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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

HECTOR MARIO GASTELUM, GAUDENCIO BLANCO RAMOS, ANGEL CONTRERAS LUNA, and KRISMELL SOTO DOS SANTOS, on behalf of themselves and all others similarly situated,

Plaintiff,

vs.

LA PLAZA MARKET LLC, a California limited liability company; JE&E CHAVEZ LLC, a California limited liability company; and DOES 1–50, inclusive,

Defendants.

Case No. STK-CV-UOE-2023-0010435
[Assigned for All Purposes to the Honorable Barbara Kronlund of Department 10D]

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[Proposed] Order and Supporting Declarations Under Separate Cover

Hearing Information

Date:	___________________
Time:	___________________
Department:	10C
Judge:	Hon. Barbara Kronlund

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on ______________________, at ____ a.m./p.m., or as soon thereafter as the matter may be heard, in Department 10C of the San Joaquin County Superior Court, located at 180 E. Weber Avenue, Stockton, California 95202, Plaintiffs Hector Mario Gastelum, Gaudencio Blanco Ramos, Angel Contreras Luna, and Krismell Soto Dos Santos (collectively the "Plaintiffs") will and hereby does move for an Order: (1) certifying the below-defined Settlement Class for settlement purposes only; (2) preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement and Release (the "Agreement") between Plaintiffs and Defendants La Plaza Market, LLC and JE&E Chavez, LLC, and DOES 1–50, inclusive (collectively the "Defendants") (Plaintiffs and Defendants are collectively "the Parties"), and preliminarily approving the Parties' settlement of the PAGA Members' claims for PAGA Penalties during the PAGA Period; (3) appointing Benowitz Law Corporation; Capstone Law APC; and Lawyers *for* Justice, PC. as Class Counsel for the Settlement Class; (5) appointing Plaintiffs as the class representatives ("Class Representatives") for the Settlement Class; (6) approving the use of the proposed Class Notice; (7) directing that notice be mailed to the proposed Settlement Class in accordance with the Agreement; and (8) scheduling a hearing date for motion for final approval of class action settlement and awards of attorneys' fees and costs.

The "Settlement Class" or "Class Members" consist of all persons employed by Defendants in hourly or non-exempt positions at any time during the Class Period, which is defined as the period from October 2, 2019 through May 30, 2024. "PAGA Members" consist of all persons employed by Defendants in hourly or non-exempt positions at any time during the PAGA Period, which is defined as the period from October 2, 2022 through May 30, 2024.

This Motion is made on the following grounds: (1) the Settlement Class meets all the requirements for class certification for settlement purposes only under Code of Civil Procedure § 382 and California Rule of Court 3.769; (2) Plaintiffs and their counsel are adequate to represent the Settlement Class; (3) the Settlement reflects a fair, adequate, and reasonable compromise of all disputed claims in view of Defendants' potential liability exposure as compared against the risks of continued litigation; (4) the proposed Class Notice complies with California Rule of Court 3.766 and constitutional due process requirements; and (5) in view of the foregoing, notice should be disseminated to the Settlement Class Members and a hearing date for motion for final approval of class action settlement, and awards of attorneys' fees and costs should be set.

The Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declarations of Louis Benowitz, Raul Perez, Vartan Madoyan, and Krismell De Los Santos in support thereof, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented in connection with the hearing on the Motion.

Respectfully submitted,

BENOWITZ LAW CORPORATION
CAPSTONE LAW APC
LAWYERS FOR JUSTICE, PC.

Dated: November 6, 2025

BY______________________________
LOUIS BENOWITZ
Attorneys for Plaintiffs
HECTOR MARIO GASTELUM
GAUDENCIO BLANCO RAMOS
ANGEL CONTRERAS LUNA
KRISMELL SOTO DOS SANTOS

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Hector Mario Gastelum, Guadencio Blanco Ramos, Angel Contreras Luna, and Krismell Soto Dos Santos (collectively, "Plaintiffs") respectfully request for this Court to preliminarily approve the Joint Stipulation of Class Action and PAGA Settlement and Release (the "Agreement" or "Settlement") between Plaintiffs and Defendants La Plaza Market, LLC and JE&E Chavez, LLC, (collectively, "Defendants"), conditionally certify the below-defined Settlement Class for settlement purposes only, direct that the Class Notice be sent to the Class Members and PAGA Members, and schedule a hearing on a Motion for Final Approval of Class Action and PAGA Settlement. The Settlement, if approved, resolves class action and PAGA claims asserted in the *Gastelum* and *Dos Santos* actions, all of which are derived from Defendants' alleged failures to, *inter alia*, provide meal and rest periods or pay premium wages, to correctly calculate regular rates of pay for purposes of overtime and sick pay, and to reimburse employee expenses.

