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County of Fresno
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

CIVIL UNLIMITED DIVISION

VERONICA BASURTO PIMENTEL, an individual and on behalf of others similarly situated, Plaintiffs, vs. AGUSTIN MADRIGAL JR., an individual; and Does 1 through 100, inclusive, Defendants.	CASE NO. 24CECG00675 **MEMORANDUM OF POINTS AND AUTHORITIES FOR PRELIMINARY APPROVAL OF CLASS AND PAGA SETTLEMENT** *Assigned for All Purposes to Dept. 502* *Hon. Kristi Culver Kapetan* Date: October 16. 2025 Time: 3:30 p.m. Dept: 502

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I. INTRODUCTION

Plaintiff VERONICA BASURTO PIMENTEL ("Plaintiff") submits the following memorandum of points and authorities in support of the unopposed motion for preliminary approval of the proposed class action and Private Attorneys General Act ("PAGA") settlement with Defendant Agustin Madrigal Jr. ("Defendant") and seeks an entry of an order for:

(1) preliminarily approving the proposed settlement of this class and PAGA action with Defendant;

(2) for settlement purposes only, conditionally certifying the class, which is comprised of "all current and former non-exempt, hourly-paid employees who worked for Defendant during the Class Period";

(3) provisionally appointing Plaintiff VERONICA BASURTO PIMENTEL as the Class and PAGA representative;

(4) provisionally appointing Brooke B. Nevels and Christopher E. Nichols of NEVELS NICHOLS, LLP; Lenden F. Webb and Katherine E. Cervantes of WEBB LAW GROUP, APC; and Mark D. Kruthers and Daniel C. Stein of FENNEMORE LLP, as Class Counsel for the Class;

(5) approving the form and method for providing notice to the class and aggrieved employees;

(6) directing that notice of the proposed settlement be given to the class and aggrieved employees;

(7) appointing Simpluris as the Settlement Administrator;

(8) and scheduling a final approval hearing date to consider Plaintiff's Motion for Final Approval of the Settlement and entry of the judgment.

Plaintiff and Defendant (collectively the "Parties") have reached a full and final settlement of the above-captioned action, which is embodied in the Class Action and PAGA Settlement Agreement ("Agreement") attached to the Declaration of Lenden F. Webb ("Decl. Webb") ¶ 4, Ex. 1. [1]

As consideration for this Settlement, the Gross Settlement Amount is Two Hundred and Eighty-Five Thousand Dollars ($285,000.00) to be paid by Defendant, as set forth in the Agreement. The Gross Settlement Amount will settle all issues pending in the Action between the Parties, and will be made in full and final settlement of the Released Class Claims and Released PAGA Claims. The Gross Settlement Amount includes all payments to the Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and the Administrator's Expenses. The Settlement is all-in with no reversion to Defendant. (See Decl. of Webb ¶ 5).

Under the terms of the Agreement, Defendant will not oppose Class Counsels' application for a reasonable award of attorney's fees not to exceed 33.33% ($95,000.00), Class Counsels' litigation expenses not to exceed $10,000, Administrator expenses not to exceed $9,000, PAGA penalties of $14,250 (of which 75% will pe paid to the LWDA and the remaining 25% to be paid to the Aggrieved Employees), and, The Representative Service Payment of $5,000 to Plaintiff. (See Decl. of Webb ¶ 6).

After all Court-approved deductions from the Gross Settlement Amount, it is estimated that $151,750.00 will be available to pay the Individual Class Payments of approximately 983 Class Members who do not opt-out of the settlement, as follows:

	Total Amount
Gross Settlement Amount	$285,000.00
Attorneys' Fees (33%)	$95,000.00
Litigation Expenses	$10,000.00

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

Administrator Costs	$9,000.00
PAGA Penalties	$14,250.00
Representative Award for Plaintiff	$5,000.00
Net Settlement Amount	$151,750.00

Because the settlement is fair and reasonable and was negotiated at arm's length by experienced counsel and an experienced mediator following a sufficient exchange of information and documents in advance of mediation, it should be preliminarily approved. Plaintiff respectfully requests that the Court enter an order preliminarily approving the Agreement and enter the proposed order submitted herewith.

