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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF YOLO

ROBERTO HERNANDEZ, individually, and on behalf of other members of the general public similarly situated, and as an aggrieved employee and Private Attorney General; Plaintiff, vs. ADAMS GRAIN CO., a California corporation; ADAMS VEGETABLE OILS, INC., a California corporation; and DOES 1 through 100, inclusive, Defendants.	Case No.: CV2022-1642 **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Hearing Date: February 13, 2025 Hearing Time: 9:00 A.M. Department: TBD Reservation No.: Complaint Filed: September 27, 2022 Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on February 13, 2025, at 9:00 A.M., of the above-captioned Court, located at 1000 Main Street, Woodland, California 95695, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, Plaintiff ROBERTO HERNANDEZ ("Plaintiff") will and hereby does move the Court for an Order granting preliminary approval of the proposed class action settlement between Plaintiff and Defendants ADAMS GRAIN CO., and ADAMS VEGETABLE OILS, INC. ("Defendants").

Specifically, Plaintiff requests that the Court enter an Order:

1. Preliminarily approving the Class Action and PAGA Settlement Agreement ("Settlement" or "Settlement Agreement") attached as **Exhibit 2** to the Declaration of Heather Davis in support of Motion for Preliminary Approval ("Davis Decl.");

2. Certifying a Class for Settlement purposes, only;

3. Appointing Plaintiff Roberto Hernandez as the Class Representative for settlement purposes, only;

4. Appointing Lawyers *for* Justice, P.C., and Protection Law Group, LLP, as Class Counsel for Settlement purposes, only;

5. Approving the proposed Class Settlement Notice ("Class Notice"), Request for Exclusion Form, and Objection Form, attached as Exhibits A-C to Exhibit 2 of the Davis Decl. (collectively the "Notice Packet") to be mailed to the Class;

6. Approving the opt-out and objection procedures provided in the Settlement Agreement set forth in the Notice Packet;

7. Directing Defendants to furnish the Class List to the Settlement Administrator within twenty-one (21) calendar days after the Court grants preliminary approval of the Settlement;

8. Approving the proposed deadlines for the Settlement administration process; and

9. Setting a date for a hearing on final approval of the proposed Settlement.

Pursuant to California Labor Code § 2699(l)(2), a copy of the proposed Class Action and PAGA Settlement Agreement, as well as information regarding the preliminary approval hearing on this matter, were submitted to the California Labor Workforce Development Agency via online filing at https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html on

November 18, 2024. *See* Davis Decl. ¶24, Ex. 3.

The motion is based upon this Notice, the attached memorandum of points and authorities; the Declaration of Heather Davis filed concurrently herewith and exhibits thereto; the pleadings and other records on file with the Court in this matter; and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

DATED: January 13, 2025 **PROTECTION LAW GROUP, LLP**

By: ______________________________
Heather Davis
Amir Nayebdadash
Brendan J. Burton
Shadi Sahebghalam
Attorneys for Plaintiff
ROBERTO HERNANDEZ

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Roberto Hernandez ("Plaintiff") seeks preliminary approval of a Class Action and PAGA Settlement Agreement ("Settlement" or "Settlement Agreement") on behalf of all current and former hourly-paid, non-exempt employees who worked for Defendants Adams Grain Co. or Adams Vegetable Oils, Inc. in California at any time from September 27, 2018, through May 24, 2024. The Settlement terms are outlined as follows:

- Estimated size of the Class: 320 employees.
- Estimated number of PAGA Members: 90 employees.
- Gross Settlement Amount: $855,000.00, exclusive of employer-side payroll taxes.
- Settlement Administration Costs: not to exceed $9,250.00.
- Requested Class Representative Incentive Payment: $7,500.00 to Plaintiff Hernandez.
- PAGA Penalties Payment: $75,000.00; 75% of which ($56,250.00) will be paid to the California Labor and Workforce Development Agency ("LWDA") with the remaining 25% ($18,750.00) distributed to PAGA Members.
- Requested Class Counsel's Fees and Costs: $299,250.00 plus actual litigation costs and expenses not to exceed $30,000.00.
- Estimated Net Settlement Amount: approximately $434,000.00 to be distributed to Participating Class Members.

As set forth herein, the Settlement is the product of informal discovery, arms-length negotiations, and provides a fair, adequate, and reasonable recovery for the Class and PAGA Members in light of the relative strength of Plaintiff's claims, Defendants' defenses, the risk, expense and uncertainty of further litigation, and the benefit conferred by the Settlement. Plaintiff therefore respectfully requests that the Court grant preliminary approval of the proposed Settlement, conditionally certify the Class, for settlement purposes, only, approve the proposed Notice Packet, and set a hearing date for final approval of the settlement, among other requested relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant ADAMS GRAIN CO. specializes in merchandizing and warehousing wheat, corn, safflower, barley, rice, and other grains. Defendant ADAMS VEGETABLE OILS, INC., is the leading processor and marketer of specialty organic vegetable oils worldwide and specializes in palm oil, soybean oil, coconut oil, high-oleic sunflower oil, linoleic sunflower oil, canola oil, and lecithin oil. Defendant ADAMS GRAIN CO. and Defendant ADAMS VEGETABLE OILS, INC., ("Defendants") offer services and products to customers throughout California. Plaintiff Roberto Hernandez alleges he was employed by Defendants as an hourly-paid, non-exempt employee in the position of Extractor Operator from approximately November 2014 to approximately January 2020. *See* Declaration of Heather Davis in support of Motion for Preliminary Approval ("Davis Decl.") ¶13.