The non-reversionary Gross Settlement Amount (GSA) is $795,000, with Defendants to separately pay their share of payroll taxes in addition to the GSA for the portion of Individual Settlement Payments classified as wages. (Settlement, ¶¶ 15, 66.) The Class consists of all current and former non-exempt, hourly-paid employees of Defendants in California at any time during the period from October 2, 2019 through May 30, 2024. (*Id.*, ¶ 4.) The Class has approximately 998 employees who worked approximately 49,549 Workweeks during the Class Period and the PAGA Members consist of approximately 518 employees who worked approximately 20,962 Workweeks during the PAGA Period. (Benowitz Decl, ¶ 5.) In the event that the actual number of Workweeks is greater than 56,981, there is an Escalator Clause that would increase the GSA by the percentage that the actual number of Workweeks exceeds 56,981. (Settlement, ¶ 56.)

The Settlement also provides for a PAGA Settlement Amount of $60,000 (Settlement, ¶ 26), attorneys' fees of up to $265,000 (one-third of the GSA) and costs of up to $30,000 (*id.*, ¶ 2), Class Representative Enhancement Payments of up to $10,000 for each of the Plaintiffs (*id.*, ¶ 9), and actual Settlement Administration Costs, which are currently estimated as $10,000 (*id.*,

¶ 34). These terms result in a Net Settlement Amount (NSA) of approximately $390,000, with a PAGA Member Payment of $15,000. Based on the NSA, this results in an average pre-tax Individual Settlement Payments of $390.78 and average PAGA Member payments of $28.95. (Benowitz Decl., ¶ 6.)

For the reasons set forth herein, this Court should issue the [Proposed] Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, direct that Notice be given to the Class, and schedule a hearing on Plaintiffs' Motion for Final Approval of Class Action and PAGA Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendants operate five grocery store locations in California. (Benowitz Decl., ¶ 7). Plaintiffs are four former hourly employees of Defendants who worked for Defendants in California during the Class Period and PAGA Period. (*Id.*, ¶ 8.) Plaintiffs Gastelum, Ramos, and Luna filed their action on October 2, 2023 (and gave notice to the LWDA under PAGA on that same date) and Plaintiff Dos Santos filed her action on January 12, 2024. (*Id.*) On July 12, 2024, this Court ordered the cases related. (*Id.*, ¶ 9.)

Plaintiffs then filed a consolidated First Amended Complaint (FAC). The operative FAC asserts claims for: (1) unfair competition (Bus. & Prof. Code § 17200 *et seq.*), (2) non-provision of meal and rest periods (Lab. Code § 226.7), (3) unpaid minimum and overtime wages (Lab. Code § 1194), (4) unpaid sick pay wages (Lab. Code § 246), (5) failure to indemnify (Lab. Code § 2802), (6) waiting time penalties (Lab. Code § 203), (7) wage statement penalties (Lab. Code § 226), and (8) PAGA penalties (Lab. Code § 2698 *et seq.*). (Benowitz Decl., ¶ 10.)

After obtaining sufficient informal discovery to intelligently evaluate Defendants' potential liability exposure in this action (including an approximately 20% sampling of Defendants' time and payroll records for the Class Period, Defendants' employee handbooks and applicable policies, Plaintiffs' personnel records, and relevant metrics on the number of Class Members and PAGA Members and their respective Workweeks), the parties participated in a full-day mediation session with Mark LeHocky of ADR Services, Inc. (Benowitz Decl, ¶ 11.) This mediation took place on May 30, 2024 and, after extensive arms' length negotiations through experienced counsel, the parties agreed to the core terms of the Settlement based on a mediator's proposal. (*Id*., ¶ 12.) Now that the parties have finalized their proposed Settlement, they submit it to this Court for approval. (*Id.*)

