Chandler Roth, Esq. (SBN: 334206)
Taleah Phillips, Esq. (SBN 357082)
GOMEZ TRIAL ATTORNEYS
755 Front Street
San Diego, CA 92101
Telephone: (619) 237-3490
Facsimile: (619) 237-3496

Chad F. Edwards (SBN 308909)
ROSENBERG, SHPALL & ZEIGEN, APLC
Bernardo Heights Corporate Center
10815 Rancho Bernardo Road, Suite 260
San Diego, California 92127
Telephone: (619) 232-1826
Facsimile: (619) 232-1859
Email: rsalaw@yahoo.com

Attorneys for Plaintiffs,
RICARDO RUIZ, MARIA OROZCO

SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE

RICARDO RUIZ, individually, and on behalf of all persons similarly situated, MARIA OROZCO, individually, and on behalf of all persons similarly situated, Plaintiffs, v. ECO FARMS AVOCADOS, INC, a corporation; ECO FARMS FIELD INC., a corporation; ECO FARMS INVESTMENT HOLDINGS, LLC., a limited liability company; ECO FARMS REAL ESTATE, LLC., a limited liability company; ECO FARMS TRADING OPERATIONS, LLC., a limited liability company; and DOES 1 to 20, inclusive, Defendants.	**Case No.:** CVRI 2304424 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Hearing Date: 8:30 a.m. Hearing Time: December 17, 2025 Judge: Hon. Harold W. Hopp Dept: 1 Action Filed: August 4, 2023 Trial Date: Not Set

Table of Authorities

Cases

Statutes

Rules

Other Authorities

I. INTRODUCTION

Plaintiffs Ricardo Ruiz and Maria Orozco ("Plaintiffs") respectfully submit this memorandum in support of the unopposed motion for preliminary approval of the proposed class action settlement with Defendants Eco Farms Avocados, Inc., Eco Farms Field Inc., Eco Farms Investment Holdings, LLC, Eco Farms Real Estate, LLC, and Eco Farms Trading Operations, LLC, ("Defendants"), and seek entry of an order: (1) preliminarily approving the proposed settlement of this class action with Defendants; (2) for settlement purposes only, conditionally certifying the Class, which is comprised of "all individuals who were employed by Defendants in California and classified as a non-exempt employee at any time during the Class Period" of Class Period" means the period of time from August 4, 2019 through the earlier of (i) the date of Preliminary Approval, or (ii) the date the Class collectively reached 13,232 Workweeks. The Parties understand and believe that the Class has already exceeded 13,232 Workweeks; however, the precise date on which this threshold was reached shall be confirmed by the Settlement Administrator based on Defendants' payroll records; (3) provisionally appointing Plaintiffs as the representative of the Class; (4) provisionally appointing Chad F. Edwards of Rosenberg Shpall & Zeigen, APLC, and Chandler Roth of Gomez Trial Attorneys as Class Counsel for the Class; (5) approving the form and method for providing class-wide notice; (6) directing that notice of the proposed settlement be given to the Class; (7) appointing ILYM Group as the Administrator; and (8) scheduling a final approval hearing date proposed for __________ to consider Plaintiffs' motion for final approval of the settlement and for approval of attorneys' fees and expenses. Plaintiffs and Defendants (collectively the "Parties") have reached a full and final settlement of the above-captioned action, which is set forth in the Class Action and PAGA Settlement Agreement ("Agreement") filed concurrently with the Court.[1] A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Chad Edwards ("Decl. Edwards"), served and filed herewith, and the form of the Agreement is the Riverside Superior Court model form for class and PAGA settlements.

As consideration for this Settlement, the Gross Settlement Amount is Three Hundred

[1] Capitalized terms shall have the same meaning as defined in the Agreement.

Ninety-Nine Thousand Dollars ($399,000) to be paid by Defendants, as set forth in the Agreement. (Decl. Edwards at ¶9; Agreement 3.1.) The Gross Settlement Amount will settle all issues pending in the Action between the Parties and will be made in settlement of the Released Class Claims. (Id.) The Gross Settlement Amount includes all payments of Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the Administration Expenses Payment. (Id.) The Gross Settlement Amount does not include the employer's share of payroll taxes which will be separately paid by Defendants. (Id.) The Settlement is all-in with no reversion to Defendants and no need to submit a claim form. Decl. Edwards at ¶ 9.