On April 4, 2024, Plaintiff provided notice to Defendants and the California Labor and Workforce Development Agency ("LWDA") of the alleged wage and hour violations and his intent to seek civil penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA"). Davis Decl. ¶14, Ex. 1.

On September 27, 2022, Plaintiff filed a class action complaint with the Yolo County Superior Court, Case No. CV2022-1642 ("the Action"), against Defendants, alleging the following causes of action: (1) Unpaid Overtime; (2) Unpaid Meal Period Premiums; (3) Unpaid Rest Period Premiums; (4) Unpaid Minimum Wages; (5) Final Wages Not Timely Paid; (6) Wages Not Timely Paid During Employment; (7) Failure to Provide Accurate Wage Statements; (8) Failure to Keep Accurate Payroll Records; (9)Failure to Reimburse Expenses; and (9)\ Violation of California Business & Professions Code §§ 17200, *et. seq*. Davis Decl. ¶15.

On December 29, 2022, Plaintiff propounded the following discovery: (i) Form Interrogatories – General, Set One, (ii) Special Interrogatories, Set One, (iii) Requests for Production of Documents, Set One, and (iv) a Deposition Notice of Defendants' Person(s) Most Qualified. Davis Decl. ¶16.

On February 23, 2023, Defendants provided written responses to Plaintiff's (i) Form Interrogatories – General, Set One, (ii) Special Interrogatories, Set One, and (iii) Requests for Production of Documents, Set One. Davis Decl. ¶17.

On March 21, 2023, the Parties met and conferred, negotiated, and filed a Joint Stipulation and Protective Order. Davis Decl. ¶18.

Thereafter, the Parties engaged in discussions to attend a formal private mediation. Plaintiff requested certain documents and data be produced in order to accurately and fairly evaluate the claims and claimed damages. The Parties agreed, and decided to mediate with March Feder, Esq., on the nearest available date, March 12, 2024. On November 13, 2023, the Parties filed a Joint Stipulation regarding Discovery and Mediation, setting forth duties and responsibilities of each party prior to mediation. Davis Decl. ¶19.

In advance of mediation, Defendants provided Plaintiff's Counsel with extensive informal discovery including all relevant policies and handbooks in place during the Class Period, which included all applicable policies relating to meal breaks, rest breaks, timekeeping, the payment of wages and other relevant areas of investigation, a randomly selected 20% sampling of time and payroll data for the putative class, and figures and information regarding the class size and composition. The randomly selected 20% sampling included records for putative class members who were employed throughout different time periods during the Class Period, that is representative of the Class. With this data for the Class, Plaintiff's Counsel and their retained expert were able to perform a comprehensive damages analysis and estimate Defendants' potential alleged violations, liability, and exposure, including, and not limited to, analyzing time and pay data, considering potential meal period violations, potential rest period violations, potential synthetic meal period recordings, unpaid and rest period premiums, rounding, overtime and premium payments, etc. This discovery and investigation allowed Plaintiff's Counsel to perform a comprehensive damages analysis and estimate Defendants' potential alleged liability and damages for mediation. Davis Decl. ¶20.

After extensive review of the mediation documents and other information, on March 12, 2024, the Parties attended a full day mediation before Marc Feder, Esq. At the mediation, the Parties engaged in intense settlement discussions during which they debated their respective positions and exchanged views regarding the strengths and weaknesses of the alleged claims and defenses, but despite the help of the mediator were unable to reach an agreement on the day of mediation. Davis Decl. ¶21.

The Parties endeavored to diligently continue discussions through the mediator, and after mediation on March 12, 2024, the Parties each agreed to a mediator's proposal, assenting to the essential terms of settlement. Davis Decl. ¶22.

Thereafter the Parties diligently worked to draft and negotiate a Memorandum of Understanding ("MOU"), which was executed on May 13, 2024. Davis Decl. ¶23.

As a negotiated term of the MOU, the Parties worked to file a Joint Stipulation to allow Plaintiff to file a First Amended Complaint adding a cause of action for violation of California Labor Code § 2699 – the Private Attorneys General Act of 2004 ("PAGA Action"). On June 11, 2024, the Parties filed the Joint Stipulation to File First Amended Complaint. Davis Decl. ¶24.