III. SUMMARY OF THE SETTLEMENT

The non-reversionary Gross Settlement Amount (GSA) is $795,000, with Defendants to separately pay their share of payroll taxes in addition to the GSA for the portion of Individual Settlement Payments classified as wages. (Settlement, ¶¶ 15, 66.) The Class consists of all current and former non-exempt, hourly-paid employees of Defendants in California at any time during the period from October 2, 2019 through May 30, 2024. (*Id.*, ¶ 4.) The Class has approximately 998 employees who worked approximately 49,549 Workweeks during the Class Period and the PAGA Members consist of approximately 518 employees who worked approximately 20,962 Workweeks during the PAGA Period. (Benowitz Decl, ¶ 6.) In the event that the actual number of Workweeks is greater than 56,981, there is an Escalator Clause that would increase the GSA by the percentage that the actual number of Workweeks exceeds 56,981. (Settlement, ¶ 56.)

The Settlement also provides for a PAGA Settlement Amount of $60,000 (Settlement, ¶ 26), attorneys' fees of up to $265,000 (one-third of the GSA) and costs of up to $30,000 (*id.*, ¶ 2), Class Representative Enhancement Payments of up to $10,000 for each of the Plaintiffs (*id.*, ¶ 9), and actual Settlement Administration Costs, which are currently estimated as $10,000 (*id.*, ¶ 34). These terms result in a Net Settlement Amount (NSA) of approximately $390,000, with a PAGA Member Payment of $15,000. Based on the NSA, this results in an average pre-tax Individual Settlement Payments of $390.78 and average PAGA Member payments of $28.95. (Benowitz Decl., ¶ 6.)

Within 14 calendar days of Preliminary Approval, Defendants will provide the Class List to the Settlement Administrator. (Settlement, ¶ 49.) Within 10 calendar days of receiving the Class List, and after searching for updated addresses, the Settlement Administrator will mail the Class Notice to all Class Members via regular First-Class U.S. Mail in both English and Spanish. (*Id.*, ¶¶ 50-51.). The Class Notice will contain the Class and PAGA Members' individual Workweeks and estimated Individual Settlement Payment, instructions on how to submit

Requests for Exclusion, Notices of Objection, and disputes over individual Workweeks, and give a Response Deadline of 45 calendar days after mailing. (*Id.*, ¶ 33, 52-55.) The Settlement also provides a procedure for remailing Class Notices returned with forwarding addresses and for finding updated addresses and remailing Class Notices returned without forwarding addresses and extends the Response Deadline by 15 calendar days for those Class Members. (*Id.*, ¶ 51.) Class Members may request exclusion from the class action portion of the Settlement but PAGA Members may not request exclusion from the PAGA portion of the Settlement. (*Id.*, ¶ 43, 55.)

The Class Members who do not request exclusion will be bound by the following release of claims:

> Upon the Effective Date and full funding of the Total Settlement Amount and all employer payroll taxes owed on the Individual Class Payments, Plaintiffs and Class Members who do not submit a timely and valid Request for Exclusion (i.e., Participating Class Members) will be deemed to have fully, finally, and forever released settled, compromised, relinquished, and discharged all Released Parties from all claims under state, federal, or local law, arising during the Class Release Period out of the claims expressly pleaded in the Actions and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been asserted based on the facts pleaded in the Actions for: (1) failure to pay overtime wages under Labor Code Sec. 510, 1198; (2) failure to provide meal periods and/or pay meal period premiums under Labor Code Sec. 226.7, 512; (3) failure to provide rest periods and/or pay rest period premiums under Labor Code Sec. 226.7; (4) failure to pay minimum wages under Labor Code Sec. 1194, et seq.; (5) failure to timely pay wages upon termination under Labor Code Sec. 203; (6) failure to timely pay wages during employment under Labor Code Sec. 204, 210; (7) failure to provide accurate, itemized wage statements under Labor Code Sec. 226; (8) failure to keep requisite payroll records under Labor Code Sec. 1174(d); (9) failure to reimburse business expenses under Labor Code Sec. 2800, 2802; and (10) violation of California's unfair competition law under Business and Professions Code Sec. 17200, *et seq.*, based on the aforementioned. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

(Settlement, ¶ 58.)