II. DESCRIPTION OF THE SETTLEMENT

The Gross Settlement Amount is Two Hundred Eighty-Five Thousand Dollars ($285,000.00) (Agreement at ¶ 1.23, see Decl. of Webb ¶ 16). Under the Settlement, the Gross Settlement Amount consists of the following:

(1) Individual Class Payments (Agreement at ¶ 1.23);

(2) Individual PAGA Payments (Agreement at ¶ 1.23);

(3) LWDA PAGA Payment (Agreement at ¶ 1.23);

(4) Class Counsel Fees and Class Counsel Expenses (Agreement at ¶ 1.23);

(5) Class Representative Service Payment (Agreement at ¶ 1.23);

(6) Administrator's Expenses ¶ 1.23).

Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 14 days after the Effective Date. (Agreement at ¶ 4.3, See Decl. of Webb ¶ 17). The Effective Date means the date when both the following have occurred: (a) the Court has entered a judgment on its order granting final approval of the Settlement herein, and (b) the judgment is final. The judgment is final as to the latest of the following occurrences: (a) If no Settlement Class Member objects to the Class Settlement, the day the Court enters judgment; (b) if one or more Settlement Class Members object to the Class Settlement, the day after the deadline for filing a notice of appeal from the judgment; or, (c) if a timely appeal from the judgment is filed, the day after the appellate court affirms the judgment and issues a remittitur. (Agreement at ¶ 1.19, See Decl. of Webb ¶ 17).

Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments. (Agreement at ¶ 4.4, See Decl. of Webb ¶ 18).

The Net Settlement Amount means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: 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. (See Decl. of Webb ¶ 19). The remainder is to be paid to Participating Class Members as Individual Class Payments. (Agreement at ¶ 1.24). Participating Class Members is a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. (Agreement at ¶ 1.38).

The Individual Class Payments will be calculated by (a) dividing the Net Settlement Amount by the total number of Class Pay Periods worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Pay Periods. (Agreement at ¶ 3.2.4, See Decl. of Webb ¶ 20). PAGA Penalties in the amount of fourteen-thousand two-hundred and fifty ($14,250) are to be paid from the Gross Settlement Amount, with 75% ($10,687.50) allocated to the LWDA PAGA Payment and 25% ($3,562.50) allocated to the Individual PAGA Payments. (Agreement at ¶ 3.2.7). The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($3,562.50) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. (Agreement at ¶ 3.2.8). Pay Periods will be based on Defendant's records, however, each Class Member shall have 45 days after the Administrator mails the Class Notice (*plus an additional 14 days for Class Members* *whose Class Notice is re-mailed*) to challenge the number of Pay Periods and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. (Agreement at ¶ 7.4.4, See Decl. of Webb ¶ 20).

Class Members who wish to exclude themselves from (opt-out of) the Class Settlement must send the Administrator, by fax, email, or U.S. mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. (Agreement at ¶ 7.5.1, See Decl. of Webb ¶ 21).

The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge. (Agreement at ¶ 7.5.2).

Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Section 5.4.1 of this Agreement, regardless of whether the Participating Class Member actually receives the Notice Packet, an Individual Settlement Payment, objects to the settlement, or disputes the pay periods set forth in the Class Notice. (Agreement at ¶ 7.5.3, See Decl. of Webb ¶ 23).

Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. (Agreement at ¶ 7.5.4., See Decl. of Webb ¶ 24). The Class Notice will advise the Participating Class Members of their right to object to class action components of the Settlement and/or the Agreement, including contesting the fairness of the Settlement and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Representative Service Payments. (Agreement at ¶ 7.7.1, See Decl. of Webb ¶ 24).

The Administrator will issue checks for the Individual Class Payments and the Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. (Agreement at ¶ 4.4.1, See Decl. of Webb ¶ 25). The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. *Id.* The Administrator will cancel all checks not cashed by the void date. *Id*. The Administrator will send checks for Individual Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). *Id*. The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees. *Id*. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. *Id*.

For each Participating Class Member or Aggrieved Employee whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Farmworker Foundation thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Agreement at ¶ 4.4.3 See Decl. of Webb ¶ 25).

The Parties have jointly selected Simpluris Inc., to serve as the Administrator. From the Gross Settlement Amount, the Administrator shall be paid the Administrator Expenses Payment not to exceed $9,000 except for a showing of good cause and as approved by the Court.

(Agreement at ¶ 3.2.3, See Decl. of Nichols ¶ 19). To the extent the Administration Expenses are less or the Court approves payment less than $9,000, the Administrator will put the remainder in the Net Settlement Amount. *Id*.