Thereafter the Parties diligently worked to draft and negotiate a long form Joint Stipulation of Class Action and PAGA Settlement ("Settlement Agreement"). On October 10, 2024, the Parties fully-executed the long form Settlement Agreement. Davis Decl. ¶25.

Now, following substantial investigation and extensive settlement negotiations, Plaintiff moves for preliminary approval of this Settlement and has provided notice of the proposed Settlement to the LWDA. Davis Decl. ¶¶26-27, Ex. 5.

III. THE SETTLEMENT TERMS

A. Class and PAGA Members Definition

For purposes of settlement only, the Parties have agreed that the Class shall be defined as: all current and former hourly-paid, non-exempt employees of Adams Grain Co. or Adams Vegetable Oils, Inc. who were employed by Adams Grain Co. or Adams Vegetable Oils, Inc. in the state of California at any time between September 27, 2018, through May 24, 2024. Davis Decl. ¶29; Settlement Agreement ¶¶3, 7. The Class Period and release of class claims covers the time period from September 27, 2018, through May 24, 2024. *See* Davis Decl. ¶29; Settlement Agreement ¶30. The proposed Class consists of an estimated 320 Class Members. Davis Decl. ¶31. For purposes of settlement only, the Parties have agreed that PAGA Members shall be defined as: all current and former hourly-paid, non-exempt employees of Adams Grain Co. or Adams Vegetable Oils, Inc. who were employed by Adams Grain Co. or Adams Vegetable Oils, Inc. in the state of California at any time between April 4, 2023, through June 11, 2024. Davis Decl. ¶30; Settlement Agreement ¶¶22,

24. The PAGA Period and release of PAGA claims covers the time period from April 4, 2023, to June 11, 2024. Davis Decl. ¶30; Settlement Agreement ¶22. There are estimated to be 90 PAGA Members. Davis Decl. ¶31.

B. Amount of Settlement

The Parties have agreed to settle the disputed Class and PAGA claims at issue in the Action for a non-reversionary Gross Settlement Amount of $855,000.00, exclusive of any employer-side payroll taxes. Davis Decl. ¶32; Settlement Agreement ¶¶16, 41, 48.

C. Escalator Clause

The Gross Settlement Amount is based on Defendants' representation that the Class Members worked a total of 28,500 Workweeks during the Class Period. Should the qualifying Workweeks worked by the Class Members during the Class Period ultimately increase by more than 10% (*i.e.*, exceed more than 31,350 Workweeks), Defendants shall have right at their sole discretion to either (1) reduce the Class Period such that the Workweeks do not exceed 31,350, or (2) pay a *pro rata* increase in the Gross Settlement Amount equal to the percentage increase in Workweeks above 31,350. For example, if the Workweek count increases by 12%, then Defendants may, at their sole discretion, elect to pay a 2% increase to the Gross Settlement Amount Davis Decl. ¶33; Settlement Agreement ¶42.

D. Allocation and Funding of the Gross Settlement Amount

The Gross Settlement Amount is a common fund and therefore, includes all requested costs, fees, and other allocations. As stated above, the Gross Settlement Amount includes: (1) attorneys' fees in the amount of $299,250.00; (2) actual litigation costs, not to exceed $30,000.00; (3) settlement administration costs, not to exceed $9,250.00; (4) a class representative incentive payment to Plaintiff Hernandez in the amount of $7,500.00; and (5) PAGA Payment of $75,000.00, 75% of which will be paid to the LWDA and 25% of which will be distributed to PAGA Members. Davis Decl. ¶34; *see also* Settlement Agreement ¶¶41, 44, 45, 46, 47, 48.

After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net Settlement Amount of approximately $434,000.00 shall be distributed to the Participating Class Members. Davis Decl. ¶35; Settlement Agreement ¶48. The Net Settlement Amount will be distributed and paid to Participating Class Members on a *pro-rata* basis based on the number of weeks worked during the Class Period. Settlement Agreement ¶49(a). In addition, PAGA Members shall receive a *pro-rata* share of the 25% portion of the PAGA Payment allocated for aggrieved employees. PAGA Members shall receive their portion of the PAGA Payment regardless of their decision to opt-out of the Class Settlement, and are not able to opt-out from the PAGA Settlement. Davis Decl. ¶36; Settlement Agreement ¶47.

The payment to each Class Member will vary based on the number of Workweeks the Class Member worked, and whether they are entitled to a share of the PAGA Payment, but Plaintiff's Counsel has calculated this will provide an average estimated payment of $1,831.22. Davis Decl. ¶37. PAGA Members shall receive their portion of the PAGA Payment regardless of their decision to opt-out of the Class Settlement. Davis Decl. ¶38; Settlement Agreement ¶49(b).

Payments to Class Members shall be allocated as twenty percent (20%) wages, forty percent (40%) penalties, and forty percent (40%) interest. Davis Decl. ¶39; Settlement Agreement ¶49(c). Employer-side payroll taxes shall be paid by Defendants separately from and in addition to the Gross Settlement Amount. Davis Dec. ¶40; Settlement Agreement ¶14.