The PAGA Members are subject to the following release of claims by the LWDA:

> Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiffs, and the State of California will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties from any and all claims for civil penalties under the California Private Attorneys General Act, California Labor Code section 2698, *et seq.*, pled or which could have been pled against Released Parties based on the factual allegations described in the PAGA Notices and only to the extent that they are expressly pleaded in the Actions, including but not limited to violations of California Labor Code Sections 201, , 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders including inter alia, Wage Orders 4-2001, and 7-2001 arising during the PAGA Period as to the Aggrieved Employees ("Released PAGA Claims"). The Released PAGA Claims do not include other PAGA claims, underlying wage and hour claims, claims for vested benefits, wrongful termination, discrimination, unemployment insurance, disability and worker's compensation, and claims outside of the PAGA Period.

(Settlement, ¶ 59.) Plaintiffs are also releasing all of their claims against Defendants subject to a waiver of Civil Code § 1542 as a condition of their Class Representative Enhancement Payments. (*Id.*, ¶ 75-76.)

Within 21 calendar days of the Effective Date, Defendants shall fund the GSA on the Funding Date. (Settlement, ¶ 38.) The Settlement Administrator will then disburse all payments within 10 calendar days of the Funding Date. (*Id.*, ¶ 63.) Checks not cashed within 180 calendar days will then be tendered to the Justice Gap Fund pursuant to Code of Civil Procedure § 384. (*Id.*, ¶ 64.)

IV. ARGUMENT

A. The Class Meets All the Requirements to Be Certified for Settlement Purposes Only.

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. (E.g., *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19.) Under Code of Civil Procedure § 382, a class may be certified if: (1) its membership is objectively ascertainable; (2) its membership is too numerous for joinder to be practical; (3) the representative and absent class members share a well-defined community of interest; and (4) a class action is the superior means of resolving the dispute. (See, e.g., *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.) As discussed below, the Class meets all of these requirements.

1. The Class Is Objectively Ascertainable.

A class is ascertainable when it may be readily identified without unreasonable expense or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiffs maintain that the above-defined Class is ascertainable because its members may be identified by reference to Defendants' records and Defendants have agreed to share the relevant information from its records to facilitate the settlement process. (Benowitz Decl., ¶ 13; Settlement, ¶ 5.) Thus, the Class is ascertainable.

2. The Class' Membership Is Sufficiently Numerous.

The Class has sufficiently numerous members to render joinder impractical. No set number is required as a matter of law to maintain a class action. (*Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030.) Defendants estimate that there are approximately 998 Class Members. (Benowitz Decl., ¶ 6.) It would be impractical and economically inefficient to require each Class Member to separately maintain an individual action or be joined in this action. (*Id*., ¶ 14.) The California Supreme Court has upheld a class of as few as 10 individuals. (See *Bowles v. Superior Court* (1955) 44 Cal.2d 574.) Given these considerations, the Class' membership is sufficiently numerous. (See *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695.)

3. The Class Shares a Well-Defined Community of Interest.

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* (2004) 34 Cal. 4th 319, 326 (*Sav-On*).) It "does not mandate that class members have uniform or identical claims." (*Capitol People First v. Dept. of Developmental Servs.* (2007) 155 Cal.App.4th 676, 692.) Rather, courts focus on the defendant's internal policies and "pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs renders class certification appropriate." (*Id.* [citing *Sav-On*, 34 Cal.4th at p. 333].)

a. Common questions of law and fact predominate.

To justify certification, the class proponents must show that questions of law or fact common to the class predominate over the questions affecting the individual members. (E.g., *Arenas v. El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732.) Here, Plaintiffs assert Defendants applied the same policies with respect to time and recordkeeping, meal and rest periods, payroll calculations, expense reimbursements, and wage payments to the Class. (Benowitz Decl., ¶ 15.) Notwithstanding that the Parties disagree as to whether these common questions would predominate, or could be fairly and efficiently managed, for litigation purposes, the Class is sufficiently cohesive for settlement purposes. (*Id.*)

b. Plaintiffs are typical of the Class.

The class representatives must be similarly situated to the rest of the purported class. (See *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46 [stating "it has never been the law in California that the class representative must have identical interests with the class members. The only requirements are ... that the class representative be similarly situated"]; See Herbert B. Newberg & Alba Conte, Newberg on Class Actions (4th ed. 2002) § 3:13 [explaining that typicality "focuses on whether there exists a relationship between the Plaintiffs' claims and the claims alleged on behalf of the class"].)