Subject to Court Approval, the Agreement provides for Class Counsel to be awarded a sum not to exceed 33.33% of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement at ¶ 3.2.2). Class Counsel will also be allowed to apply separately for an award of Class Counsel Litigation Expenses Payment in an amount not to exceed $10,000. *Id.* Subject to Court approval, the Agreement provides for Class Representative Service Payment in the amount no more than $5,000 to Plaintiff. (Agreement at ¶ 3.2.1). As set forth in the accompany proof of service, the LWDA has been served with this motion and the Agreement. (See Decl. of Nichols ¶ 20).

III. CASE BACKGROUND

Defendant Agustin Madrigal Jr. is an individual registered with the County of Tulare under the fictitious business name of “El Dorado Farms,” is a farm laborer company. Plaintiff, the aggrieved employees, and putative class members were employed by Defendant as non-exempt hourly employees. On February 15, 2024, Plaintiff filed the wage and hour class action Complaint in Fresno Superior Court. On April 23, 2024, Plaintiff filed her PAGA claims with the Labor Workforce Development Agency and gave written notice via U.S. certified mail to Defendant with specific provisions of Labor Code § 2699.3 alleged to be violated. Thereafter on July 12, 2024, Plaintiff filed a First Amended Complaint to include PAGA. As such, the operative complaint contains the follow causes of action: (1) Failure to Pay Wages When Due in Violation of Cal. Lab. Code §§ 201, 202, and 203; (2) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code § 226; (3) Failure to Pay All Overtime Hours Worked in Violation of Cal. Lab. Code §§ 1194(a) and 510; (4) Failure to Pay Minimum Wage in Violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1; (5) Failure to Provide Meal Periods and Paid Rest Breaks in Violation of Cal. Lab. Code § 512; (6) Unfair Competition in Violation of Cal. Bus. Prof. Code § 17200, *et seq.*; (7) Failure to Reimburse Employees for Required

Expenses in Violation of Cal. Lab. Code § 2802; and (8) Violation of Private Attorney General Act in Violation of Cal. Lab. Code §§ 2698 and 2699.

The Parties engaged in investigation and exchange of documents and information in connection with the Actions for over two years, which permitted Class Counsel to perform a thorough analysis of the claims. Plaintiff obtained, through informal discovery, voluminous company records and documents, including payroll data and key data points. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot* Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129-130 ("Dunk/Kullar"). After conducting an investigation of the law and facts relating to the claims asserted, and taking into account the sharply contested issues involved, the expense and time necessary to pursue the matter through trial, the risks and costs of further prosecution, the risk of an adverse outcome, the uncertainties of complex litigation, and the substantial benefits to be received by Plaintiffs and the Class Members pursuant to this Agreement, that a settlement with Defendant on the terms and conditions set forth in the Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members.

Plaintiff believes Defendant will conclude that, because of the substantial expense of defending this action, the length of time necessary to resolve the issues presented herein, the inconvenience involved, it is in its best interests to accept the terms of the Settlement. However, Plaintiff is under the understanding that Defendant desires to settle the claims for the purpose of avoiding the burden, expense, and uncertainty of continuing to defend the action and for the purpose of putting to rest the controversies engendered by the claims in this matter.

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*, 186 Cal. App. 4th 576, 581 (2010) quoting

Cellphone Termination Fee Cases, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co*., 48 Cal.App.4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983)). 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.*, 48 Cal.App.4th 1794, 1801 (1996); 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, Second §30.44 at 229; *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." *Sayaman v. Baxter Healthcare Corp.,* 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is "a presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining." *Wershba v. Apple Computer, Inc.,* 91 Cal.App.4th 224, 245 (2001) (citation omitted);[3] see also Cho v. Seagate Tech. Holdings, Inc., 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court's determination that

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[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).

[3] Recent appellate court developments suggest that courts should not "presume" fairness and still must conduct a searching inquiry of a settlement, but nonetheless the opinions of counsel, experience of counsel, and amount of discovery and arms' length negotiations all remain *factors* under the advisory comments to Rule 23(e). In the aggregate, where a settlement shows no signs of collusion and a non-disproportionate remedy going to the Class, as opposed to counsel, as is the case here, there remains a *strong inference of fairness*.