The proposed Settlement is a non-reversionary and non-claims made settlement. All money from the Net Settlement Amount will be distributed to the Class Members. No money from the Settlement will revert to Defendants. Davis Decl. ¶41; Settlement Agreement ¶¶16, 41. Any residue from checks issued to Participating Class Members and PAGA Members remaining uncashed after 180 days will be distributed to the State Controller's Office Unclaimed Property division as unclaimed property to be held in trust for such Participating Class Members pursuant to California's Unclaimed Property Law. As such, no "unpaid residue" under California Code of Civil Procedure § 384 will result from the settlement. Davis Decl. ¶42; Settlement Agreement ¶63.

E. Release of Wage and Hour Claims

In exchange for participating in the Settlement, Participating Class Members will release their wage and hour claims against Defendants and the Released Parties, as defined in the Settlement Agreement. The release for Participating Class Members is narrowly tailored to only release claims based upon the facts alleged in the Operative Complaint in the Action, for the Class Period. Davis

Decl. ¶43; Settlement Agreement ¶68. The proposed Settlement also resolves all PAGA Members' claims arising under PAGA that were alleged in the LWDA letter and Operative Complaint, or could have been alleged, for the PAGA Period. Davis Decl. ¶44; Settlement Agreement ¶¶31, 69.

IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL

The settlement of a class action requires court approval. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794 (1996). "In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds).

The review and approval of a proposed class action settlement involves a two-step process. *See* Cal. Rules of Court, Rule 3.769(c). First, counsel submit the proposed terms of settlement and the Court makes a preliminary assessment of whether the settlement is sufficiently fair to justify providing notice of the settlement to the class. After notice is provided to the class, the Court must conduct a second inquiry into whether the proposed settlement is fair, reasonable and adequate. *Id.*

The initial evaluation of the settlement at the preliminary approval step "is not a fairness hearing." *Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the proposed settlement is within the range of possible approval and, as a result, "whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing." 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. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006).

Preliminary approval does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after class members have been given an opportunity to review and voice their views of the settlement or exclude themselves from the settlement. *See* Cal. Rules of Court, Rule 3.769(g). In considering a potential class settlement, the court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute. *See Officers for Justice v. Civil Service Comm. of S.F.*, 688 F.2d 615, 625 (1982).

V. THE SETTLEMENT IS PRESUMED FAIR

A. Arm's-Length Bargaining

California courts recognize that "a presumption of fairness exists where . . . [a] settlement is reached through arm's-length bargaining." *Wershba*, 91 Cal. App. 4th at 245 (disapproved on other grounds); *see also Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009). Here, the Parties engaged in arm's-length, non-collusive negotiations at all times. This litigation was hotly contested and settlement negotiations were at all times at arm's length and adversarial. The Parties engaged in a full day of private mediation with a highly respected mediator. Thereafter, the Parties engaged in additional negotiations before finalizing the long-form settlement agreement presently before the Court. At all times, Plaintiff was willing and prepared to litigate this matter if the Parties had been unable to reach a favorable resolution, and understands Defendants were equally as willing to litigate and defend against Plaintiff's claims. Davis Decl. ¶49.

B. Sufficient Investigation and Discovery by Experienced Class Counsel

Courts typically assess the status of discovery in determining whether a class action settlement agreement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801. As discussed above, the Parties engaged in extensive formal and informal discovery prior to reaching a settlement. Prior to mediation, Defendants informally produced time and payroll records for a portion of the putative class members, written policies including the employee handbooks in effect during the Class Period, stand-alone wage and hour policies, and other relevant documents. Defendants also provided information regarding the number of putative class members, the number of current versus former employees, the total workweeks and pay periods worked by the Class; and the putative class members' average rate of pay. With the time and pay records, Class Counsel and their retained expert were able to perform a comprehensive damage analysis and estimate Defendants' potential alleged violations, liability, and exposure, including, and not limited to analyzing time and pay data, considering potential meal period violations, potential rest period violations, potential synthetic meal period recordings, rounding, overtime and premium payments, etc. The Parties extensively briefed issues regarding class certification and liability and provided their respectively analyses to the mediator for his consideration. Davis Decl. ¶48.

Additionally, settlement negotiations were conducted by highly capable and experienced counsel. Class Counsel are respected members of the bar with strong records of vigorous and effective advocacy, and are experienced in handling complex wage and hour class action litigation. Davis Decl. ¶¶2-11(a)-(d); Hosseni Decl. ¶¶2-6(a)-(oo). Accordingly, Class Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal Positions and Recovery Risks

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable. *Wershba*, 91 Cal.App.4th at 246, 250 (disapproved on other grounds). In evaluating the reasonableness of a settlement, a trial court must consider "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008).