Here, for purposes of settlement, Plaintiffs are typical of the Class. (Benowitz Decl., ¶ 15.) Plaintiffs, like Class Members, were subject to the same meal and rest period, timekeeping, payroll calculation, and expense reimbursement policies. (*Id.*) As a result, Plaintiffs and Class Members can allege the same claims for unpaid wages, meal and rest period violations, unreimbursed expenses, and related penalties and remedies based on Defendants' same general course of conduct. (*Id.*) Moreover, Defendants' primary defenses to Plaintiffs' claims—namely that all meal and rest periods were provided and either taken or waived (thus barring or reducing liability), that no off-the-clock work occurred because all breaks were taken (and/or that Defendants lacked actual or constructive knowledge of its occurrence some or all of the time), that any phone expenses owed are minimal, and that its scienter and circumstances weigh against imposing substantial penalties—apply with equal force across the Class. (*Id.*) Thus, Plaintiffs are typical of the Class.

c. Plaintiffs and their counsel will adequately represent the Class.

The adequacy requirement is met where the plaintiffs are represented by counsel qualified to conduct the litigation and the plaintiffs' interest in the litigation is not antagonistic to the interests of the class. (E.g., *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451.) In other words, where the plaintiffs have adequate counsel, the plaintiffs may represent the entire class absent any disabling conflicts of interest. Both these requirements are met in this case.

First, Class Counsel have supplied the Court with declarations to show that they are adequate to represent the Class. (Benowitz Decl, ¶¶ 17-27; see generally Perez & Madoyan Decls.) Beyond having no conflicts of interest with the Class, all three firms representing Plaintiffs and seeking appointment as Class Counsel have extensive experience representing employees in wage and hour class action matters—including having been collectively involved in many of the most notable California published appellate decisions relating to wage and hour law. (Benowitz Decl, ¶¶ 17-27; see generally Perez & Madoyan Decls.) Based on their experience, they were able to efficiently and intelligently negotiate a favorable settlement for the Class—thus demonstrating their adequacy.

Second, Plaintiffs are adequate class representatives. Beyond being typical of the Class, Plaintiffs have no conflicts of interest with the Class and demonstrated their commitment to the Class by retaining experienced counsel, assisting them in identifying the claims in this case and understanding the nature of the Class, and exposing themselves to potential liabilities if the action had been unsuccessful. (Benowitz Decl., ¶ 28.) Their counsels have also consented to an ethical division of attorneys' fees between multiple counsel in accordance with California Rule of Professional Conduct 1.5.1. (Benowitz Decl, ¶ 28; see generally Perez & Madoyan Decls.) As such, Plaintiffs are adequate to represent the Class.

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d. A class-wide settlement is the superior means of adjudicating the Class' claims.

Plaintiffs further contend that a class action is also superior to other means adjudicating the issues in this action. (Benowitz Decl., ¶ 30.) The predominance of common legal and factual questions shows that this Court could fairly adjudicate the claims of Class Members through a single class action. (*Id.*) In view of the *theoretical* alternatives that proposed class members could potentially utilize—representative PAGA action (where there is less relief available), individual civil lawsuits or wage claims through the Division of Labor Standards Enforcement (where there would be relatively little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly superior to all of them. (*Id.*) Thus, this consideration supports conditional class action treatment for purposes of this Settlement only.

Thus, the Class meets all the requirements to be certified for settlement purposes only.

B. The Settlement Should Be Preliminarily Approved Because It Is a Fair, Adequate, and Reasonable Compromise of the Disputed Wage and Hour Claims in This Case.

A class action settlement requires court approval. California Rules of Court ("CRC"), Rule 3.769 provides three steps for approval: (1) Preliminary approval after submission of a written motion for preliminary approval, the proposed class settlement, and the proposed class notice; (2) Issuance of notice of settlement to class members; and (3) A final settlement approval hearing where class members may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented. The decision to approve or reject a class settlement is committed to the Court's broad discretion. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. (*Kullar*).) The decision to approve class settlement may be reversed only upon a showing of "clear abuse of discretion." (*Id.*)

1. The Settlement is fair, adequate, and reasonable based on the risks of continued litigation.

In assessing preliminary approval, a court evaluates if the settlement process has certain indicia of fairness. A "presumption of fairness exists where (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Kullar*, 168 Cal. App. 4th at p. 128 [quoting *Dunk v. Ford Motor Co.*, (1996) 48 Cal.App.4th at p. 1794].)