The following are the key financial terms of the Settlement and the proposed deductions:

1. The proposed Settlement provides for a Gross Settlement Amount of $399,000.00. Subject to Court approval, the following deductions are contemplated from the Gross Settlement Amount:
2. **Plaintiffs' Service Awards**: Up to $20,000.00 in total, not to exceed $10,000.00 for each Plaintiff, in recognition of their service to the Class. (Agreement at 3.2(a); Edwards Decl. ¶ 27)
3. **Class Counsel Litigation Expenses:** An estimated $20,663.93, subject to Court approval. If Class Counsel's litigation costs increase during the settlement administration process, Class Counsel reserves the right to request additional reimbursement. (Agreement 3.2(b); Edwards Decl. ¶ 27.)
4. **Class Counsel Fees Payment**: Up to $133,000, which represents no more than One-Third (1/3) of the Gross Settlement Amount, subject to Court approval. (Agreement 3.2(b); Edwards Decl. ¶ 40.)
5. **PAGA Penalties**: $7,800 allocated pursuant to the Private Attorneys General Act ("PAGA"), of which seventy-five percent (75%) will be paid to the Labor and Workforce Development Agency ("LWDA") and twenty-five percent (25%) will be distributed to the Aggrieved Employees. (Agreement 3.2(d); Edwards Decl. ¶ 28.)
6. **Settlement Administration Costs:** Up to $10,000.00, not to exceed actual costs

incurred by the Settlement Administrator. The current estimate by ILYM Group is $6,650.00. (Edwards Decl. ¶ 43.)

7. After the above deductions, the Net Settlement Amount is estimated to be **$207,536.07** which will be distributed to the Participating Class Members on a proportional basis.

Based on a Net Settlement Amount of $207,536.07 the average recovery is $1,242.73 per Class Member for each of the 167 Class Members, and the PAGA allocation equals $20.31 for each of the 96 Aggrieved Employees. (Agreement at ¶5.1; Decl. Edwards at ¶13.)

On July 11, 2024, the Parties participated in mediation presided over by Katherine Edwards, a respected and experienced mediator of employment law issues. The Parties reached an agreement to settle the Action based upon a mediator's proposal. (Decl. Edwards at ¶11.) The Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a substantial monetary payment, and there are substantial litigation and class-certification risks. Therefore, Plaintiffs respectfully request that this Court grant preliminary approval of the Agreement and enter the proposed order submitted herewith.

II. DESCRIPTION OF THE SETTLEMENT

The Gross Settlement Amount is Three Hundred Ninety-Nine Thousand Dollars ($399,000). (Agreement at 3.1; Edwards Decl. ¶9.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the Class Representative Service Payment to Plaintiffs; and (5) the PAGA Penalties payment. (Agreement at 1.19.) The Gross Settlement Amount does not include Defendants' share of payroll taxes. (Agreement at ¶ 3.1(b).) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at 6.4.)

Within sixty (60) days of the Effective Date, Defendants shall deposit the Gross Settlement

Amount with the Administrator. (Agreement at ¶ 5.3.) The distribution of Individual Class Payments to Participating Class Members along with the other Court-approved distributions shall be made by the Administrator within twenty-one (21) days after Defendants fully fund the Gross Settlement Amount. (Agreement at ¶ 6.1.)

The amount remaining in the Gross Settlement Amount after the deduction of Court-approved amounts for Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment (called the "Net Settlement Amount") shall be allocated to Class Members as their Individual Class Payments. (Agreement at section 4.1-4.4; Edwards Decl. ¶ 21, 23.) From the Net Settlement Amount, the Individual Class Payment for each Participating Class Member will be calculated by the Administrator based upon the proposed distribution formulas. (Agreement at ¶ 4.2; Edwards Decl. ¶ 23.)

Class Members may choose to opt-out of the Settlement by following the directions in the Class Notice. (Agreement at ¶ 9.4(a); Edwards Decl. ¶ 24.) All Class Members who do not "opt out" will be deemed Participating Class Members who will be bound by the Settlement and will be entitled to receive an Individual Class Payment. (Agreement at ¶ 9.4(c).) All Aggrieved Employees, including those who submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will remain subject to the release of the Released PAGA Claims regardless of their request for exclusion. (Agreement at ¶ 9.4(d).) Finally, the Class Notice will advise the Class Members of their right to object to the Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 9.5 and 9.6; Ex. A to Agreement; Edwards Decl. ¶ 38.)

A Participating Class Member must cash his or her Individual Class Payment check within 180 days after it is mailed. (Agreement at ¶ 6.2.) Any Individual Class Payment or Individual PAGA Payment checks that remain uncashed after the void date will be redistributed on a pro rata basis to Participating Class Members who cashed their original checks. If redistribution is not feasible, the remaining uncashed funds will be handled pursuant to California Code of Civil Procedure section 384, and such amounts will be transmitted to the California Controller's Unclaimed Property Fund in the name of the affected Participating Class Members and/or Aggrieved Employees, thereby leaving no unpaid residue. If the Court does not approve this method of distribution, the Parties will meet and confer in good faith to propose an appropriate cy pres recipient consistent with section 384. (Agreement at ¶ 6.4; Edwards Decl. ¶ 25.)

Subject to Court approval, the Parties have jointly selected ILYM Group to administer the settlement in this action ("Administrator"). (Agreement at ¶ 9.1.) The Administrator will be paid for settlement administration in an amount not to exceed $10,000. (Agreement at ¶ 3.2(c); Edwards Decl. ¶ 26.)

Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not to exceed 1/3 of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel Litigation Expenses Payment in an amount estimated to be $20,663.93 (Agreement at ¶ 3.2(b).) Subject to Court approval, the Agreement provides for a payment of no more than $10,000 each to the Plaintiffs as the Class Representative Service Payment. (Agreement at ¶ 3.2(a); Edwards Decl. ¶ 27.)

Subject to Court approval, $7,800.00 will be allocated pursuant to the Private Attorneys General Act ("PAGA"), of which seventy-five percent (75%) will be paid to the Labor and Workforce Development Agency ("LWDA") and twenty-five percent (25%) will be distributed to the Aggrieved Employees. Pursuant to the express requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows: 75% ($5,850.00) shall be allocated to the LWDA as its share of the civil penalties, and 25% ($1,950.00) shall be allocated to the Individual PAGA

Payments to be distributed to the Aggrieved Employees based on the number of their respective PAGA Pay Periods (Agreement at ¶ 3.2(d); Edwards Decl.¶ 28.). As set forth in the accompanying proof of service, the LWDA has been served with this motion and the Agreement. (Edwards Decl. ¶ 28.)

III. CASE BACKGROUND

The description of the case and claims, along with the procedural history, is set forth in the Declaration of Chad Edwards at ¶¶ 12-18. The Parties engaged in thorough investigation and the exchange of documents and information in connection with the Action which permitted Class Counsel to perform a thorough analysis of the claims. (Edwards Decl. ¶¶ 14 and 18.) The Parties participated in mediation on July 11, 2024 with Katherine J. Edwards, Esq., which after arm's length negotiations, resulted in this Settlement. (Edwards Decl. ¶ 16.)

IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL

When a proposed class-wide settlement is reached, the settlement must be submitted to the court for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87. California "[p]ublic policy generally favors the compromise of complex class action litigation." *Nordstrom Comm'n Cases*, (2010) 186 Cal.App. 4th 576, 581 quoting *Cellphone Termination Fee Cases*, (2009) 180 Cal.App.4th 1110, 1117-18. Class action settlements are approved where the proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, (1996) 48 Cal.App.4th 1794, 1801 (citing *Officers for Justice v. Civil Serv. Comm'n*, (9th Cir. 1982) 688 F.2d 615, 625).

Preliminary approval is the first of three steps that comprise the approval procedure for settlements of class actions. The second step is the dissemination of notice of the settlement to all class members. The third step is a final settlement approval hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class members may be heard regarding the settlement. *See Dunk v. Ford Motor Co.*, (1996) 48 Cal.App.4th 1794; *Manual for Complex Litigation,* Second §30.44 (1993); Cal. Rules of Court, rule 3.769.

The primary question presented on an application for preliminary approval of a proposed class action settlement is whether the proposed settlement is "within the range of possible approval." *Manual for Complex Litigation*, §1.46 at 53-57; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982).[2] Preliminary approval is merely the prerequisite to giving notice so that "the proposed settlement... may be submitted to members of the prospective Class for their acceptance or rejection." *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.,* (E.D. Pa. 1970) 323 F. Supp. 364, 371. There is "a presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining." *Wershba v. Apple Computer, Inc.,* (2001) 91 Cal.App.4th 224, 245 (citation omitted); see also *Cho v. Seagate Tech. Holdings, Inc.*, (2009) 177 Cal.App. 4th 734, 742-45 (upholding trial court's determination that settlement was "fair, reasonable and adequate" where the settlement "provided valuable benefits to the class … that were 'particularly valuable in light of the risks plaintiff would have faced if she proceeded to litigate her case.'"); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the settlement is given to the class members and a final settlement hearing is held by the Court.

a. <u>The Role Of The Court In Preliminary Approval Of A Class Action Settlement</u>

[2] California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d 800, 821 (1971). "It is well established that in the absence of relevant state precedents trial courts are urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for conducting class actions." *Frazier v. City of Richmond*, 184 Cal.App.3d 1491, 1499 (1986), *citing Green v. Obledo*, 29 Cal.3d 126, 145-146 (1981).

The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial court. *Wershba, supra,* 91 Cal.App.4th at 234-235; *Dunk,* 48 Cal.App.4th 1794. Preliminary approval does not require the trial court to answer the ultimate question of whether a proposed settlement is fair, reasonable and adequate. That final determination is made only after notice of the settlement has been given to the class members and after they have been given an opportunity to voice their views of the settlement or to be excluded from the settlement. 3B J. Moore, *Moore's Federal Practice* §§23.80 - 23.85 (2003).

In considering a potential settlement for preliminary approval purposes, the trial court does not have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute, and need not engage in a trial on the merits. *Wershba*, *supra*, 91 Cal.App.4th at 246. The Ninth Circuit explains, "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688 F.2d at 624. The question whether a proposed settlement is fair, reasonable and adequate necessarily requires a judgment and evaluation by the attorneys for the parties based upon a comparison of "'the terms of the compromise with the likely rewards of litigation.'" *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982), (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the settlement, the amount is "not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Officers for Justice*, 688 F.2d at 625.