Here, the reasonableness of the Settlement is underscored by the fact that Defendants have legal and factual grounds for defending the Action. Based upon Class Counsel's experience litigating similar complex matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class certification and the merits absent a settlement. Davis Decl. ¶¶2-11(a)-(d); Hosseni Decl. ¶¶2-6(a)-(oo).

1. <u>Class Counsel's Analysis of the Maximum Available Liability and Damages</u>

Prior to mediation, Class Counsel analyzed the time and payroll records for all putative class members provided by Defendants and other relevant documents and discovery. With this data, Class Counsel and their retained expert were able to perform a comprehensive damages analysis and estimate Defendants' potential alleged violations, liability, and exposure, including, and not limited to, analyzing time and pay data, considering potential meal period violations, potential rest period violations, potential synthetic meal period recordings, potential unpaid meal or rest period premiums, overtime and premium payments, etc. This discovery and investigation allowed Class Counsel to perform a comprehensive damages analysis and estimate Defendants' potential alleged liability. Davis Decl. ¶48. Based on the discovery provided, and although disputed by Defendants, Class Counsel estimated with respect to the claims at issue, with all claims adjudicated in favor of the Class, Defendants faced a maximum potential liability of $13,110,903.06. This estimated maximum liability includes: $894,626.27 for meal period violations; $894,626.27 for rest period violations; $1,177,325.72 for unpaid wages; waiting time penalties in the amount of $1,088,992.80; penalties for inaccurate wage statements in the amount of $1,192,500.00; and estimated claims for business reimbursement at $85,500.00, all as calculated by Class Counsel and their expert(s). Plaintiff also estimated non-duplicative PAGA penalties of approximately $7,777,332.00 including penalties for violations of Labor Code §§ 204 and 1174(d), which Defendants dispute. Davis Decl. ¶50.

2. Class Counsel's Risk-Based Analysis and Risk-Based Adjustments

While Plaintiff believes Defendants faced significant alleged exposure, which Defendants deny, Plaintiff recognized substantial barriers to a class recovery existed and Plaintiff faced numerous challenges attempting to bring the alleged claims on a class and representative basis. For instance, Defendants contended that Plaintiff's claims were not suitable for class certification because individual issues and affirmative defenses would predominate should this case go to trial. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1051 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014). While Plaintiff and Class Counsel disagree with Defendants' predictions, they also recognize that there is a significant risk that the Court may deny class certification. Davis Decl. ¶52; *see also*, *Findings of the Study of California Class Action Litigation*, 2000-2006, available at http://www.courts.ca.gov/documents/class-action-lit-study.pdf (finding only 21.4% of all class actions were certified either as part of a settlement ***or*** as part of a contested certification motion).

A large portion of Defendants' overall estimated liability lies in Plaintiff's alleged meal period claim. Plaintiff's meal period theory of liability was based upon Defendants' alleged failure to provide timely, full, and/or uninterrupted meal periods. Defendants argued that they had compliant policies and practices and that there were individualized issues with respect to the alleged violations.

Meal period claims have become increasingly difficult to certify in recent years and Defendants contended their practices were lawful. *See Brinker*, 53 Cal.4th at 1034-35. Accordingly, Class Counsel had to consider the risk that the Court would find validity in this individualized proof defense to the certification of Plaintiff's meal period claim. Davis Decl. ¶¶53-54.

Similarly, Plaintiff would likely face difficulties proving the alleged rest period violations, as Defendants were not required to record these breaks. Plaintiff contended that Defendants allegedly failed to provide Class Members with timely, full, and uninterrupted rest periods and also allegedly failed to implement a compliant rest period policy during the class period. Plaintiff believed that Defendants' alleged written policy requiring employees remain on premises during their rest breaks was unlawful and violated California law. *See Augustus v. ABM Securities*, 2 Cal. 5th 257, 270 (2016) (holding that employers must relieve employees of all duties during rest breaks and relinquish control over how employees spend their time). Defendants claimed they allowed employees to take their state mandated rest periods and that their practices complied with California law. Given the lack of records demonstrating rest period violations, there were legitimate concerns Plaintiff would not be able to certify this claim or prove substantial damages even assuming a uniform practice could be established. Davis Decl. ¶¶56-57.

Plaintiff also faced challenges certifying and proving liability for his alleged minimum wage and overtime claims. These claims were largely based on alleged unrecorded, off-the-clock work performed by Class Members both before and after their shifts and during purported meal periods. Defendants contended they did not permit off-the-clock work and that they were not aware off-the-clock work was being performed. Defendants argued even if a class could be certified, the individualized nature of the claims presented substantial concerns regarding the manageability of the case and the risk the Court could find these issues prevented certification. Davis Decl. ¶¶59-60.