The Settlement here satisfies all of these factors. The Settlement resulted from thorough, arms' length, negotiations between experienced counsel with the assistance of a respected mediator after sufficient discovery was exchanged to assess the relative strengths and weaknesses of their respective cases and Defendants' potential exposure. (Benowitz Decl., ¶¶ 31-32.)

The *Kullar* case sets forth several factors a court should consider in determining whether to approve a class settlement. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. (*Kullar*, 168 Cal.App.4th at p. 128.) As demonstrated herein, the Settlement satisfies each of these factors.

Here, the overwhelming majority of Defendants' potential liability exposure consists of meal and rest period premiums. While Plaintiffs contend that the meal and rest period claims would be certified based on *Donohue v. AMN Servs., LLC* (2021) 11 Cal. 5th 58 based on Defendants' failures to pay premium wages for break violations (resulting in presumptive liability), Defendants had facially compliant break policies and their sample time records only showed a meal period violation rate of approximately 6.84%. (Benowitz Decl., ¶ 33.) If limited to the meal period violations based on the time records (as opposed to a broader of break liability based on Defendants' claimed practices where break violations were far more prevalent than the records indicate), Defendants' meal and rest period exposure would be far narrower than anticipated even if the claim were certified. (*Id.*) Similarly, while Defendants' liability for unpaid overtime and sick pay based on calculation errors is clear, the claim results in a very small amount of actual unpaid wages. (*Id.*) Further, Plaintiffs may have encountered problems with class certification on their unreimbursed expenses claim (along with a very small amount of damages being attributable to that claim) because grocery store workers are not constantly using their personal cell phones for work purposes and are already paying for their personal cellular telephones. (*Id.*) In sum, all of Plaintiffs' underlying non-penalty claims in this case are potentially very modest in size when realistically compared to Defendants' maximum theoretical exposure. (*Id.*)

In turn, the overwhelming majority of Defendants' liability exposure in this case takes the form of statutory and civil penalties under Labor Code §§ 203, 226(e), and 2698 *et seq.* PAGA. (Benowitz Decl., ¶ 34.) Because the claims under §§ 203 and 226 are wholly derivative, the recent California Supreme Court decision in *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056 (*Naranjo*) presents tremendous risk because it shows a judicial sensitivity from California appellate courts to imposing substantial derivative liability over potentially innocent payroll errors. (Benowitz Decl.,¶ 34.) Without these penalties, there is a very strong likelihood that Class Members would be left with very modest underlying wage and expense reimbursement claims.

Moreover, there is a strong likelihood that any PAGA award would be modest. Plaintiffs are aware of only two significant awards under the PAGA in contested proceedings, both issued by federal district courts before recent amendments to the PAGA narrowing the scope of employer liability exposure (which, while not retroactive, could guide a court in its exercise of discretion under PAGA and result in a very modest award).[1] (Benowitz Decl.,¶ 35.) PAGA penalty awards

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[1] In *Bernstein v. Virgin Am., Inc*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil penalties under the PAGA of $12,277,500.00 where total adjusted damages were $18,695,692.58. In this regard, the district court stated,

> The plain language of PAGA provides that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, *based on the facts and circumstances of the particular case*, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code s 2699(e)(2) (emphasis added). The relationship between the amount of total damages and the amount of maximum PAGA penalties is certainly a "circumstance" of the case under the term's ordinary meaning. The weight given to that circumstance is greater in this case because Plaintiffs' PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs' individual claims except for one.

are often small even for egregious, intentional violations of the Labor Code.[2] (*Id*.) For instance, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only $50.00. *Shields v. Security Paving Company*, Inc., LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a PAGA penalty of only $5 per pay period for the defendant's meal period violations. A similar result could occur here. (*Id*.)

The settlement of PAGA penalties in the sum of $60,000, of which 75% ($45,000) will be paid to the LWDA and 25% ($15,000) will be distributed to the PAGA Members, is reasonable and appropriate under the circumstances. (Benowitz Decl.,¶ 36.) The Parties negotiated a good faith amount for PAGA Penalties to be paid to the LWDA and to the PAGA Members. (*Id.*) The portion to be paid to the LWDA was not the result of self-interest at the expense of other Class Members. (*Id.*) Where settlements "negotiate[] a good faith amount" for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of other Class Members," such amounts are generally considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133, at p. *9.) Likewise, where the employer did not act willfully, and made good faith attempts to comply with wage and hour laws,

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> As a general matter, it would be excessively punitive for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed the damages caused by that injury or set of injuries.