With regard to class action settlements, the opinions of counsel should be given considerable weight both because of counsel's familiarity with this litigation and previous experience with cases such as these. *Officers for Justice*, 688 F.2d at 625; *Weinberger*, 698 F.2d at 74. "The recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979). As a result, courts hold that the recommendation of counsel is entitled to significant weight. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

b. <u>Factors To Be Considered In Granting Preliminary Approval</u>

A number of factors are to be considered in evaluating a settlement for purposes of preliminary approval. "The Court will ordinarily grant preliminary approval where the proposed settlement 'appears to be the product of serious, informed, non-collusive negotiations, has no obvious-deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval.'" *In re Motor Fuel Temperature Sales Pracs. Litig.,* No. 07-MD-1840-KHV, 2011 WL 4431090 at 5. Courts hold that "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." *Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App. 4th 116, 128. Here, the Settlement meets all of these criteria for preliminary approval and therefore the presumption applies.

i. The Settlement is the Product of Serious, Informed and Arm's Length Negotiations by Experienced Counsel

This settlement is the result of extensive and hard-fought litigation as well as negotiations before an experienced and well-respected mediator. (Edwards Decl. 16.) Defendants have expressly denied and continue to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. (Id. at ¶ 19.) Plaintiffs and Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class Claims of the Class in accordance with this Settlement.[3]

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[3] The release applicable to the Class is tethered to allegations in the Action as the "Released Class Claims" are "all claims that were alleged, or reasonably could have been alleged, based facts stated in the Operative Complaint which occurred during the Class Period. Except as expressly set forth in this Agreement, Participating Class Members do not release all other claims, including Plaintiff's individual claims alleged in the Tenth Cause of Action of the Operative Complaint (defined below) which is subject to a separate individual settlement and

Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted, and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in wage and hour employment class actions, as Class Counsel has previously litigated and certified similar claims against other employers. (See Edwards Decl. at ¶¶ 4-6, 35; Declaration of Chandler Roth ¶ 18; Declaration of Taleah Phillips ¶ 18.) The view of qualified and well-informed counsel that a class action settlement is fair, adequate, and reasonable is entitled to significant weight. *See Kullar, supra,* 168 Cal.App. 4th at 133 (the trial court "undoubtedly should continue to place reliance on the competence and integrity of counsel, the involvement of a qualified mediator, and the paucity of objectors to the settlement.")

The Parties attended an arms-length mediation session with Katherine Edwards, a respected and experienced mediator of wage and hour class actions, in order to reach this Settlement. (Edwards Decl. ¶ 16.) In preparation for the mediation, Defendants provided Class Counsel with necessary information for the members of the Class, including payroll information and data concerning the composition of the Class. (Id.) Plaintiffs analyzed the data with the assistance of damages expert, Hemming Morse, and prepared and submitted a mediation brief and damage valuation to the Mediator. (Id.) Following the mediation session, the Parties agreed to the basic terms of a settlement based upon a mediator's proposal. The final settlement terms were negotiated and set forth in the Agreement now presented for this Court's approval. (Edwards Decl. ¶ 16.) Importantly, Plaintiffs and Class Counsel believe that this Settlement is fair, reasonable and adequate. (Id.)

As consideration for this Settlement, the Gross Settlement Amount to be paid by

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release, and claims for vested benefits, wrongful termination, violations of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, and California class claims based on facts occurring outside the Class Period." (Agreement at ¶¶ 1.38 and 6.2.)

Defendants is Three Hundred Ninety-Nine Thousand Dollars ($399,000).

Class Counsel has conducted a thorough investigation into the facts of the class action. (Edwards Decl. ¶ 20.) Over the course of more than a year, Class Counsel diligently evaluated the Class Members' claims against Defendants. (Id.) Prior to the settlement negotiations, counsel for Defendants provided Class Counsel with access to necessary information for the Class. (Id.) In addition, Class Counsel previously negotiated settlements with other employers in actions involving nearly identical issues and analogous defenses. (Id.) Based on the foregoing data and their own independent investigation, evaluation and experience, Class Counsel believes that the settlement with Defendants on the terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendants, and potential appellate issues. (Id.)

Plaintiffs and Class Counsel recognize the expense and length of continuing to litigate and trying this Action against Defendants and then litigating a possible appeal which could take several years. (Edwards Decl. ¶ 29.) Class Counsel has also taken into account the uncertain outcome and risk of litigation, especially in complex class actions such as this Action. (Id.) Class Counsel is also mindful of and recognizes the inherent problems of proof under, and alleged defenses to, the claims asserted in the Action. Based upon their evaluation, Plaintiffs and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class Members. (Id.)