There are also substantial risks associated with Plaintiff's alleged waiting time penalties, recordkeeping, and wage statement claims. First, these alleged claims were largely derivative of Plaintiff's previous claims and if certification was denied on those underlying claims, these claims would also likely fail and/or not be certified. Further, even if Plaintiff prevailed on his underlying off-the-clock claims, he would still be required to demonstrate that Defendants' violations of Labor

Code § 203 were <u>willful</u> violations, a difficult prospect. *See, e.g.*, *Choate v. Celite Corp.*, 215 Cal.App.4th 1460, 1468 (2013) (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding of willfulness"). Wage statement claims have also seen varying treatment at the appellate level because such claims have an element of discretion attached to them rather than a pure calculation of damages after liability is proven. *Cf., Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) *with Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011). Accordingly, these derivative claims, which comprised a substantial portion of Defendants' estimated liability, as calculated by Class Counsel, and disputed by Defendants, are extremely risky. Davis Decl. ¶¶62, 64, 65.

Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the amount of wages due to each Class Member would be an expensive, time-consuming, and extremely uncertain proposition. In order to prove liability and damages, Class Counsel would be required to spend hundreds of additional hours obtaining discovery and likely substantial motion practice. Obtaining cooperation of current employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. On the other hand, Defendants would likely be able to obtain the cooperation of their employees. Moreover, even if Plaintiff prevailed, possible appeals would substantially delay recovery by the Class. Davis Decl. ¶76.

Class Counsel also separately contemplated the risks of proceeding with the PAGA cause of action and potential penalties Defendant could face under this alleged cause of action. As part of the valuation of the potential PAGA claims, Class Counsel included claims under Labor Code §§ 204 and 1174(d). Plaintiff's claim under Labor Code § 204 could be recovered either through Labor Code § 210 or PAGA, but as a matter of law, Plaintiff is not entitled to a duplicative recovery. *See* Labor Code § 210(c) (permitting recovery of penalties through § 210 or PAGA, but not both). Plaintiff's claims under Labor Code § 1174(d) were arguably only recoverable under PAGA. *See Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal.4th 365, 383 (2005).

The Parties agreed during settlement negotiations to allocate $75,000.00 of the Settlement towards the PAGA claims, which represents approximately 8.7% of the Gross Settlement Amount. This percentage of the settlement is well-within the range of wage and hour settlements regularly approved in both state and federal court for cases that include both a class and PAGA action. Settlements that allocate only 1% of the total settlement value to resolve PAGA claims is typical of wage and hour settlements and PAGA allocations as little as 0.27% of the total settlement amount have been approved as reasonable by courts. Davis Decl. ¶68. Class Counsel also recognizes that the PAGA claims would be subject to the same defenses and risks as Plaintiff's class claims, as well as defenses unique to PAGA, that PAGA penalties may not be stacked for violations based on the same conduct, and the substantial risk that PAGA penalties may be reduced where they are duplicative, arbitrary or oppressive. Davis Decl. ¶¶69-70. *See Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012) (imposition of both statutory and civil penalties for same conduct is impermissible double recovery) (disapproved on other grounds); *Fleming v. Covidien, Inc.*, 2011 WL 756304718, at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 80%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (reducing penalties from $50 per pay period to $5 per pay period based on good faith attempt to comply with obligations and minimal violations).

Therefore, in consideration of risks regarding certification of the class claims, as well as the unique risk posed to the Class, Class Counsel discounted Defendants' estimated potential alleged liability. In light of merits-based risk factors, even if a class was certified and the claims were brought to trial, Class Counsel reduced Defendants' estimated liability for Plaintiff's meal and rest period claims, and unpaid wages claims by 70%. In light of the fact that Plaintiff's waiting time penalties and wage statement penalty claims were not only derivative and reliant upon the prior claims but faced their own unique risks, Plaintiff discounted these claims by 70% for merits related defenses. Davis Decl. ¶¶55, 58, 61, 63, 65. Finally, as to Plaintiff's PAGA claims, there was a 75% discount applied to account for the risks associated with establishing manageability, a discount of 65% was applied to account for the risks associated with succeeding on the merits, establishing liability, and proving the extent of penalties that are warranted, and a discount of 55% was applied in light of the unique risks to PAGA including the likely discretionary reduction of penalties by the Court given the circumstances of the Action and outside considerations. Davis Decl. ¶76. This resulted in an adjusted liability of $845,149.08, as calculated by Class Counsel. The slightly higher figure achieved on behalf of the Settlement Class is warranted not only because it benefits the Class, but it may address any conservative calculations that cannot be accounted for from off-the-clock work as this time was unrecorded. Moreover, the Settlement Amount of $855,000.00 achieves about 8.7% of the total exposure, which in Class Counsel's opinion is fair, adequate, and reasonable. Davis Decl. ¶78.

In light of the Parties' respective legal positions and the risks to potential recovery, it is clear that the proposed settlement is fair, adequate, and reasonable, and is in the best interests of the Class Members, PAGA Members, and State of California. Davis Decl. ¶79.

VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

Code of Civil Procedure § 382 provides that three basic requirements must be met in order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined community of interest in the question of law or fact affecting the parties to be represented; and (3) certification will provide substantial benefits to litigants and the courts, *i.e.*, proceeding as a class is superior to other methods. *See Dunk*, 48 Cal.App.4th at 1806. Plaintiff contends that this Action, which is primarily based upon Defendants' wage and hour policies and practices, satisfies the class certification requirements under California Code of Civil Procedure § 382. Defendants deny Plaintiff's allegations in their entirety, but for purposes of this Settlement, only, Defendants have stipulated to certification of the proposed class.

A. An Ascertainable Class Exists Which Is So Numerous That Joinder Of All Members Is Impracticable

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal.App.3d 862, 873 (1983). In this case, all three considerations strongly favor class certification. Here, the Class is defined as all current and former hourly-paid, non-exempt employees of Adams Grain Co. or Adams Vegetable Oils, Inc. who were employed by Adams Grain Co. or Adams Vegetable Oils, Inc. in the state of California at any time between September 27, 2018, and May 24, 2024. Settlement Agreement ¶¶3, 7. This provides a clear and definite scope for the proposed class.

Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity requirement. Under the Federal Rules, the minimum number of a class is one-hundred individuals. Under California law, that number is significantly less. *See e.g., Rose v. City of Haywood*, 126 Cal.App.3d 926, 934 (1981) (holding forty-two class members sufficient to satisfy numerosity).

Here, the fact that the Class consists of an estimated 320 Class Members plainly favors class certification.

Finally, the question whether class members are easily identifiable turns on whether a plaintiff can establish "the existence of an ascertainable class." *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 706 (1967). The existence of an ascertainable class in this case can be established through Defendant' payroll records, and the class definition is sufficiently specific to enable the Parties, potential Class Members, and the Court to determine the parameters of the Class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal.App.3d 605, 617 (1987) (proposed class defined as all persons nationwide subscribing to telephone service since January 1, 1981, who were charged for long distance calls deemed "plainly" ascertainable).

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

The community of interest requirement embodies three factors: (1) predominant questions of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. *Dunk*, 48 Cal.App.4th at 1806. Plaintiff easily satisfies all three requirements.

The commonality criterion requires the existence of common question of law or fact and is generally established with the issues of predominance and typicality. *See Daar*, 67 Cal. 2d at 706. What is required is that a common question of fact or law exists which predominates over issues unique to individual plaintiffs. The existence of individual issues or facts—generally present in any case arising from employment—is not a bar to class certification as long as they do not render class litigation unmanageable or predominate over the common issues. *See B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

Here, notwithstanding Defendants' denial of such claims, the claims as alleged by Plaintiff present sufficient common issues of law and fact that predominate and warrant class certification. Plaintiff alleges that Defendants allegedly denied compliant meal and rest periods to employees, failed to properly compensate employees for missed meal or rest periods, required employees to perform work off-the-clock, and failed to fully compensate employees for all time worked. Plaintiff alleges that these policies and practices mean that Defendants allegedly failed to pay minimum and overtime wages, and other related claims. Plaintiff alleges that Defendants' policies and practices were allegedly uniform as to all Class Members. Thus, Plaintiff contends that class treatment is appropriate.

To satisfy the typicality requirement, California law does not require that Plaintiff has claims identical to the other class members. Rather, the test of typicality for a class representative is whether other members have the same or similar injury, whether the action is based on conduct, which is not unique to the named plaintiff, and whether other class members have been injured by the same course of conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007). The typicality requirement for a class representative refers to the nature of the claim or defense of the representative, and not to the specific facts from which it arose, or the relief sought. *See Id*.

Here, Plaintiff alleges that his claims are similar to those of the other Class Members. Plaintiff alleges his claims arise out of the same alleged facts and course of conduct giving rise to the claims of the other Class Members. Finally, Plaintiff contends Plaintiff's claims are typical of the other Class Members because he seeks the exact same relief for the alleged violations. Because Plaintiff's claims are based upon the same alleged conduct and practices as those of Class Members, Plaintiff contends the typicality requirement has been satisfied.

Finally, the question of adequacy of representation "depends on whether the plaintiff's attorney qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests of the class." *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations are satisfied. Counsel for Plaintiff include well-regarded and accomplished lawyers who are qualified and experienced in employment-related, class-action litigation. Davis Decl. ¶¶2-11(a)-(d); Hosseni Decl. ¶¶2-6(a)-(oo). Plaintiff will vigorously, adequately, and fairly represent the interests of the class. Because Plaintiff's claims are typical of other class members and are not based on unique circumstances, Plaintiff contends there is no antagonism between the interests of Plaintiff and the Class.