(*Id.,* nn. 9.) The court further stated, "Virgin 'has not presented any evidence that the full penalty would be excessive in relation to its ability to pay,' the weight of this factor is lessened." (*Id.*)

In *Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court awarded approximately $102 million in damages, primarily based on the defendant's failures to comply with the requirements of Labor Code § 226.

[2] In 2012, Mr. Benowitz tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. The plaintiff sought in excess of $9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately $325,000 in civil penalties under the PAGA.

a reduction or lesser penalty is warranted because imposing maximum PAGA penalty for each violation would have been unjust, arbitrary, and oppressive. (*Id; Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 [affirming trial court's award of only 10% of maximum PAGA penalty for meal break violations].) The amount to be paid to the LWDA comports with PAGA settlement amounts approved by other courts. See, e.g., *Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 (approving PAGA payment of $7,500 to LWDA out of $6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA payment of $7,500 to LWDA out of $1.25 million common fund settlement); *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving PAGA settlement of 0.3% or $1,500); see *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated $0 to PAGA claim). As required under Labor Code § 2699(l)(2), Plaintiffs will provide notice of this Settlement to the LWDA with the filing of this motion. (Benowitz Decl.,¶¶ 36-37 & Ex. 3.)

After careful consideration of all relevant factors, including the merits of the claims, the likelihood of prevailing at certification, and the risks and expense of protracted litigation, Plaintiffs and their counsel agreed, with valuable input from an experienced mediator, to settle all claims on a class-wide basis in exchange for payment of $795,000, or for approximately 41.2% of Defendants' realistic estimated exposure of $1,927,423, when discounted by the risks of continued litigation, which Plaintiffs' counsel, on balance, believes is approximately 25% of the maximum possible theoretical exposure, exclusive of PAGA penalties (which are subject to potential reduction for numerous potential reasons as explained herein). (Benowitz Decl., ¶ 38.)

2. The proposed Class Representative Enhancement Payments are fair, adequate, and reasonable.

Plaintiffs are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399.)

Here, Plaintiffs each request Class Representative Enhancement Payments of $10,000 in recognition of their efforts in obtaining the benefits of the Settlement. The Class Representative

Enhancement Payments are fair and reasonable compensation for Plaintiffs' efforts in pursuing the action, serving as private attorneys general under PAGA, assisting counsel with the litigation and settlement, regularly conferring with counsel on the status of the case and the strategies for prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for the Class. (Benowitz Decl., ¶ 39.) Plaintiffs will file a formal motion for the negotiated Class Representative Enhancement Payments once preliminary approval of the Settlement is granted. (*Id.*) Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Class Representative Enhancement Payments. (*Id.*)

3. The proposed Attorneys' Fees and Costs are fair, adequate, and reasonable.

Class Counsel will request a payment of fees in an amount totaling $265,000, which equals one-third of the GSA, for the time spent litigating this matter. (Benowitz Decl., ¶ 40.) Class Counsel will also seek payment of up to $30,000 for litigation costs incurred. (*Id.*) The requested fee is a fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis, especially in light of the substantial benefits achieved by Plaintiffs' counsels on behalf of the Class. (*Id.*)

California courts have recognized that the appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. (*City & County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-11; *Quinn v. State* (1975) 15 Cal.3d 162; see also *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal. App.4th 1253, 1270; *Lealao v. Beneficial California, Inc*. (2000) 82 Cal.App.4th 19, 26.) As stated by the California Supreme Court in *Quinn*: "[O]e who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." (*Quinn*, 15 Cal.3d at p. 167.) Notably, the California Supreme Court in *Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480 affirmed a fee award representing one-third of the fund.

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V. CONCLUSION

For the reasons set forth herein, this Court should preliminarily approve the Settlement and adopt the proposed order submitted herewith.

Respectfully submitted,

BENOWITZ LAW CORPORATION
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LAWYERS FOR JUSTICE, PC.

Dated: November 6, 2025 BY________________________________

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