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. "[C]ourts *must* apply a more searching review for a pre-class certification settlement." *Saucillo v. Peck*, (9th Cir. 2022) 25 F.4th 1118, 1133 (holding that blanket presumptions of fairness without such a searching review are in error and holding that such elements as arms' length negotiations and experience of counsel should be treated as a factor instead). 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 the Preliminary Approval of a Class Action Settlement</u>

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 239-40; *Dunk*, supra, 48 Cal.App. 4th at 1807. 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), cert. denied 464 U.S. 818 (1983) (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, 628.

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; *In re Wash. Public Power Supply System Sec. Litig*., 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli, 695 F. Supp*. 446, 451 (N.D. Cal. 1988); 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. Factors Considered In Granting Preliminarily Approval

A number of factors are to be considered in evaluating a settlement for purposes of preliminary approval. In determining whether to grant preliminary approval, the court considers whether the "(1) the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls within the range of possible approval." In re Tableware Antitrust Litig., 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). No one factor should be determinative, but rather all factors should be considered. The analysis has been summarized as follows:

> If the proposed settlement appears to be the product of serious, informed, noncollusive 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, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.
> *Manual of Complex Litigation, Second* § 30.44, at 229.

Here, the Agreement meets all of these criteria for preliminary approval.

C. The Settlement Is The Product of Arm’s Length Negotiations

The Settlement is the result of extensive and hard-fought litigation as well as negotiations before an experienced and well-respected mediator. Defendant has expressly denied and continues to deny any wrongdoing or legal liability arising out of the conduct alleged in the Actions. Plaintiff and Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Actions in accordance with the Agreement upon full funding of the Agreement.[4]

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. (Decl. Nichols at ¶ 8., Declaration of Lenden Webb at ¶ 31). 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 v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (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."); *Dunk*, 48 Cal. App. 4th at 1802.

On January 7, 2025, Plaintiff Pimentel, through her attorneys, and Defendant El Dorado Farms, through their attorneys, attended mediation with Laurie Saldaña. Ms. Saldaña is a well-respected and experienced with wage and hour class actions.

In preparation for the mediation, Defendant provided Class Counsel with informal discovery and documents, including payroll data and data concerning the composition of the Settlement Class Member. (See Decl. of Nichols ¶ 6). Plaintiff's counsel analyzed the data and prepared and submitted a mediation brief and damages valuation to the Mediator Ms. Saldaña, which resulted in the settlement of the Action. *Id.* The final settlement terms were negotiated

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[4] The release applicable to the Settlement Class is tethered to allegations in the Actions, the Operative Complaint, and the letters submitted to the LWDA. .

and set forth in the Agreement now presented for this Court's approval. Importantly, Plaintiff and Class Counsel believe that this Settlement is fair, reasonable and adequate.

Class Counsel has conducted a thorough investigation into the facts of the class action. Over the course of over two years, Class Counsel has diligently evaluated the Class Members' claims against Defendant. Prior to the settlement negotiations, counsel for Defendant provided Class Counsel with access to necessary information for the Class. In addition, Class Counsel previously negotiated settlements with other employers in actions involving nearly identical issues and analogous defenses. Based on the foregoing data and their own independent investigation, evaluation and experience, Class Counsel believes that the settlement with Defendant 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 Defendant, and potential appellate issues. (See Decl. of Webb ¶ 31).

Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and trying these Actions against Defendant through possible appeals which could take several years. Class Counsel has also taken into account the uncertain outcome and risk of litigation, especially in complex class actions such as these Actions. Class Counsel is also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the Actions. Based upon their evaluation, Plaintiff and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Settlement Class Members. (See Decl. Webb ¶ 31).

Here, there can be no dispute that the litigation has been and will continue to be 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.

D. The Settlement Falls Within the Range of Approval

The proposed settlement is well within the range of approval. All Class Members will receive an opportunity to participate in the settlement and receive payment. At the time of settlement, Defendant estimates there were **983** Class Members who collectively worked a total of **6,086** Pay Periods during the Class Period. (Agreement at ¶ 4.1). Defendant also estimated at the time of settlement and mediation that there are **554** Aggrieved Employees who worked **3,254** Pay Periods during the PAGA Period. (See Decl. Nichols ¶ 11).

