

Arrash T. Fattahi (SBN 333676)
arrash.fattahi@wilshirelawfirm.com
Arman A. Salehi (SBN 351112)
arman.salehi@wilshirelawfirm.com
Emily K. Borman (SBN 303180)
emily.borman@wilshirelawfirm.com
Courtney M. Miller (SBN 327850)
courtney.miller@wilshirelawfirm.com
WILSHIRE LAW FIRM, PLC
660 S. Figueroa Street, Sky Lobby
Los Angeles, California 90017
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

TIFFANY MA'AE, individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

PREMIER NUTRITION COMPANY, LLC, a
limited liability company; BELLRING
BRANDS, LLC, a limited liability company;
POST HOLDINGS, LLC, a California limited
liability company; POST FOODS, LLC, a
limited liability company; and DOES 1 through
10, inclusive,

Defendants.

Case No.: 24CV072746

*[Assigned for All Purposes to the Hon.
Patrick McKinney, Dept. 18]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

Preliminary Approval Hearing:

Date: January 14, 2026

Time: 1:30 p.m.

Dept: 18

Reservation ID: 651175957256

Action Filed: April 23, 2024

1 **TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on January 14, 2026, at 1:30 p.m., in Department 18 of the
3 Superior Court of California, County of Alameda, René C. Davidson Courthouse, located 1225
4 Fallon Street, Oakland, California 94612, pursuant to California Code of Civil Procedure § 382
5 and California Rules of Court, Rule 3.769, *et seq.*, Plaintiff Tiffany Ma’ae (“Plaintiff”) will move
6 the Court for an Order granting preliminary approval of the proposed class action settlement
7 between Plaintiff and Defendant Premier Nutrition Company, LLC (“Defendant”). Plaintiff further
8 moves the Court for an Order:

- 9 1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement
10 and Class Notice;
- 11 2. Certifying a Class for settlement purposes;
- 12 3. Approving the Notice and the plan for distribution of the Notice;
- 13 4. Appointing Plaintiff Tiffany Ma’ae as Class Representative for settlement purposes;
- 14 5. Appointing Plaintiff’s Counsel, Arrash T. Fattahi, Arman A. Salehi, Emily K. Borman,
15 and Courtney M. Miller of Wilshire Law Firm, PLC, as Class Counsel for settlement
16 purposes;
- 17 6. Appointing Apex Class Action, LLC as the Settlement Administrator; and
- 18 7. Scheduling a final approval hearing.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

The motion will be based upon this notice, the attached memorandum of points and authorities, the Declaration of Arrash T. Fattahi filed concurrently herewith, the Declaration of Tiffany Ma'ae filed concurrently herewith, the Declaration of Sean Hartranft filed concurrently herewith, the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: December 19, 2025

WILSHIRE LAW FIRM, PLC

By: /s/ Courtney M. Miller

Arrash T. Fattahi

Arman A. Salehi

Emily K. Borman

Courtney M. Miller

Attorneys for Plaintiff

TABLE OF CONTENTS

MEMORANDUM OF POINTS AND AUTHORITIES.....	1
I. INTRODUCTION.....	1
II. SUMMARY OF THE LITIGATION AND SETTLEMENT.....	1
A. Plaintiff’s Claims	1
B. Discovery and Investigation.....	2
C. Settlement Negotiations	3
D. Key Terms of the Proposed Settlement.....	4
III. DISCUSSION	8
A. The Settlement is Fair, Reasonable, Adequate, and the Product of Investigation, Litigation, and Negotiation	8
1. The Settlement Is the Product of Discovery, Investigation, and Informed and Non-Collusive Arm’s-Length Negotiations.....	8
2. The Settlement is Fair and Reasonable in Light of the Parties’ Respective Legal Positions.....	10
3. Class Counsel Has Extensive Experience in Class Action Litigation.....	10
B. The Proposed Class Notice of Settlement Should Be Approved	11
C. The Proposed Attorneys’ Fees and Costs Are Reasonable	11
1. Class Counsel Request an Award of Fees Based on the “Common Fund” Method	11
2. The Requested Fee Award is in Line with Typical Cases	12
3. This Matter Involves a “Fee-Shifting” Provision of the Labor Code	13
4. The Experience, Reputation and Ability of Class Counsel Support the Requested Fee Award	13
D. The PAGA Allocation is Reasonable.....	14
E. The Service Payment to Named Plaintiff is Reasonable.....	14
IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED	16
A. Legal Standard	16

1	B. Plaintiff Maintains That the Criteria for Class Certification Are Satisfied for	
2	Settlement Purposes.....	17
3	1. The Class is Ascertainable and Numerous.....	17
4	2. There are Many Common Issues of Law and Fact Which Predominate.....	17
5	3. Plaintiff’s Claims Are Typical of the Claims of the Class.....	18
6	4. Plaintiff and Her Counsel Meet the Adequacy Requirement.....	18
7	5. A Class Action is Superior to a Multiplicity of Litigation.....	19
8	V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND.....	19
9	A. The Proposed Notice Plan Satisfies Due Process	19
10	B. The Notice is Accurate and Informative	20
11	VI. CONCLUSION	20