Here, there can be no dispute that the litigation has been hard-fought with aggressive and capable advocacy on both sides. The Parties were represented by experienced and capable counsel who zealously advocated their positions. Accordingly, "[t]here is likewise every reason to conclude that settlement negotiations were vigorously conducted at arms' length and without any suggestion of undue influence." *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. at 1392.

ii. The Settlement Has No "Obvious Deficiencies" and Falls Well Within the Range for Approval

The proposed Settlement herein has no "obvious deficiencies" and is well within the range of possible approval. All Class Members will receive an opportunity to participate in the Settlement and receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon review of documentation provided by Defendants and consultations with Plaintiffs' retained forensic economist, David Breshears, Plaintiffs prepared a damages analysis with respect to the Class and Aggrieved Employees. (See Edwards Decl. ¶¶12–13). Based upon 167 Class Members who collectively worked 11,506 Workweeks (Agreement at ¶5.1), Plaintiffs estimate that if this matter were to proceed through certification and trial, the potential full recovery of damages and penalties could potentially be $3,927,965.02. (See Edwards Decl. ¶¶12–13). Specifically, the analysis reflects approximately $44,817.77 in overtime premiums, $168,576.31 in meal period premiums, $813,720.31 in rest period premiums, $563,476.54 in off-the-clock wages, and $1,590,590.93 in unreimbursed mileage expenses, for a subtotal of $3,181,181.86 in wage and expense claims. (Id.) In addition, Plaintiffs estimate potential inaccurate wage statement penalties of $230,043.10 and waiting time penalties of $342,195.18, resulting in a subtotal of $3,753,420.14 before any statutory PAGA penalties. (Id.) With respect to PAGA, Plaintiffs' estimates include $18,847.29 for failure to pay overtime, $133,725.99 for failure to pay meal period premiums, $226,167.44 for failure to pay rest period premiums, and $463,104.76 for failure to provide accurate wage statements, for an additional $841,845.48 in potential civil penalties. (Id.) Taken together, Plaintiffs' estimates reflect a maximum theoretical recovery of $3,927,965.02. (Id.).

Based on a Net Settlement Amount of $207,536.07 the average recovery is $1,242.73 per Class Member for each of the 167 Class Members, and the PAGA allocation equals $20.31for each of the 96 Aggrieved Employees. (Agreement at ¶5.1; (Edwards Decl. ¶ 13(a).)

Also, as detailed in Section 11.18 of the Settlement Agreement, the Settlement includes an escalator provision tied to the total number of Class Workweeks. The precise number of Workweeks worked by the Class during the Class Period will be verified by the Settlement Administrator upon receipt and reconciliation of Defendants' payroll records. (Edwards Decl., ¶¶ 48-49.) If the Settlement Administrator confirms that the escalator provision has been triggered, Plaintiffs' expert analysis demonstrates that the increased Workweeks—from the originally-assumed 11,506 Workweeks to approximately 13,232 Workweeks—results in a corresponding increase in the maximum potential damages exposure. (Id.)

Specifically, under this extended Workweek period, overtime premiums increase from $44,818 to $51,541 (an increase of $6,723); meal period premiums increase from $168,576 to $193,864 (an increase of $25,288); rest period premiums increase from $813,720 to $935,785 (an increase of $122,065); off-the-clock wages increase from $563,477 to $648,003 (an increase of $84,526); and unreimbursed mileage expenses increase from $923,290 to $1,061,792 (an increase of $138,502), resulting in a total increase of $377,104 in wage and expense exposure. Statutory penalties also increase, with inaccurate wage-statement penalties rising from $230,043 to $264,569 (an increase of $34,526), while waiting-time penalties remain unchanged. As a result, the combined wage/expense and non-PAGA statutory exposure increases from $3,086,120 to $3,497,749 (an increase of $411,630). PAGA penalties likewise increase from $841,845 to $968,193 (an increase of $126,348). (Edwards Decl., ¶ 50.)

In total, Plaintiffs' expert estimates that maximum exposure would increase from $3,927,965 to $4,465,943, an overall increase of $537,978, should the escalator clause apply. Thus, while the determination of whether the escalator trigger has been reached awaits the Settlement Administrator's review of payroll records, Plaintiffs' expert analysis demonstrates the potential increased exposure if the escalator provision applies. (Edwards Decl., ¶¶ 51-52.)

Based on this updated maximum exposure figure of approximately $4,465,943, the Gross Settlement Amount of $399,000 represents approximately 8.93% of the theoretical maximum recovery. Given the disputed nature of liability and damages, the risks associated with class certification and potential decertification, the prospect of appeals, and the substantial expense and delay inherent in continued litigation, the recovery secured here is fair and reasonable and falls squarely within the range routinely approved in wage-and-hour class settlements in California. (Id.)