C. A Class Action is Superior to a Multiplicity of Litigation

Under the circumstances, proceeding as a class action is a superior means of resolving this dispute, as the class members and the court will derive substantial benefits. Class certification would serve as the only means to deter and redress the alleged violations. *See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will come forward to prove his or her separate claim and whether the class approach would actually serve to deter and redress the alleged wrongdoing). Further, individual actions arising out of the same operative facts would unduly burden the courts and could result in inconsistent results. Therefore, Plaintiff contends class action proceedings are superior to individual litigation.

VII. THE REQUESTED ENHANCEMENT PAYMENT IS REASONABLE

Plaintiffs in class action and PAGA lawsuits are eligible for reasonable enhancement payments as compensation "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.*, 186 Cal.App.4th 399, 412 (2010). Courts routinely grant approval of class action settlement agreements containing enhancements for the class representative, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives helped obtain. S*ee In re Online DVD Rental*, 779 F.3d 934, 947-948 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments).

Plaintiff initiated and has stepped forward in this litigation on behalf of his former co-workers and the LWDA, who will now benefit from the Settlement. Plaintiff invested substantial time and effort into this litigation including his own research, reviewing documents, and extensive discussions with Class Counsel. Further, Plaintiff contends the requested amount is also extremely reasonable given the benefit gained by other Class Members. For these reasons, Plaintiff requests that a Class Representative Enhancement Payment of $7,500.00 to Plaintiff Hernandez be preliminarily approved by the Court. *See* Davis Decl. ¶80.

VIII. REQUESTED ATTORNEYS' FEE AND COSTS

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal, Inc.*, 82 Cal.App.4th 19, 41 (2000). California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Id*. at 47. In common fund cases where the defendant agrees to the fees constituting a percentage of the fund as part of the settlement, use of the percentage method is appropriate. *Id.* at 32.

The requested attorneys' fees of $299,500.00, which is thirty-five percent (35%) of the common fund, are disclosed to Class Members in the proposed Class Settlement Notice ("Notice"). *See* Settlement Agreement, Ex. A. The requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by Defendants. The Motion for Final Approval will elaborate on the legal services provided the time incurred in performing those services, including Class Counsel's hourly rates, in order to demonstrate the fee sought is reasonable under a lodestar analysis. The Motion for Final Approval will also provide additional evidence supporting Class Counsel's request for the reimbursement of litigation costs not to exceed $30,000.00. Davis Decl. ¶82.

IX. NOTICE TO THE CLASS, THE OPT OUT AND OBJECTION PROCESS MEETS DUE PROCESS REQUIREMENTS

The Parties have jointly drafted the Notice Packet which will be delivered to the Class Members and have agreed to having Apex Class Action Administration Solutions administer the Settlement subject to the Court's Approval. Davis Decl. ¶83, Exs 3-4 thereto; *see* Settlement Agreement, ¶36, Exs. A-C. The Notice Packet will include information regarding the nature of the lawsuit, a summary of the terms of the Settlement, the Class definition, information on how to object and opt-out, information regarding the release of the class and PAGA claims, and the date of the Final Approval Hearing. The Notice Packet will also list each Class Member's total workweeks, pay periods, and the approximate Individual Settlement Payment and share of the PAGA Penalties. *Id.* No later than twenty-one (21) days after entry of the Preliminary Approval Order, Defendant will provide the Class List to the Settlement Administrator including the full name, last known home address, last known telephone number, social security number, dates of employment as a non-exempt employee, number of workweeks worked during the Class Period, and number of pay periods worked during the PAGA Period for each Class Member. The Settlement Administrator shall perform any searches necessary to confirm the Class Members' addresses, shall translate the Notice Packet, and shall mail the Notice Packet in both English and Spanish to all Class Members within seven (7) days of receiving the Class List from Defendant. Davis Decl. ¶84; Settlement Agreement ¶¶50, 51-55.

In determining whether to approve a settlement of a class action, a trial court has complete discretion as to the manner of giving notice to class members, and review on appeal is governed by the abuse of discretion standard. *See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380 (2010). Here, Class Counsel is not aware of an alternative method that would result in a higher likelihood of actual notice. The original source of the mailing addresses is from each Class Member, who provided the information to Defendants. As a fail-safe, additional searches will be performed on any notice returned as non-deliverable. Davis Decl. ¶85; Settlement Agreement ¶54.

Any Class Member who wishes to be excluded from the Settlement must mail the Settlement Administrator a written request for exclusion including their name, address, telephone number, signature, and last 4 digits of their social security number or employee ID number. The request for exclusion must be received no later than 60 days after mailing of the Notice Packet. Settlement Agreement, ¶¶58-60, Ex. 3. Any Class Member wishing to object to the approval of this Settlement shall provide a signed written statement stating the specific reason for the objection as well as their full name, address, telephone number, and last 4 digits of their social security number or employee ID number. Such written statement must be served on the Settlement Administrator within 60 days following the initial mailing of the Notice Packet. Settlement Agreement ¶61.

X. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's Motion for Preliminary Approval and the relief requested herein.

DATED: January 13, 2025 **PROTECTION LAW GROUP, LLP**

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