TABLE OF AUTHORITIES

STATE CASES

<i>Bowles v. Super. Ct.</i> , (1955) 44 Cal.2d 574	17
<i>Cartt v. Super Ct.</i> , (1975) 50 Cal.App.3d 960.....	19
<i>Chavez v. Netflix, Inc.</i> , (2008) 162 Cal.App.4th 43.....	12
<i>City and County of San Francisco v. Sweet</i> , (1995) 12 Cal.4th 105	11
<i>Classen v. Weller</i> , (1983) 145 Cal.App.3d 27	18
<i>Clothesrigger, Inc. v. GTE Corp.</i> , (1987) 191 Cal.App.3d 605.....	18
<i>Collins v. Rocha</i> , (1972) 7 Cal.3d 232	17
<i>D’Amico v. Bd. of Medical Examiners</i> , (1974) 11 Cal.3d 1	11
<i>Daar v. Yellow Cab Co.</i> , (1967) 67 Cal. 2d 695	16
<i>Dunk v. Ford Motor Co.</i> , (1996) 48 Cal.App.4th 1794.....	8
<i>Gentry v. Super. Ct.</i> , (2007) 42 Cal.4th 443	15, 198
<i>Kullar v. Foot Locker Retail, Inc.</i> , (2008) 168 Cal.App.4th 116.....	8
<i>Laffitte v. Robert Half Int’l Inc.</i> , (2016) 1 Cal.5th 480	12
<i>Linder v. Thrifty Oil Co.</i> , (2000) 23 Cal.4th 429	17
<i>Mallick v. Super. Ct.</i> , (1979) 89 Cal.App.3d 434.....	8
<i>McGhee v. Bank of America</i> , (1976) 60 Cal.App.3d 442.....	18, 19

1	<i>Miller v. Woods,</i>	
2	(1983) 148 Cal. App. 3d 862.....	19
3	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles,</i>	
4	(2010) 186 Cal.App.4th 399.....	8, 15
5	<i>Quinn v. State of California,</i>	
6	(1975) 15 Cal.3d 162	11
7	<i>Richmond v. Dart Indus., Inc.,</i>	
8	(1981) 29 Cal. 3d 462	16, 17
9	<i>Rose v. City of Hayward,</i>	
10	(1981) 126 Cal.App.3d 926	17
11	<i>Serrano v. Priest,</i>	
12	(1977) 20 Cal.3d 25	11
13	<i>Stamburgh v. Super. Ct,</i>	
14	(1976) 62 Cal.App.3d 231	9
15	<i>Wershba v. Apple Computers, Inc.,</i>	
16	(2001) 91 Cal.App.4th 224.....	10
17	<i>Wilner v. Sunset Life Ins. Co.,</i>	
18	(2000) 78 Cal.App.4th 952.....	17
19		
20	<u>FEDERAL CASES</u>	
21	<i>Frank v. Eastman Kodak Co.,</i>	
22	(W.D.N.Y. 2005) 228 F.R.D. 174	15
23	<i>Garcia v. Gordon Trucking, Inc.</i>	
24	(E.D. Cal. Oct. 31, 2012) No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575.....	14
25	<i>Hopson v. Hanesbrands Inc.</i>	
26	(N.D. Cal. Apr. 3, 2009)No. CV-08-0844 EDL, 2009 WL 928133.....	14
27	<i>Jack v. Hartford Fire Ins. Co.</i>	
28	(S.D. Cal. Oct. 13, 2011) 2011 WL 4899942	14
29	<i>Leyva v. Medline Ind.,</i>	
30	(9th Cir. 2013) 716 F.3d 510.....	19
31	<i>McKenzie v. Fed. Express Corp.</i>	
32	(C.D. Cal. Jan. 23, 2012) 2012 WL 12882124	14
33	<i>Moreno v. Pretium Packaging, L.L.C.</i>	
34	(C.D. Cal. Aug. 6, 2021) 2021 WL 3673845	15

1	<i>Priddy v. Edelman</i> , (6th Cir. 1989) 883 F.2d 438.....	9
2	<i>Rodriguez v. W. Publ'g Corp.</i> , (9th Cir. 2009) 563 F.3d 948.....	15
3	<i>Van Vranken v. Atlantic Richfield Company</i> , (N.D. Cal. 1995) 901 F.Supp. 294.....	12
4	<i>Vincent v. Hughes Air West, Inc.</i> , (9th Cir. 1977) 557 F.2d 759.....	11
5	<i>Zubia v. Shamrock Foods Co.</i> (C.D. Cal. Dec. 21, 2017) No. CV1603128ABAGRX, 2017 WL 10541431.....	14
6	<u>STATUTES</u>	
7	Code of Civil Procedure § 382.....	4, 16, 17
8	Labor Code § 90.5	15
9	Labor Code § 1194	5, 6, 13
10	<u>RULES</u>	
11	California Rules of Court, Rule 3.766 (e)	19
12	California Rules of Court, Rule 3.766 (f).....	19
13	California Rules of Court, Rule 3.769(f).....	11
14	<u>TREATISES</u>	
15	Conte & Newberg, <i>Newberg on Class Actions</i> (3rd Ed.)	9, 12, 20
16	<u>OTHER SOURCES</u>	
17	Eisenberg & Miller, <i>Incentive Awards to Class Action Plaintiffs: An Empirical Study</i> , (2006) 53 UCLA L.Rev. 1303	16

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Tiffany Ma'ae ("Plaintiff") seeks preliminary approval of a proposed \$400,000.00 non-reversionary, wage and hour class action settlement with Defendant Premier Nutrition Company, LLC ("Defendant") for the violations alleged in this action brought by Plaintiff against Defendants Premier Nutrition Company, LLC, Bellring Brands, LLC, Post Holdings, LLC, and Post Foods, LLC (collectively "Defendants") (Plaintiff and Defendants collectively, the "Parties"). This motion for preliminary approval is unopposed. The Settlement will provide substantial monetary payments to approximately 73 class members and, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, discovery, and negotiations. The negotiations were at arm's length and were facilitated by an experienced class action mediator, Michael Mandel, Esq., over the course of a full day of mediation. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendants' defenses, the Parties reached a settlement. Accordingly, Plaintiff requests that the Court preliminarily approve the proposed Settlement, certify the proposed settlement class, approve the proposed notice, and set a final approval hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims

This is a wage and hour class and Private Attorneys General Act ("PAGA") (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Plaintiff and putative class members worked for Defendant Premier Nutrition Company, LLC in California as non-exempt employees during the class period. (Declaration of Arrash T. Fattahi in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ["Fattahi Decl."] at ¶ 2.) Defendant Premier Nutrition Company, LLC produces and markets a range of protein-focused shakes, bars, and powders under various brands, including Premier Protein, Dymatize, and PowerBar. (*Id.*)

Plaintiff alleges that Defendants' payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiff alleges that Defendants failed to pay for all hours worked. Plaintiff further alleges that Defendants failed to provide employees with legally compliant meal and rest

1 periods. Based on these allegations, Plaintiff asserts related claims for failure to provide accurate
2 wage statements, failure to pay all final wages upon separation of employment, unfair business
3 practices, and civil penalties under PAGA. (*Id.* at ¶ 3.)