Based on the Gross Settlement Amount, this settlement equates to an approximate value of **$46.82** per Pay Period[5]. Using the estimated Net Settlement Amount, each Class Member would receive approximately **$24.94** per Pay Period. Since there are 6,086 Pay Periods at issue during the Class Period, on average, a Class Member would receive **$154.38**.[6] (Decl. of Nichols ¶ 12). Where both sides face significant uncertainty, including the risk for obtaining class certification, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendants present serious threats to the claims of Plaintiff and the other Settlement Class Members. Defendants assert that Defendant's employment practices complied with all applicable Labor laws and Plaintiffs would be unable to obtain class certification as the allegations are too individualized. Notably, while there were piece-rate workers involved in this matter, which often leads to wage and hour issues. However, a review of the payroll documentation revealed that these piece-rate workers were separately compensated for unproductive time alleviating a key issue. Specifically, with regards to certification of this matter, Defendant would likely argue that the Class Members were working at different locations which often leads to individualized inquiries. Additionally,

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[5] $285,000 (Gross Settlement Amount) / 6,086 (Pay Periods) = $46.82 (Per Pay Period)

[6] 6,086 (Pay Periods) / 983 (Class Members) = 6.19. 6.19 x $24.94 (avg. workweek payout) = $154.38.

the Defendant in this matter is an individual, not a company. This raised serious concerns for counsel when it came to collectability, as the Class Members may be unable to collect their settlement amount due to an insolvent personal Defendant with a large liability owed across almost a thousand individuals. (See Decl. Nichols ¶ 16).

Although Plaintiffs believe in spite of these arguments that this was still a strong case, the risks inherent in continued litigation are great. Defendants strongly deny liability for Plaintiffs' principal claim that they were paid improperly and that there is unpaid overtime. This settlement is therefore certainly entitled to preliminary approval. After vigorous negotiations, the parties agreed to the Agreement recognizing the potential risks, both sides would face if litigation of this Lawsuit continued. As the federal court held in *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D.Cal. 2007), where the parties faced uncertainties similar to those in this litigation:

> 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." *See In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000). Here, the risk of further litigation is substantial.

Id. at *12.

The above-referenced uncertainty in the law, the risk, expense, complexity, and likely duration of further litigation likewise favor 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." See *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000). Here, the risk of further litigation is substantial. *Id.* at *12.

E. <u>The Settlement Does Not Improperly Grant Preferential Treatment To Class Representatives</u>

The relief provided in the Agreement will benefit all of the Settlement Class Members. The Agreement does not grant preferential treatment to Plaintiff or segments of the Class in any way. Payments to the Settlement Class Members are all determined under a neutral methodology. Each Settlement Class Member will receive the same opportunity to participate in and receive payment through a neutral formula that is based upon the Pay Periods by that individual.

Plaintiff will apply to the Court for a Class Representative Service Payment in consideration for the service and for the risks undertaken on behalf of the class and aggrieved employees. Plaintiff performed their duties admirably by working with Class Counsel. (See Decl. Webb, at ¶ 33, See Declaration of Veronica Pimentel generally). At this stage, the requested service award of $5,000 is well within the accepted range of awards for purposes of preliminary approval. See e.g. *Mathein v. Pier 1 Imps*. (U.S.), Inc., 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding $12,500 where average class member payment was $351); *Holman v. Experian Info. Solutions, Inc*., 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving $10,000 service award where class member recovery was $375); *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 there from, and to serve as an incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17. Moreover, "it is established that named 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,* 186 Cal. App. 4th 399, 412, 112 Cal. Rptr. 3d 324, 335 (2010)

F. <u>The Stage of The Proceedings Are Sufficiently Advanced To Permit Preliminary Approval</u>

The stage of the proceedings at which this Agreement was reached also works in favor of preliminary approval and ultimately, final approval of the Agreement. Class Counsel has conducted a thorough investigation into the facts of the class action. Class Counsel began investigating the Class Members' claims before the lawsuit was filed. Class Counsel engaged in informal discovery and conducted a review and analysis of the relevant documents and data. (See Decl. of Webb ¶ 30). 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 data and their own independent investigation and evaluation, Class Counsel is of the opinion that the Agreement with Defendant 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 Defendant, and numerous potential appellate issues. There can be no doubt that Counsel for the 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 U.S. Dist. LEXIS 8476 at *14 (quoting In re Mego Financial Corp. Securities Litigation, 213 F.3d at 459.