Defendants vigorously dispute Plaintiffs' calculations and theories of exposure. Consequently, the Gross Settlement Amount represents 8.93% to 10% of the potential maximum damages at issue for the Class in this case, assuming these amounts could all be proven in full at trial. The above maximum calculations should then be adjusted in consideration for both the risk of class certification and the risk of establishing class-wide liability on all claims. Given the amount of the Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and reasonable.[4] Clearly, the goal of this litigation has been met. (Edwards Decl. ¶ 11.)

Where both sides face significant uncertainty, the attendant risks favor settlement. *In re Crocs, Inc. Sec. Litig.*, 306 F.R.D. 672, 691 (D. Colo. 2014). Here, a number of defenses asserted by Defendants present serious threats to the claims of the Plaintiffs and the other Class Members.

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[4] *See Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents approximately 10% of what class might have been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%" of full verdict value).

(Edwards Decl. ¶ 19.) Defendants asserted that Defendants' practices complied with all applicable Labor laws. (Id.) Defendants argued that based on their facially lawful practices, they acted in good faith and without willfulness, which if accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. (Id.) If successful, Defendants' defenses could eliminate or substantially reduce any recovery to the Class. (Id.) While Plaintiffs believe that these defenses could be overcome, Defendants maintain these defenses have merit and therefore present a serious risk to recovery by the Class.

There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable to obtain class certification and thereby not recover on behalf of any employees other than themselves. Defendants could argue that the individual experience of each putative class member varied with respect to the claims. Defendants could also contest class certification by arguing injury and good faith were case-by-case determinations that precluded class certification. Plaintiffs are aware of other cases where class certification of similar claims were denied. *See e.g. Cacho v. Eurostar, Inc.*, (2019) 43 Cal.App. 5th 885 (denying certification of rest break claims). Finally, even if class certification was successful, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, (2014) 59 Cal. 4th 1, there are significant hurdles to overcome for a class wide recovery even where the class has been certified. While other cases have approved class certification in wage and hour claims, class certification in this action would have been hotly disputed and was by no means a foregone conclusion. (Edwards Decl. ¶¶ 29-31.)

After arm's length negotiations between experienced and informed counsel, the Parties recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of $399,000.00. As the Court held in *Glass v. UBS Fin. Servs., Inc.*, where the parties faced uncertainties similar to those here:

> In light of the above-referenced uncertainty in the law, the risk, expense, complexity, and likely duration of further litigation likewise favors the settlement. Regardless of how this Court might have ruled on the merits of the legal issues, the losing party likely would have appealed, and the parties would have faced the expense and uncertainty of litigating an appeal. 'The expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement.'"

2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000)).

iii. The Settlement Does Not Improperly Grant Preferential Treatment To Class Representatives or Segments of The Class

The relief provided in the Settlement will benefit all members of the Class. The Settlement does not grant preferential treatment to Plaintiffs or segments of the Class in any way. Payments to the Class Members are all determined under a neutral methodology. Each Participating Class Member will receive the same opportunity to participate in and receive payment through a neutral formula that is based upon the Workweeks worked by that individual. (Edwards Decl. ¶¶9-10.)

Plaintiffs will apply to the Court for a Class Representative Service Payment in consideration for their service and for the risks undertaken on behalf of the class. (Agreement at ¶ 3.2(a).) Plaintiffs performed their duties admirably by working with Class Counsel. (Edwards Decl. ¶ 33.). Declarations of the Plaintiffs are presented in support. For purposes of this preliminary approval stage, the requested service award of $10,000 is well within the accepted range of awards for purposes of preliminary approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.,* No. 1:16-CV-00087-DAD-SAB, 2018 WL 1993727, at 1 (E.D. Cal. 2018) (awarding $12,500 where average class member payment was $351); *Louie v. Kaiser Foundation Health Plan, Inc*., 2008 WL 4473183, *7 (S.D.Cal. 2008) (awarding $25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. 2007) (awarding $25,000 service award in overtime class action and a pool of $100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded to class representatives to compensate the employees for the time and effort expended on the case, for the risk of litigation, for the fear of suing an employer and retaliation therefrom, and to serve as an incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

iv. The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary Approval Of The Settlement

The stage of the proceedings at which this Settlement was reached also militates in favor of preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted a thorough investigation into the facts of the class action. (Edwards Decl. ¶¶ 16-18.) Class Counsel began investigating the Class Members' claims before the Action was filed. (Id.) Class Counsel engaged in a full investigation of the claims and conducted a review and analysis of the relevant documents and data. (Id.) Class Counsel was also experienced with the claims at issue here, as Class Counsel previously litigated and settled similar claims in other actions. Accordingly, the agreement to settle did not occur until Class Counsel possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation.

Based on the foregoing data and their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendants for the consideration and on the terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendants, and numerous potential appellate issues. (Edwards Decl. ¶ 35.) There can be no doubt that Counsel for both parties possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation.

In *Glass*, the Northern District of California granted final approval of an overtime wage action although in *Glass* no formal discovery had been conducted prior to the settlement:

> Here, no formal discovery took place prior to settlement. As the Ninth Circuit has observed, however, '[i]n the context of class action settlements, 'formal discovery is not a necessary ticket to the bargaining table' where the parties have sufficient information to make an informed decision about settlement.'"