4 On April 23, 2024, Plaintiff filed a putative wage and hour class action complaint
5 against Defendants for: (1) failure to pay minimum and straight time wages; (2) failure to pay
6 overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest
7 periods; (5) failure to timely pay final wages upon separation of employment; (6) failure to
8 provide accurate itemized wage statements; and (7) violation of unfair business practices.
9 (Fattahi Decl. at ¶ 4.)

10 On June 20, 2024, Plaintiff sent a notice to Defendants and the California Labor &
11 Workforce Development Agency (“LWDA”) alleging similar wage and hour violations
12 pursuant to PAGA. (Fattahi Decl. at ¶ 4.) On October 3, 2025, Plaintiff filed a first amended
13 complaint adding a cause of action for civil penalties under PAGA. (*Id.*)

14 **B. Discovery and Investigation**

15 Following the filing of the initial complaint, the Parties exchanged documents and
16 information before mediating this action. (Fattahi Decl. at ¶ 5.) Defendant Premier Nutrition
17 Company, LLC provided the following information to Plaintiff: BellRing Intermediate
18 Holdings, Inc., the holding company of Premier Nutrition Company, LLC, spun off from Post
19 Holdings, Inc. prior to the start of the class period in October 2019; the Post entities Plaintiff
20 identified in her Complaint do not, and have never, employed any members of the putative class;
21 after the spin-off, Post Holdings, LLC provided payroll services for Premier Nutrition
22 Company, LLC; and Premier Nutrition Company, LLC stopped using Post Holdings, LLC’s
23 payroll services in January 2025. (*Id.*) Defendant Premier Nutrition Company, LLC produced
24 a sampling of timekeeping and pay records for the class members. (*Id.*) Defendant Premier
25 Nutrition Company, LLC also provided documents of its wage and hour policies and practices
26 during the class period, and information regarding the total number of current and former
27 employees in its informal discovery responses. (*Id.*)

28 After reviewing documents regarding Defendant Premier Nutrition Company, LLC’s

1 wage and hour policies and practices and analyzing Defendant Premier Nutrition Company,
2 LLC's timekeeping and payroll records, Class Counsel was able to evaluate the probability of
3 class certification and success on the merits and assess the maximum monetary exposure for all
4 claims. (*Id.* at ¶ 6.) Class Counsel also investigated the applicable law regarding the claims and
5 defenses asserted in the litigation. (*Id.*) Class Counsel reviewed these records and utilized an
6 expert to prepare a damages analysis prior to mediation. (*Id.*)

7 C. Settlement Negotiations

8 On February 6, 2025, the Parties participated in a full-day private mediation with
9 experienced class action mediator, Michael Mandel, Esq. (*Id.* at ¶ 7.) The settlement
10 negotiations were at arm's length and, although conducted in a professional manner, were
11 adversarial. The Parties went into the mediation willing to explore the potential for a settlement
12 of the dispute, but each side was also prepared to litigate their position through trial and appeal
13 if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding
14 the strengths and weaknesses of Plaintiff's claims and Defendants' defenses, the Parties reached
15 a settlement, the material terms of which are encompassed within the Settlement. (*Id.* at ¶ 8, **Ex.**
16 **2** [Class Action and PAGA Settlement Agreement and Class Notice].)

17 Class Counsel has conducted a thorough investigation into the facts of this case. Based
18 on the Parties' informal exchange of documents and information and Class Counsel's own
19 independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is
20 fair, reasonable, and adequate and is in the best interests of the Settlement Class Members in
21 light of all known facts and circumstances, the risk of significant delay, the defenses that could
22 be asserted by Defendants both to certification and on the merits, trial risk, and appellate risk.
23 (*Id.* at ¶ 13.)

24 Indeed, the \$400,000.00 Settlement represents approximately **95.53%** of the **realistic**
25 **maximum recovery** of \$418,725.32. (*Id.* at ¶ 21.) Although Class Counsel estimated that
26 Defendants' maximum potential liability for all claims was approximately \$3.17 million, when
27 the risk of prevailing at certification and trial are factored into the equation, Class Counsel
28 believes that Defendants' realistic exposure was \$418,725.32, meaning the Settlement achieves

1 a significant recovery. (*Id.* at ¶¶ 13-25.) Considering the risk and uncertainty of prevailing at
2 class certification and at trial, this is an excellent result for the Class. (*Id.* at ¶ 21.) Indeed,
3 because of the proposed Settlement, class members will receive timely, guaranteed relief and
4 will avoid the risk of an unfavorable judgment. (*Id.*)

5 **D. Key Terms of the Proposed Settlement**

6 The Settlement’s key terms include:

7 1. Class Definition: For settlement purposes only, the Parties agree to the certification
8 of a class pursuant to California Code of Civil Procedure § 382 defined as: “all current and former
9 non-exempt employees [who] worked [for] Defendant Premier Nutrition Company, LLC in
10 California during the Class Period.” (Settlement, § 1.5.)

11 2. Class Period: “means the period from October 28, 2019 to April 11, 2025.”
12 (Settlement, § 1.12.)

13 3. Class Member or Settlement Class Member: “means a member of the Class, as either
14 a Participating Class Member or Non-Participating Class Member (including a Non-Participating
15 Class Member who qualifies as an Aggrieved Employee).” (Settlement, § 1.9.)

