conduct.” (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502, citation and
4 internal quotation marks omitted.) To satisfy the typicality requirement, the class representatives’
5 interests must be similar to those of class members. (*Richmond v. Dart Industries, Inc.* (1981) 29
6 Cal. 3d 462, 478.)

7 The adequacy of representation component is related to, but not synonymous with, the
8 typicality requirement. It “ ‘ “serves to uncover conflicts of interest between named parties and the
9 class they seek to represent.” ’ ” (*Capitol People First v. Dept. of Developmental Services* (2007)
10 155 Cal.App.4th 676, 697, citations omitted; accord, *Johnson v. GlaxoSmithKline, Inc.* (2008) 166
11 Cal.App.4th 1497, 1509.) Adequacy “comes into play when the party opposing certification brings
12 forth evidence indicating widespread antagonism to the class suit.” (*Capitol People First, supra*,
13 155 Cal.App.4th at pp. 696-697.) Adequacy of representation also looks at whether Plaintiff’s
14 counsel is qualified to conduct the litigation. (*McGhee v. Bank of America* (1976) 60 Cal.App.3d
15 442, 450.)

16 In this case, typicality and adequacy are both satisfied. Plaintiff was employed as dairy
17 worker and performed the similar duties as the rest of the class. He has claims typical of those in
18 the class because he was not reimbursed for work-related expenses, not compensated for all of his
19 overtime wages, not provided adequate meal and rest periods, not paid all of his wages upon
20 separation of employment and not given accurate wage statements. He can adequately and fairly
21 represent the interests of the class because the individual interests are fully congruent with those of
22 the class.

23 The Named Plaintiff is an adequate class representative because he raised claims similar or
24 identical to those to be raised by members of the class. He has no conflicts of interest with the class
25 and cooperated fully with Plaintiff’s counsel in assisting with the investigation, prosecution, and
26 mediation of the case. As to the adequacy of counsel, as explained above and in the declaration
27 filed herewith, Plaintiff’s counsel has many years of experience in class action litigation and has
28

1 successfully handled dozens of similar wage and hour class actions. (Martinez Decl. ¶¶ 10-15.)
2 The typicality and adequacy of representation requirements for class certification are satisfied.

3 **3. Classwide Settlement Is Superior to Other Available Methods of Resolution**

4 In a case like this one which settled prior to class certification, the court's evaluation of the
5 superiority requirement differs somewhat from its consideration of certification issues when the
6 class action has not yet been settled. In some ways, the standard for certification of a settlement-
7 only class is lessened. Since no trial is anticipated in a settlement-only class case, "the case
8 management issues inherent in the ascertainable class determination need not be confronted."
9 (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93, quoting *Global Minerals & Metals*
10 *Corp. v. Superior Court* (2003) 113 Cal.App.4th at p. 859.) On the other hand, issues "designed to
11 protect absentees by blocking unwarranted or overbroad class definitions," require heightened
12 scrutiny in the settlement-only class context. (*Lukey, supra*, quoting *Amchem Products, Inc. v.*
13 *Windsor* (1997) 521 U.S. 591, 620.)

14 In this case, the class definition includes approximately 119 identifiable persons who
15 suffered similar injuries and who would clearly benefit from a class-wide resolution. The
16 definition is narrow, clear, and discrete. Personal notice by U.S. mail is likely to reach most class
17 members, none of whom sufficiently sizeable claims, such as personal injury claims, that they
18 might want to bring on their own in any event. Thus, no *Amchem* problem exists and there is no
19 other indication that classwide resolution is not the most effective and superior method of dealing
20 with these claims.