Glass, 2007 WL 221862 at *4. (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d at 459).

Here, Class Counsel was in a better position to evaluate the fairness of this Settlement because Class Counsel received a production of documents through informal discovery, received all necessary information which was evaluated with the assistance of an expert, and performed independent investigations and due diligence to confirm the accuracy of the information supplied by Defendants.

V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES ONLY

Plaintiffs contend that the proposed settlement meets all of the requirements for class certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court should conditionally certify the Class for settlement purposes only, defined as follows:

> All individuals who were employed by Defendants in California and classified as a non-exempt employee at any time during the Class Period.

(Agreement at ¶ 1.5.)

Class Period" means the period of time from August 4, 2019 through the earlier of (i) the date of Preliminary Approval, or (ii) the date the Class collectively reached 13,232 Workweeks. The Parties understand and believe that the Class has already exceeded 13,232 Workweeks; however, the precise date on which this threshold was reached shall be confirmed by the Settlement Administrator based on Defendants' payroll records. (Agreement at ¶ 1.11)

a. California Code of Civil Procedure § 382

Plaintiffs seek certification of this Class for settlement purposes under California Code of Civil Procedure § 382. The California Supreme Court has summarized the standard for determining whether class certification is appropriate as follows:

> Code of Civil Procedure Section 382 authorizes class actions "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court...." The party seeking certification has the burden to establish the existence of both an ascertainable class and a well-defined community of interest among class members. (*citations omitted*). The "community of interest" requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.

Sav-On Drug Stores, Inc. v. Superior Court, 34 Cal. 4th 319, 326 (2004).

While Defendants reserve all rights to dispute that the Plaintiffs can satisfy these requirements, the Parties agree that Defendants will not dispute that these requirements may be satisfied in this case for purposes of settlement only and therefore, the proposed Class should be certified for purposes of this settlement only. (Agreement at ¶ 2.7)

b. The Proposed Class Is Ascertainable and Numerous

Plaintiffs bring this Action on behalf of a Class of non-exempt employees who worked for Defendants in California during the applicable Class Period. Plaintiffs assert that all of these individuals are ascertainable because the class members can readily be determined through examination of Defendants' files. Given that the Class consists of approximately 167 members, Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v. Superior Court*, (1955) 44 Cal.2d 574 (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, (1981) 126 Cal.App.3d 926, 934 (class of 48 members satisfies numerosity requirement.) Here, Plaintiffs assert that the 167 individuals who comprise the Class can be identified based on Defendants' records and are sufficiently numerous for class certification. (Edwards Decl. ¶ 36(a).)

c. Common Issues of Law and Fact Predominate

Predominance of common issues of law or fact does not require that the common issues be dispositive of the entire controversy or even that they be dispositive of all liability issues. 1 *Newberg on Class Actions*, § 4.25 at 4-82, 4-83 (1992). "Predominance is a comparative concept, and 'the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate.'" *Sav-On Drug Stores, Inc. v. Super. Ct. (Rocher)*, (2004) 34 Cal. 4th 319, 334.

Commonality exists if there is a predominant common legal question regarding how an employer's policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, (2008) 169 Cal.App. 4th 1524, 1534 ("[T]he common legal question remains the overall impact of Diva's policies on its drivers.") Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the certification stage since the question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." *Linder v. Thrifty Oil Co.*, (2003) 23 Cal.

4th 429, 439-440.

Here, Plaintiffs contend that common questions of law and fact are present, and specifically the common questions of whether Defendants' practices were lawful, whether Class members were lawfully compensated for all hours worked, whether Defendants properly calculated wages, whether the Defendants failed to provide all legally required meal and rest periods to class members, whether Defendants failed to provide required expense reimbursement, and whether Class Members are entitled to damages and penalties as a result of these practices. (Edwards Decl. ¶ 36(b).) Defendants dispute that common questions predominate but will not oppose such a finding for purposes of this Settlement only.

d. The Claims of the Plaintiffs Are Typical of the Class Claims

Typicality "requires a showing that the class representative has claims or defenses typical of the class." (See, e.g., *Fireside Bank v. Superior Court* (2007) 40 Cal. 4th 1069, 1089 .) "[I]t has never been the law in California that the class representative must have identical interests with the class members." (*Classen v. Weller* (1983) 145 Cal.App. 3d 27, 46 .) The typicality requirement requires the Plaintiffs to demonstrate that the members of the Class have the same or similar claims as the Plaintiffs. Typicality requires "a demonstration that there are other members of the class who have the same or similar grievances as the plaintiff." *Tate v. Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In *Hanlon v. Chrysler Corp.,* (1998) 150 F.3d 1011, 1020, the Ninth Circuit held that "[u]nder the rule's permissive standards, representative claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical."