16 4. Aggrieved Employee: “means all current and former non-exempt employees that
17 worked for Defendant Premier Nutrition Company, LLC in California during the PAGA Period.”
18 (Settlement, § 1.4.)

19 5. PAGA Period: “means the period from June 19, 2023 to April 11, 2025.”
20 (Settlement, § 1.33.)

21 6. Gross Settlement Amount: “means \$400,000.00 which is the total amount
22 Defendant Premier Nutrition Company, LLC agrees to pay under the Settlement, except as
23 provided in Paragraph 8 [of the Settlement Agreement] and the employer’s share of payroll taxes
24 which shall be paid separately. The Gross Settlement Amount will be used to pay Individual Class
25 Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment,
26 Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the
27 Administrator’s Expenses.” (Settlement, § 1.23.) “The Administrator will disburse the entire Gross
28 Settlement Amount without asking or requiring Participating Class Members or Aggrieved

Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Premier Nutrition.” (Settlement, § 3.1.)

7. Uncashed Checks: Any settlement checks remaining uncashed after one hundred and eighty (180) days shall be cancelled and the funds shall be transmitted to George Mark Children’s House as the *cy pres* recipient. (Settlement, § 4.4.3.)

8. Release by Participating Class Members: “All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, including, all claims based on the factual allegations made in the Complaint and which could have been made based on the factual allegations in the Complaint for the Class Period. This includes but is not limited to: (1) failure to pay minimum and straight time wages (Labor Code sections 204, 1174, 1194 and 1194.2 and all applicable Industrial Welfare Commission (“IWC”) Wage Orders); (2) failure to pay overtime wages (Labor Code sections 204, 510, 1174, 1194, 1198 and all applicable IWC Wage Orders); (3) failure to provide meal periods (Labor Code sections 226.7, 512 and all applicable IWC Wage Orders); (4) failure to authorize and permit rest periods (Labor Code sections 226.7, 512 and all applicable IWC Wage Orders); (5) failure to timely pay final wages at termination (Labor Code sections 201-203); (6) failure to provide accurate itemized wage statements (Labor Code sections 226); (7) unfair business practices (Business & Professions Code sections 17200 et seq.); (8) statutory penalties of any nature; (9) interest; (10) attorneys’ fees and costs; (11) and any other claims arising out of or related to the Complaints filed in the Action during the Class Period. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.” (Settlement, § 5.2.)

9. Release by Aggrieved Employees: “All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for

PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, including: (1) failure to pay minimum and straight time wages (Labor Code sections 204, 1174, 1194 and 1194.2 and all applicable Industrial Welfare Commission (“IWC”) Wage Orders); (2) failure to pay overtime wages (Labor Code sections 204, 510, 1174, 1194, 1198 and all applicable IWC Wage Orders); (3) failure to provide meal periods (Labor Code sections 226.7, 512 and all applicable IWC Wage Orders); (4) failure to authorize and permit rest periods (Labor Code sections 226.7, 512 and all applicable IWC Wage Orders); (5) failure to timely pay final wages at termination (Labor Code sections 201-203), and (6) failure to provide accurate itemized wage statements (Labor Code sections 226), during the PAGA Period. Aggrieved Employees only release these claims for the duration of the PAGA Period. PAGA claims for civil penalties due to any Labor Code violations by Defendants arising out of or related to events alleged in the complaint including, but not limited to, Labor Code sections 201-203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and all applicable Wage Orders.” (Settlement, § 5.3.)

10. No Reversion, No Claims Made: means that the Administrator “will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment” and that “[n]one of the Gross Settlement Amount will revert to Premier Nutrition.” (Settlement, § 3.1.)

11. PAGA Allocation: The settlement includes \$10,000.00 allocated to Plaintiff’s claims under PAGA, with 65% (\$6,500.00) being paid to the LWDA and 35% (\$3,500.00) being paid to the Aggrieved Employees. (Settlement, § 3.2.5.) Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for Preliminary Approval. (Fattahi Decl. at ¶ 9.)

12. 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. The remainder is to be paid to Participating Class Members as Individual Class Payments.” (Settlement, § 1.29.)

13. Distribution Formula: The Individual Class Payment will be “calculated by (a)

dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks." (Settlement, § 3.2.4.) As to PAGA, "[t]he Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 35% share of PAGA Penalties (\$3,500) 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 Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment." (Settlement, § 3.2.5.1.)

14. Tax Allocation: 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). (Settlement, § 3.2.4.1.)

15. Class Representative Service Payment: Defendant agrees not to oppose Plaintiff's request for a service payment to Plaintiff of up to \$10,000.00. (Settlement, § 3.2.1.) This payment shall be in addition to the *pro rata* recovery received by Plaintiff as part of the settlement.

16. Attorneys' Fees and Costs: The Settlement provides that Defendant will not oppose a fee application of up to one third (1/3) of the Gross Settlement Amount (currently estimated to be \$133,333.33), plus out-of-pocket costs not to exceed \$30,000.00. (Settlement, § 3.2.2.)

17. Notice of Proposed Class Action Settlement: The Notice sets forth in plain terms, a statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys' fees, costs, and service payment being sought, and an explanation of how the settlement allocations are calculated. (Settlement, Ex. A, Class Notice.) Class Members will be notified by first-class mail of the settlement. (Settlement, § 7.4.2.) Apex Class Action, LLC ("Apex"), the proposed Settlement Administrator, will undertake its best efforts to ensure that the notice is provided to the current addresses of class members, including conducting a national change of address search and re-mailing the notice to updated addresses. (*Id.*, §§ 7.4.2 and 7.4.3; Fattahi Decl. at ¶ 10; Declaration of Sean Hartranft from Apex Class Action in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement, **Ex. B** [Apex's Bid].)