21 On the contrary, "[a] class action is the superior method for managing litigation if no
22 realistic alternative exists' " (*Reynoso v. South County Concepts* (C.D. Cal. Oct. 15, 2007) 2007
23 WL 4592119, at *4, quoting *Valentino v. Carter-Wallace, Inc.* (9th Cir. 1996) 97 F.3d 1227, 1234-
24 1235), or if classwide litigation of common issues " 'reduces litigation costs and promotes greater
25 efficiency.' " (*Orvis v. Spokane County* (E.D. Wash. 2012) 281 F.R.D. 469, 475, quoting
26 *Valentino, supra*, 97 F.3d at p. 1234.) In this case, the proposed Settlement Class consists of a
27 significant number of low-wage immigrant workers, many of whom no longer work for
28 Defendants, and who lack the means to finance an individual lawsuit. Their claims, while

1 significant to them as individuals, are too small to warrant the filing and prosecution of a host of
2 separate actions. In other words, the cost of litigating the individual claims would be prohibitive to
3 class members, and burdensome on the court system. Under these circumstances, class treatment is
4 appropriate because “[i]t is more likely that, absent a class suit, defendant will retain the benefits
5 from its alleged wrongs.” (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 715.) For this reason, a
6 class action is superior to other available methods of resolution.

7 **IV. THE COURT SHOULD APPROVE THE PROPOSED NOTICE OF THE FINAL** 8 **APPROVAL HEARING**

9 The Court’s order preliminarily approving a class settlement must include the notice to be
10 given to the class. (Cal. Rules of Court, rule 3.769, subd. (e).) Here, the proposed Class Notice
11 attached as Exhibit A to the Settlement Agreement satisfies all procedural requisites. (Martinez
12 Decl. Exh. 1A.)

13 “The notice must contain an explanation of the proposed settlement and procedures for
14 class members to follow in filing written objections to it and in arranging to appear at the
15 settlement hearing and state any objections to the proposed settlement.” (Cal. Rules of Court, rule
16 3.769, subd. (f).) “The purpose of a class notice in the context of a settlement is to give class
17 members sufficient information to decide whether they should accept the benefits offered, opt out
18 and pursue their own remedies, or object to the settlement. As a general rule, class notice must
19 strike a balance between thoroughness and the need to avoid unduly complicating the content of
20 the notice and confusing class members. Here, again, the trial court has broad discretion.”
21 (*Wershba*, *supra*, 91 Cal.App.4th at p. 252.)

22 **A. The Notice Contains All of the Required Components**

23 The proposed Notice in this case meets all of the requirements set forth in the California
24 Rules of Court and in *Wershba*, including: (1) a class definition; (2) a description of the substantive
25 issues and proceedings to date; (3) a neutral description of the proposed settlement; (4) the amount
26 of attorney’s fees and costs sought; (5) the right to opt out of the settlement class and the opt-out
27 procedure; (6) the right to challenge the number of pay periods worked; (7) the right to object and
28 the procedure for filing a written objection; (8) the consequences of remaining a settlement class

1 member; (9) the date, time and place of the final approval hearing; and (10) the identity and contact
2 information for the parties' counsel. (Martinez Decl. Exh. 1A.)

3 **B. The Method of Notice is Appropriate**

4 Following an order from this Court granting preliminary approval, the Defendants will
5 provide the Claims Administrator, CPT Group, Inc., with information regarding class members
6 (including names, contact information, the amount of Settlement Awards, and other relevant
7 information). The Administrator will then mail the Notice to class members. (Settlement
8 Agreement ¶¶ 49, 50.) The Notice packet will be in English and Spanish.

9 **V. THE ATTORNEYS' FEES PROVISION SHOULD BE PRELIMINARILY**
10 **APPROVED**

11 In a class action settlement, the amount of attorney's fees requires court approval (Cal.
12 Rules of Court, rule. 3.769, subd. (b)). Under the proposed Settlement Agreement, Plaintiff's
13 counsel will apply for an attorney's fee award of \$136,666.67, or 33.33% of the total settlement
14 fund. That motion will be heard in conjunction with the Motion for Final Approval. In support of
15 their request for fees, Plaintiff's counsel will present evidence of their hours worked and resulting
16 lodestar, along with a more comprehensive discussion of the applicable authorities supporting the
17 requested award. (Martinez Decl. ¶ 10.) For the present purposes of preliminary approval, Plaintiff
18 respectfully asks that the Court conditionally rule that the amount requested is reasonable.