Here, Class Counsel was in far superior position to evaluate the fairness of this Settlement because Class Counsel performed informal discovery, received all necessary information which was evaluated with the assistance of an expert, and also performed independent investigations and due diligence to confirm the accuracy of the information supplied by Defendant.

V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES

Plaintiff contends 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 persons directly employed by Defendants in California and classified as a non-exempt employee who worked during the Class Period.* (Agreement at ¶ 1.5., See Decl. of Webb at ¶ 28).

The "Class Period" means the period from February 15, 2020, through March 7, 2025, whichever occurs first. (Agreement at ¶ 1.13. See Decl. of Webb at ¶ 28).

A. California Code of Civil Procedure § 382

The Parties seeks 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).

Moreover, "[t]he party advocating class treatment must demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives. In turn, 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.'" (*internal quotes omitted*) *Brinker Rest. Corp. v. Superior Ct.,* 53 Cal. 4th 1004, 1021, 273 P.3d 513, 523 (2012).

While Defendant reserve all rights to dispute that the Plaintiff can satisfy these requirements, the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case for purposes of settlement only and therefore, the proposed Settlement Class Members should be certified for purposes of settlement only. (Agreement at ¶ 12.1).

B. <u>The Proposed Class Is Ascertainable and Numerous</u>

Plaintiff brings this action on behalf of a Class of individuals during the applicable Class Period. Plaintiff asserts that all of these individuals are ascertainable because the class members can readily be determined through examination of Defendant's files. Given that the Class consists of approximately 983 members, Plaintiffs maintain that numerosity is clearly satisfied. See *Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) (See Decl. of Webb ¶ 28).

As for the requirements for ascertainability, the California Supreme also concluded that "the objectives of this requirement are best achieved by regarding a class as ascertainable when it is defined 'in terms of objective characteristics and common transactional facts' that make 'the ultimate identification of class members possible when that identification becomes necessary.' We regard this standard as including class definitions that are "sufficient to allow a member of [the class] to identify himself or herself as having a right to recover based on the [class] description." (*internal quotes omitted*) *Noel v. Thrifty Payless, Inc.,* 7 Cal. 5th 955, 980, 445 P.3d 626, 643 (2019). Here, Plaintiff asserts that the 983 current and former employees that comprise the Class can be identified based on Defendant's records and are sufficiently ascertainable and numerous for class certification.

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, Section 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*, 34 Cal. 4th at 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.,* 169 Cal. App. 4th 1524, 1536 (2008) ("[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*., 23 Cal. 4th 429, 439-440 (2003).

Here, Plaintiff contends that common questions of law and fact are present, and specifically the common questions of whether Defendant properly paid their non-exempt employees, whether the Defendant failed to pay overtime wages, whether the Defendant failed to provide meal and rest periods, whether class members were lawfully compensated for all hours worked, whether Defendant failed to provide required expense reimbursement, whether the Defendant failed to provide accurate itemized wage statements, and whether Class Members are entitled to damages and penalties as a result of these practices.

D. The Claims of Plaintiffs Are Typical of the Settlement Class Members

The typicality requirement requires Plaintiffs to demonstrate that the members of the class have the same or similar claims as the Plaintiffs. "The typicality requirement is met when the claims of the [p]laintiff arise from the same event or are based on the same legal theories." *Tate v. Weyerhaeuser Co*., 723 F.2d 598, 608 (8th Cir. 1983). In *Hanlon*, supra, 150 F.3d at 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 the instant case, Plaintiff contends that there can be little doubt that the typicality requirement is satisfied. The Plaintiff, like every other member of the class, worked for Defendant as non-exempt farm labor employees during the Class Period. Plaintiff contends that, like every other member of the class, they were subjected to the same practices and policies of Defendant and are subject to the same defenses. Thus, Plaintiff asserts that his claims and the Settlement Class Members arise from the same course of conduct by the Defendant, involve the same employment policies and practices of Defendant, and are based on the same legal theories. For purposes of settlement, Plaintiff asserts that the typicality requirement is met as to the common issues presented in this case. Defendant does not oppose a finding of typicality for purposes of this settlement only. (See Decl. of Webb ¶ 28).