1 **III. DISCUSSION**

2 To prevent fraud, collusion, or unfairness to the class, the settlement of a class action
3 requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This
4 Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super.*
5 *Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached
6 through arm’s-length bargaining; (2) investigation is sufficient to allow counsel and the court to
7 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
8 is small. (*Dunk*, 48 Cal.App.4th at p. 1800.)

9 In considering whether a settlement is reasonable, the trial court should consider relevant
10 factors, which may include the strength of plaintiff’s case, the risk, expense, complexity and likely
11 duration of further litigation, the risk of maintaining class action status through trial, the amount
12 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
13 experience and views of counsel, the presence of a governmental participant, and the reaction of
14 the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
15 Cal.App.4th 116, 128.) In order to approve a class action settlement, the court must satisfy itself
16 that the class settlement is within the “ballpark” of reasonableness. (*Id.* at p. 133.) The record need
17 not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola*
18 *Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not
19 require “an explicit statement of the maximum amount the plaintiff class could recover if it
20 prevailed on all its claims”, but instead, only an “understanding of the amount that is in controversy
21 and the realistic range of outcomes of the litigation.”].)

22 As discussed below, Class Counsel has provided information exceeding the threshold
23 required to provide this Court with materials and information necessary to determine that the
24 proposed settlement is fair, adequate, and reasonable.

25 **A. The Settlement is Fair, Reasonable, Adequate, and the Product of** 26 **Investigation, Litigation, and Negotiation**

27 **1. The Settlement Is the Product of Discovery, Investigation, and Informed** 28 **and Non-Collusive Arm’s-Length Negotiations**

1 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
2 evidence to the contrary is offered; thus, there is a presumption here that the negotiations were
3 conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.)
4 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super.*
5 *Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The
6 fact that a plaintiff might have received more if the case had been fully litigated is no reason not
7 to approve the settlement.”].)

8 The Settlement was reached following extensive negotiations following a full day of
9 mediation with experienced class action mediator, Michael Mandel, Esq. (Fattahi Decl. at ¶ 7.) The
10 settlement negotiations were at arm’s length and, although conducted in a professional manner,
11 were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a
12 settlement of the dispute, but each side was also prepared to litigate their position through trial and
13 appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions
14 regarding the strengths and weaknesses of Plaintiff’s claims and Defendants’ defenses, the Parties
15 reached an agreement. (*Id.* at ¶ 8.)

16 Prior to reaching this settlement, Class Counsel conducted informal discovery concerning
17 the claims set forth in the litigation, such as a sample of class member timekeeping and payroll
18 records, Defendant Premier Nutrition Company, LLC’s wage and hour policies and practices
19 during the class period and information regarding the total number of current and former
20 employees. (*Id.* at ¶¶ 5-6.) In conjunction with their extensive factual investigation, Class Counsel
21 investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.* at
22 ¶ 6.) Thus, Plaintiff and her counsel were able to act intelligently and effectively in negotiating the
23 proposed Settlement.

24 Class Counsel also has considerable experience and has demonstrated competence with
25 litigating wage and hour class actions. (*Id.* at ¶¶ 36-46.) Again, this supports the position that
26 the terms of the Settlement are premised on objective evidence that has been considered and
27 weighed in light of the risks, expenses, and time consumption to both sides of continued
28 litigation of this action.

1 **2. The Settlement is Fair and Reasonable in Light of the Parties’**
2 **Respective Legal Positions**

3 A settlement is not judged against what might plaintiff recover had plaintiff prevailed at
4 trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable.
5 (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 [“Compromise is inherent
6 and necessary in the settlement process . . . even if the relief afforded by the proposed settlement
7 is substantially narrower than it would be if the suits were to be successfully litigated, this is no
8 bar to a class settlement because the public interest may indeed be served by a voluntary settlement
9 in which each side gives ground in the interest of avoiding litigation.”].)

10 This settlement avoids the risks and the accompanying expense of further litigation. (Fattahi
11 Decl. at ¶ 23.) While Plaintiff is confident in the merits of her claims, a legitimate controversy
12 exists as to each cause of action. (*Id.* at ¶ 22.) Plaintiff also recognizes that proving the amount of
13 wages due to each class member would be an expensive, time-consuming, and uncertain
14 proposition. (*Id.*)

15 The proposed settlement of \$400,000.00 therefore represents a substantial recovery when
16 compared to Plaintiff’s reasonably forecasted recovery. (*Id.* at ¶¶ 13-25.) Because of the proposed
17 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
18 unfavorable judgment. When considering the risks of litigation, the uncertainties involved in
19 achieving class certification, the burdens of proof necessary to establish liability, the probability
20 of appeal of a favorable judgment, it is clear that the settlement amount of \$400,000.00 is well
21 within the “ballpark” of reasonableness, and preliminary settlement approval is appropriate. (*Id.*)
22 ***Indeed, each Settlement Class Member is eligible to receive an average net benefit of***
23 ***approximately \$2,899.68.*** (*Id.* at ¶ 24.)

24 **3. Class Counsel Has Extensive Experience in Class Action Litigation**

25 The settlement negotiations were conducted by highly capable and experienced counsel.
26 Class Counsel have a strong record of vigorous and effective advocacy for their clients and are
27 experienced in handling complex wage and hour class action litigation. (Fattahi Decl. at ¶¶ 36-46.)
28 Although Plaintiff and her counsel were prepared to litigate the claims alleged in the litigation,

they support the proposed Settlement as being in the best interests of the class.

B. The Proposed Class Notice of Settlement Should Be Approved

The proposed Notice, in the form attached to the Settlement Agreement, should be approved for dissemination to the class. The Notice informs the class of the terms of the settlement and of their rights to be excluded from the settlement. And if there are class members who wish to object to this proposed class action settlement, they will have the opportunity to file their objections and be heard at the Final Approval Hearing. Accordingly, the proposed Notice meets all the requirements of Rule 3.769(f) of the California Rules of Court.