In this Action, Plaintiffs contend that there can be little doubt that the typicality requirement is satisfied. (Edwards Decl. ¶ 36(c).) The Plaintiffs worked for Defendants as a non-exempt employee during the Class Period. (Id.) Plaintiffs contend that, like every other member of the Class, they were subject to the same practices and policies of Defendants and was subject to the same defenses. (Id.) Thus, Plaintiffs assert that the claims of the Plaintiffs and the Class Members arise from the same course of conduct by the Defendants, involve the same employment policies and practices of Defendants, and are based on the same legal theories. (Id.) For purposes of settlement, Plaintiffs maintain that the typicality requirement is met as to the common issues presented in this case. Defendants dispute typicality but Defendants do not oppose a finding of typicality for purposes of this Settlement only. (Id.)

e. The Class Representatives Fairly and Adequately Protected the Class

Plaintiffs contend that the Class Members are adequately represented here because Plaintiffs and representing counsel (a) do not have any conflicts of interest with other class members, and (b) will prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is met here. (Edwards Decl. ¶ 36(d).) First, Plaintiffs are well aware of their duties as the representative of the class and has actively participated in the prosecution of this case to date. (Id.) Plaintiffs effectively communicated with counsel, provided documents to counsel and participated in the investigation and negotiations in the Action. (Id.) Second, Plaintiffs retained competent counsel who are experienced in employment class actions and who have no conflicts. (Id.) Third, there is no antagonism between the interests of the Plaintiffs and those of the Class. (Id.) Both the Plaintiffs and the Class Members seek monetary relief under the same set of facts and legal theories. (Id.) Defendants dispute that the adequacy requirement is satisfied but will not oppose such a finding for purposes of this Settlement only.

f. The Superiority Requirement Is Met

To certify a class, the Court must also determine that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. "Where classwide litigation of common issues will reduce litigation costs and promote greater efficiency, a class action may be superior to other methods of litigation." *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). As courts have previously observed:

> Absent class treatment, each individual plaintiff would present in separate, duplicative proceedings the same or essentially the same arguments and evidence, including expert testimony. The result would be a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants. "It would be neither efficient nor fair to anyone, including defendants, to force multiple trials to hear the same evidence and decide the same issues."

Sav-On, 34 Cal. 4th at 340, citing *Boggs v. Divested Atomic Corp.*, 141 F.R.D. 58, 67 (S.D. Ohio 1991).

Here, Plaintiffs contend that a class action is the superior mechanism for resolution of the claims as pled by the Plaintiffs. While Defendants dispute that class treatment is superior, Defendants do not dispute a finding of superiority in this action for purposes of this Settlement only.

VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE

The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for Fair Franchising v. Southland Corp.*, (2000) 85 Cal.App. 4th 1135, 1164. The Parties have agreed upon procedures by which the Class Members will be provided with written notice of the Settlement similar to those approved and utilized in hundreds of class action settlements. In accordance with the Agreement, Defendants will provide to the Administrator a confidential electronic spreadsheet containing the Class Data. (Agreement at ¶ 5.2.) Within 21 days after receiving the Class Data, the Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the most current mailing address information available. (Agreement at ¶ 6.1.)

The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel and to be approved by the Court, includes all relevant information. (*See* Exhibit "A" to the Agreement.) The Class Notice will include, among other information: (i) information regarding the Action; (ii) the impact on the rights of the Class Members if they do not opt out, including a description of the applicable release; (iii) information to the Class Members regarding how to opt out and how to object to the Settlement; (iv) the estimated Individual Class Payment for each of the Class Members; (iii) the amount of attorneys' fees and expenses to be sought; (v) the amount of the Plaintiff's service award request; and (vi) the anticipated expenses of the Administrator. (Edwards Decl. ¶ 38.)

The Class Notice will state that the Class Members shall have forty-five (45) days from the date that the Notice is mailed to them (the "Response Deadline") to request exclusion (opt-out) or to submit an objection, which response Deadline shall be extended by 14 days in the event of a re-mailing. (Agreement at ¶¶ 1.38, 9.3(d), 9.4(a).) Class Members shall be given the opportunity to object to the Settlement and/or requests for attorneys' fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ 9.4(d).) Class Members who do not submit a timely and proper request to opt-out will automatically receive a payment of their Individual Class Payment. This notice program was designed to meaningfully reach the Class Members and it advises them of all pertinent information concerning the Settlement. (Edwards Decl. ¶ 38.) The mailing and distribution of the Class Notice satisfies the requirements of due process and is the best notice practicable under the circumstances and complies with Rules of Court 3.766 and 3.769(f).

VII. CONCLUSION

Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final fairness hearing for the proposed date of **DATE**

Respectfully submitted,

DATE: November 14, 2025 ROSENBERG, SHPALL & ZEIGEN, APLC.

Chad Edwards
Chad Edwards, Esq,
Attorneys for Plaintiffs,
Ricardo Ruiz and Maria Orozco