19 California courts typically calculate attorney's fees in a class action settlement as a
20 percentage of the common fund, so long as the amount is " 'cross-check[ed]' " against the value of
21 the lodestar. (*Lealao, supra*, 82 Cal.App.4th at p. 45.) The lodestar may be enhanced based on
22 factors such as the amount at stake, the result obtained by counsel on behalf of the class. (*Id.* at pp.
23 45-46.) In *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, the court explained that
24 "[r]egardless of whether attorney fees are determined using the lodestar method or awarded based
25 on a percentage-of-the-benefit analysis under the common fund doctrine, [t]he ultimate goal ... is
26 the award of a reasonable fee to compensate counsel for their efforts, irrespective of the method of
27 calculation. It is not an abuse of discretion to choose one method over another as long as the
28 method chosen is applied consistently using percentage figures that accurately reflect the

1 marketplace.” (*Id.* at pp. 557–558, citations and internal quotation marks omitted; accord, *Chavez*
2 *v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 65–66; see also *Consumer Cause, Inc. v. Mrs. Gooch’s*
3 *Natural Food Markets, Inc.* (2005) 127 Cal.App.4th 387, 397 [the common fund doctrine is
4 “frequently applied in class actions when the efforts of the attorney for the named class
5 representatives produce monetary benefits for the entire class”]; *Wershba, supra*, 91 Cal.App.4th at
6 p. 254 “[c]ourts recognize two methods for calculating attorney fees in civil class actions: the
7 lodestar/multiplier method and the percentage of recovery method”].)

8 The attorneys’ fees provision in the proposed Settlement Agreement is equal to the 33.33%
9 common fund percentage commonly used in class actions. (*Lealao, supra*, 82 Cal.App.4th 19, 36).
10 Accordingly, the requested attorneys’ fees are appropriate and should be preliminarily approved.

11 Nonetheless, Class Counsel has calculated their lodestar at \$172,660. Since November
12 2022, Class Counsel investigated this matter, conducted thorough discovery, reviewed thousands of
13 pages of records, and prepared for mediation, among other work to litigate this case.

14 The lodestar of \$172,660 was calculated using rates reflecting those currently earned in the
15 marketplace. Thus, the lodestar exceeds Plaintiff’s fee request by nearly \$36,000, reflecting a
16 significant negative multiplier. Enrique Martinez was admitted to the California Bar in 2000 and
17 his hourly rate is \$775. Class Counsel have spent 162.40 hours on this case since November 2022,
18 and expect to spend more hours in the future responding to class member questions through the
19 distribution process. Counsel’s paralegals also devoted 374.4 hours to the case, primarily working
20 with the class data, obtaining declarations for the class certification motion, and handling calls
21 from class members. The hourly rate for the firm’s paralegals is \$125. Martinez Decl. ¶ 10.

22 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
23 experience in the relevant community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084,
24 1096). Class Counsel’s skill and experience here justifies the requested rate and fees. Class
25 Counsel have a substantial amount of experience in wage and hour class actions. Martinez Decl. ¶
26 15. Class Counsel has litigated this matter thoroughly and diligently and has reached a fair result
27 for the class.

1 **VI. CONCLUSION**

2 For all of the foregoing reasons, the Named Plaintiff respectfully requests that the Court
3 preliminarily approve the class settlement, conditionally certify the settlement class, and enter the
4 proposed Order submitted concurrently herewith.

5
6 Dated: December 5, 2024

Respectfully Submitted,

7 **LAW OFFICES OF ENRIQUE MARTINEZ**

8
9 By: *Enrique Martinez*
10 Enrique Martinez
11 *Attorney for Plaintiff and Putative Class*
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