C. The Proposed Attorneys' Fees and Costs Are Reasonable

Under the Settlement, subject to the Court's approval, the Parties agreed to allocate reasonable attorneys' fees in an amount currently estimated to be \$133,333.33, and up to \$30,000.00 in costs. (Settlement, § 3.2.2.) These amounts are disclosed to all class members in the proposed Notice and are reasonable.

1. Class Counsel Request an Award of Fees Based on the "Common Fund" Method

California courts have long awarded attorneys' fees as a percentage of the benefit created by counsel in creating a common fund. The California Supreme Court held that "when a number of persons is entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34, quoting *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

Class Counsel seeks an award of attorneys' fees on the "percentage of recovery/common fund" theory. The purpose of this approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1975) 15 Cal.3d 162, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in *City and*

1 *County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized
2 that the common fund doctrine has been applied “consistently in California when an action brought
3 by one party creates a fund in which other persons are entitled to share.” (*Id.* at p. 110.)

4 The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th
5 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
6 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
7 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
8 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
9 method – including relative ease of calculation, alignment of incentives between counsel and the
10 class, a better approximation of market conditions in a contingency case, and the encouragement
11 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation –
12 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
13 (*Id.* [internal citations omitted].)

14 **2. The Requested Fee Award is in Line with Typical Cases**

15 According to a leading treatise on class actions, “[n]o general rule can be articulated on what
16 is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a
17 reasonable fee award from a common fund in order to assure that the fees do not consume a
18 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
19 are not unprecedented.” (*See Conte & Newberg, Newberg on Class Actions* (3rd Ed.) § 14.03.)
20 Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with thirty
21 to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also*
22 *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most
23 cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10 million].)

24 Here, Plaintiff requests attorneys’ fees equal to one third (1/3) of the Gross Settlement
25 Amount, which is in line with the prevailing guidelines established in California case law and
26 academic literature and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008)
27 162 Cal.App.4th 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage
28 method or the lodestar method is used, fee awards in class actions average around one-third of the

recovery.”].) Accordingly, Plaintiff respectfully requests that the Court approve the attorneys’ fees as negotiated by the Parties and requested herein.

3. This Matter Involves a “Fee-Shifting” Provision of the Labor Code

Labor Code § 1194 (a) provides for the recovery of “minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Under this section, Plaintiff would be permitted to recover her actual attorneys’ fees, even if those fees were larger than the total class recovery at the conclusion of this case. This settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Class Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action involved significant financial risk for Class Counsel. (Fattahi Decl. at ¶¶ 34-35.) Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class ahead of all other concerns.

4. The Experience, Reputation and Ability of Class Counsel Support the Requested Fee Award

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possesses considerable expertise in litigating class actions. (Fattahi Decl. at ¶¶ 36-46.) Class Counsel has been involved as lead counsel or co-counsel in several class actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class counsel commensurate with their skill, reputation and experience, Class Counsel’s requested fee award is supported here.

Class Counsel’s experience in wage and hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation. Based on these and other factors, Class Counsel has frequently received fee awards of this percentage from the gross recovery for the class. Therefore, the requested fee award

1 is reasonable and fair.

2 **D. The PAGA Allocation is Reasonable**

3 Where settlements negotiate a good faith amount for PAGA penalties and “there is no
4 indication that this amount was the result of self-interest at the expense of other” class members,
5 such amounts are generally considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr.
6 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133 at *1, 9.) Courts have approved amounts for
7 PAGA penalties in the range of zero to two percent of the total maximum amount of the Settlement.
8 (*Id.* [approving a PAGA payment of 0.3%, or \$1,500]; *see also Jack v. Hartford Fire Ins. Co.* (S.D.
9 Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a PAGA payment of 0.25%]; *McKenzie v.*
10 *Fed. Express Corp.* (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5 [acknowledging that courts
11 approve PAGA claim settlements in the range of zero to two percent of the total settlement].) Here,
12 the amount to be paid to the LWDA is larger than many other PAGA settlement amounts approved
13 by the courts where seemingly nominal amounts were allocated for such claims. (*See, e.g., Zubia*
14 *v. Shamrock Foods Co.* (C.D. Cal. Dec. 21, 2017) No. CV1603128ABAGRX, 2017 WL 10541431,
15 at *14 [approving a PAGA settlement of 0.1%]; *Hopson*, 2008 WL 3385452, at *1 [approving a
16 PAGA settlement of 0.3% or \$1,500]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012)
17 No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 [approving a PAGA settlement of
18 0.27%].) Here, the Parties negotiated a good faith amount of \$10,000.00, 65% percent of which
19 (\$6,500.00) will be paid to the LWDA and 35% (\$3,500.00) to be distributed to the Aggrieved
20 Employees. (Settlement, § 3.2.5.) The \$10,000.00 allocation equates to 2.5% of the Gross
21 Settlement Amount, which exceeds amounts that are routinely approved. The Parties negotiated to
22 allocate 2.5% of the Settlement to PAGA penalties in good faith and this amount is reasonable
23 considering that the PAGA penalties were realistically estimated to be \$17,630.00, which means
24 the \$10,000 allocation for PAGA penalties is approximately 57% of the realistic value of this claim.
25 (Fattahi Decl. at ¶ 20.)

26 **E. The Service Payment to Named Plaintiff is Reasonable**

27 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
28 compensate them for the expense or risk they have incurred in conferring a benefit on other

1 members of the class.” (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Courts routinely grant approval
2 of class action settlement agreements containing enhancements for the class representatives, which
3 are necessary to provide incentive to represent the class, and are appropriate given the benefit the
4 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir.
5 2009) 563 F.3d 948, 958-59.)