E. <u>The Class Representation Fairly and Adequately Protected the Class</u>

Plaintiff contends that the Settlement 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. First, Plaintiff is well aware of her duties and has actively participated in the prosecution of this case to date. Plaintiff effectively communicated with counsel, provided documents to counsel and participated in the investigation and negotiations. (See Declaration of Veronica Pimentel). Second, Plaintiffs retained competent counsel who are experienced in employment class actions and who have no conflicts. Third, there is no antagonism between the interests of the Plaintiff and those of the Settlement Class Members. Both the Plaintiff and the Settlement Class Members seek monetary relief under the same set of facts and legal theories.

A. 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 class wide 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, Plaintiff contends that a class action is the superior mechanism for resolution of the claims as pled by the Plaintiff. While Defendant disputes that class treatment is superior, Defendant does 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. The Parties have agreed upon procedures by which the Settlement Class Members will be provided with written notice of the settlement similar to that approved and utilized in hundreds of class action settlements. In accordance with the Agreement, Defendant will provide the Administrator Class Data. (Agreement at ¶ 4.2). The Administrator will run all the addresses provided through the United States Postal Service National Change of Address (NCOA) database (which provides updated addresses for any individual who has moved in the previous four years and who has notified the U.S. Postal Service of a forwarding address) to obtain current address information, and shall mail the Notice to the Class Members via first-class U.S. Mail using the most current mailing address information available within thirty (30) days after receiving the Class Data. (Agreement at ¶ 7.4). The Notice shall provide Class Members forty-five (45) calendar days' notice of all applicable dates and deadlines, including an additional fourteen (14) days for Class Members whose Class Notice is re-mailed. (Agreement at ¶ 7.5.1) The Notice will also include the estimated dollar amount of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member and/or Aggrieved Employee, and the number of Class Pay Periods and PAGA Pay Periods (if applicable) used to calculate these amounts.

Not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. (Agreement at ¶ 7.4.3) If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. *Id*. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time. *Id.*

Class Members will have the opportunity, should they disagree with the number of Pay Periods stated in their Notice, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Administrator and postmarked no later than forty-five (45) calendar days after the date the Administrator initially mails the Notice to the Class, including an additional fourteen (14) days for Class members whose Notice Packet is re-mailed. (Agreement at ¶ 7.6) If there is a dispute, the Administrator will determine the allocation of Class Pay Periods and/or PAGA Pay Periods for the Class Member, and their determination shall be final and not appealable or otherwise susceptible to challenge. *Id*.

Not later than twenty-one (21) days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and mailing of the Notice Packets, the Notice Packets returned as undelivered, the re-mailing of Notice Packets, attempts to locate Class Members, the total number of Requests for Exclusion it received (both valid and invalid), and the number of written objections received. (Agreement at ¶ 7.8.5).

The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court. (Agreement at ¶ 7.8.5). Class Members who don't submit a timely and proposer request to opt-out will automatically receive a payment. This notice program was designed to meaningfully reach the Class Members and advise them of all pertinent information concerning the settlement. The mailing and distribution of the Notice satisfied 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

Based on the foregoing, Plaintiff respectfully requests 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 a date that is at least 80-100 days from the date Preliminary Approval is granted.

Dated: September 19, 2025

NEVELS NICHOLS, LLP

By______________________________
CHRISTOPHER E. NICHOLS
BROOKE B. NEVELS
Attorneys for Veronica Pimentel

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF FRESNO

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My primary business address is 10650 Treena Street, Suite 212, San Diego, California, 92131. On Friday, September 19, 2025, I served a copy of the following documents:

- **Motion for Preliminary Approval – Notice**
- **Motion for Preliminary Approval – Memorandum of Points and Authorities**
- **Motion for Preliminary Approval – Declaration of Nichols**
- **Motion for Preliminary Approval – Declaration of Webb**
- **Motion for Preliminary Approval – Declaration of Pimentel**

[x] **By Electronic Service**: Based on a court order, Code of Civil Procedure Section 1010.6 and California Rules of Court Rule 2.251, or an agreement of the parties to accept electronic service. I caused the above documents to be sent to the person(s) at the e-mail address(es) set forth below.

[ ] **By Mail**: I placed the envelope for collection and mailing at the address(es) below, following our ordinary business practices. I am readily familiar with this firm's business practice for collecting and processing correspondence for mailing, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at San Diego, California.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on Friday, September 19, 2025, at San Diego, California.

Noah Adams

NOAH ADAMS

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