6 Service awards are particularly important to plaintiffs in wage and hour cases because they
7 promote the important public policies underlying the wage and hour laws. This strong policy is
8 codified in California Labor Code § 90.5, which provides, “it is the policy of this state to vigorously
9 enforce minimum labor standards in order to ensure employees are not required or permitted to
10 work under substandard unlawful conditions” Nonetheless, the California Supreme Court has
11 noted that “retaliation against employees for asserting statutory rights under the Labor Code is
12 widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.*
13 (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should be rewarded for
14 assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.*
15 (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

16 Under the Settlement, subject to the Court’s approval, Defendant agreed to pay a Class
17 Representative Service Payment in the amount of \$10,000.00 to Plaintiff. (Settlement, § 3.2.1.)
18 Courts routinely approve a \$10,000 enhancement award for plaintiffs represented by Class
19 Counsel. (*See, e.g., Moreno v. Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) 2021 WL
20 3673845, *3 [“The Court concludes a \$10,000 incentive award is appropriate.”]; *Suarez v. Bank of*
21 *America, National Association* (N.D. Cal., Jan. 11, 2024, No. 18-CV-01202-LB) 2024 WL 150721,
22 at *4 [“The court approves awards of \$10,000 for each class representative.”].) Class Counsel
23 represents that Plaintiff devoted a great deal of time and work assisting counsel in the case,
24 communicated with counsel very frequently for litigation and to prepare for mediation, and made
25 herself available to Class Counsel during the mediation. (Fattahi Decl. at ¶¶ 26-30.) This amount
26 is reasonable particularly in light of the substantial benefits Plaintiff generated for all class
27 members. (*Id.*)

28 When compared with the amounts awarded in typical class action cases, the amount

requested here is particularly reasonable. Indeed, a 2006 study examining the average incentive award given to class action plaintiffs from 1993 to 2002 found that the “average award per class representative was \$15,992 and the median award per class representative was \$4,357.” (Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L.Rev. 1303, 1308.) That same study found that named plaintiffs in employment discrimination class actions received an average award of \$69,850 and a median award of \$31,081, while named plaintiffs in other employment class actions received an average award of \$12,121 and a median award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards in employment cases reflected the “courts’ wish to make representative plaintiffs whole by compensating them for the high costs of their service to the class, including risks of stigmatization or retaliation on the job.” (*Id.* at p. 1308.)

IV. **CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

A. **Legal Standard**

The proposed Settlement Class is well suited for class certification. All of the claims derive from a core set of alleged violations of California’s wage and hour laws and regulations. For the reasons set forth more fully below, for purposes of settlement only, the Class satisfies the prerequisites for certification under California Code of Civil Procedure § 382. Section 382 provides: “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, one or more may sue or defend for the benefit of all.” (Code Civ. Proc., § 382.) There are two requirements to section 382: “(1) There must be an ascertainable class; and (2) there must be a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 704 [citations omitted].) To clarify these requirements, the California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the community-of-interest requirement itself embodies three factors: “(1) predominant 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.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 470.)

1 California law and policy favor the fullest and most flexible use of the class action device.
2 (*Id.* at pp. 469-73.) Indeed, “[c]ourts long have acknowledged the importance of class actions as a
3 means to prevent a failure of justice in our judicial system” particularly where the rights of
4 consumers are at issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 434.) Any doubt as to the
5 appropriateness of class treatment should be resolved in favor of certification. (*Richmond, supra*,
6 29 Cal.3d at pp. 473-75.)

7 **B. Plaintiff Maintains That the Criteria for Class Certification Are Satisfied for**
8 **Settlement Purposes.**

9 **1. The Class is Ascertainable and Numerous**

10 The proposed class that Plaintiff seeks to represent is easily ascertainable and includes
11 approximately 73 employees of Defendant Premier Nutrition Company, LLC.

12 Plaintiff maintains that there is an easily ascertainable class, defined by objective and
13 precise criteria. Because class members are identified using specific criteria in the regular business
14 records of Defendant, i.e., job position, the class is ascertainable. (*Wilner v. Sunset Life Ins. Co.*
15 (2000) 78 Cal.App.4th 952, 959-60 [class membership defined by ownership of product that is the
16 subject of the lawsuit is sufficient to make the class ascertainable].)

17 “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a
18 class action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981) 126
19 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action may
20 be maintained as a class action even where the parties are numerous and it is in fact practicable to
21 join them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a class
22 action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a trust
23 in an action for removal of the trustees.” (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574; *see*
24 *also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.]) Therefore, Plaintiff
25 contends that numerosity is plainly satisfied.

26 **2. There are Many Common Issues of Law and Fact Which Predominate**

27 The Court should grant conditional class certification for settlement purposes here on the
28 grounds that questions of law and fact common to all class and subclass predominate over any

1 individual questions. This inquiry tests whether proposed classes are sufficiently cohesive to
2 warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191
3 Cal.App.3d 605.)

4 Here, the employment practices at issue are: whether Defendants had legally compliant
5 policies and practices for all hours worked, including overtime wages; whether Defendants had
6 legally compliant policies and practices to provide employees with meal periods; whether
7 Defendants had legally compliant policies and practices authorizing and permitting its employees
8 to take rest periods; whether Defendants consequently paid final wages timely at termination; and
9 whether Defendants consequently failed to provide accurate itemized wage statements. Plaintiff
10 contends that the factual and legal issues are the same for all of the identified class members,
11 including Plaintiff. Further, all class members suffered from, and seek redress for, the same alleged
12 injuries.

13 **3. Plaintiff's Claims Are Typical of the Claims of the Class**

14 The typicality requirement does not focus on the individual characteristics or
15 circumstances of the representative plaintiff compared to those of the remainder of the class,
16 but rather upon the typicality of the proposed representative's claims as they relate to the
17 defendant's conduct and activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["[t]he
18 only requirements are that common questions of law and fact predominate and that the class
19 representative be similarly situated" vis-à-vis the class.].) A representative plaintiff's claims
20 are typical of the class if they arise from the same event, practice or course of conduct, and if
21 the claims rest on the same legal theories. (*Id.*) That is precisely the case here. Plaintiff is a
22 former employee of Defendant Premier Nutrition Company, LLC; as such, she alleges that she
23 was subject to the same policies and practices as other similarly situated employees.

24 **4. Plaintiff and Her Counsel Meet the Adequacy Requirement**

25 The adequacy of representation requirements is met by fulfilling two conditions: first, a
26 named plaintiff must be represented by counsel qualified to conduct the pending litigation; second,
27 a named plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of*
28 *America* (1976) 60 Cal.App.3d 442, 451.)

1 All of these requirements are met here for settlement purposes. Plaintiff retained counsel
2 with extensive experience in prosecuting complex class actions, including similar class actions that
3 previously settled. (Fattahi Decl. at ¶¶ 36-46.) Class Counsel unquestionably is “qualified,
4 experienced and generally able to conduct the proposed litigation.” (*Miller v. Woods* (1983) 148
5 Cal.App.3d 862, 875.) In addition, Plaintiff has no conflicts, and Plaintiff has, with counsel,
6 litigated this case and diligently reviewed the settlement terms, showing her dedication. Plaintiff’s
7 willingness to serve as a representative demonstrates her serious commitment to bringing about
8 the best results possible for the class. (*McGhee, supra*, 60 Cal.App.3d at p. 451.)

9 **5. A Class Action is Superior to a Multiplicity of Litigation**

10 Finally, in making its class certification decision, the Court must determine that a class
11 action would be superior to alternative means for the fair and efficient adjudication of the litigation.
12 By consolidating many potential individual actions into a single proceeding, this Court’s use of the
13 class action device enables it to manage this litigation in a manner that serves the economics of
14 time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly
15 situated employees with small but nevertheless meritorious claims for damages would, as a
16 practical matter, have no means of redress because of the time, effort and expense required to
17 prosecute individual actions. (*Gentry, supra*, 42 Cal.4th at pp. 457-62; *Leyva v. Medline Ind.* (9th
18 Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the superiority concerns are
19 essentially non-existent.

20 **V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND**

21 **A. The Proposed Notice Plan Satisfies Due Process**

22 Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,
23 Rule 3.766 (e), (f).) California law vests the Court with broad discretion in fashioning an
24 appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no
25 statutory or due process requirement that all class members receive actual notice, but in this matter,
26 the class members will receive direct mailed notice. As the Court of Appeals has explained, “[t]he
27 notice given should have a reasonable chance of reaching a substantial percentage of the Class
28 Members . . .” (*Id.* at p. 974.) In this case, notice of the proposed settlement will be provided by

1 direct mailing, the best possible form of notice.

2 **B. The Notice is Accurate and Informative**

3 The proposed Notice should be approved. It will be disseminated through direct U.S. first
4 class mail to the last known address for each Class Member. It informs the Class Members of the
5 terms of the Settlement and their right to be excluded from the Settlement. And if there are Class
6 Members who wish to object to this proposed class action settlement, they will have the
7 opportunity to file their objections and be heard at the Final Approval Hearing.

8 The Notice also fulfills the requirement of neutrality in class notices. (Conte & Newberg,
9 *Newberg on Class Actions* (3rd Ed.) § 8.39.) It summarizes the proceedings to date and the terms
10 and conditions of the settlement agreement, in an informative and coherent manner. It makes
11 clear that the settlement agreement does not constitute an admission of liability by the
12 Defendant, who denies all liability, and it recognizes that this Court has not ruled on the merits
13 of the action. It also states that the final settlement approval decision has yet to be made. The
14 Notice thus complies with the standards of fairness, completeness, and neutrality required of a
15 combined settlement-certification class notice.

16 **VI. CONCLUSION**

17 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
18 approval of the proposed settlement and set a Final Approval Hearing.

19 Respectfully submitted,

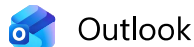
20 Dated: December 19, 2025

WILSHIRE LAW FIRM, PLC

21
22 By: /s/ Courtney M. Miller

23 Arrash T. Fattahi
24 Arman A. Salehi
25 Emily K. Borman
26 Courtney M. Miller

27 Attorneys for Plaintiff



Rescheduled: 24CV072746 - 651175957256

From ecourt <noreply@alameda.courts.ca.gov>

Date Mon 11/17/2025 4:32 PM

To Letty Zepeda <letty.zepeda@wilshirelawfirm.com>

The following reservation has been rescheduled by the REQUESTOR:

Event: Motion re: (Motion for Preliminary Approval of Class Action and PAGA Settlement)

Reservation ID: 651175957256

Status: RESERVED

Case Number: 24CV072746

Case Title: MA'AE vs PREMIER NUTRITION COMPANY, LLC, A LIMITED LIABILITY COMPANY, et al.

Courthouse: Rene C. Davidson Courthouse

Dept: Department 18

Previous Date: 12-11-2025 at 01:30:00 PM

Reschedule To: 12-18-2025 at 01:30:00 PM

Motion Count: 1

Click the link below to view the reservation. You may need to supply your PIN number. From here you may print receipt and attach it to the corresponding motion/document as the last page. Indicate the Reservation ID on the motion/document face page. The document will not be accepted without the receipt page and the Reservation ID.

<https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Fportal.alameda.courts.ca.gov%2F%3Fq%3Dcalendar%2Fsearch%26crsNumber%3D651175957256&data=05%7C02%7Cletty.zepeda%40wilshirelawfirm.com%7C617a7010ae78442680e508de2639f83e%7C9ada260a4f194da187b814d372333753%7C1%7C0%7C638990227596337735%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMtIsIkFOljoitWFpbCIsIlldUljoyfQ%3D%3D%7C0%7C%7C%7C&sdata=4ZoXZEfvVyFnkMZDw16JvAxQYjHhEyQS%2BPJrh6%2FbVCg%3D&reserved=0>