

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
Perssia Razma (State Bar #351398)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
prazma@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

Attorneys for Plaintiff MANUEL DIAZ NUNEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF TULARE

MANUEL DIAZ NUNEZ, an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

TITAN AG SERVICES, INC., a California
Corporation; ROYAL FARMS, INC., a
California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. VCU296822

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: July 16, 2024

Time: 8:30 a.m.

Judge: Hon. Bret D. Hillman

Dept.: 2

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTS AND PROCEDURE	3
	A. Overview of the Litigation	3
	B. Class Counsel Thoroughly Investigated the Factual and Legal Issues	5
	C. The Parties Settled at Mediation	7
	D. The Proposed Settlement Fully Resolves Plaintiff's Claims	7
	1. The Composition of the Settlement Class Members	7
	2. The Settlement Consideration	7
	3. The Funding Date and Installment Plan	8
	4. Formula for Calculating Individual Class Payments	8
	5. Release by Settlement Class Members	8
	6. PAGA Release by the Aggrieved Employees	9
III.	ARGUMENT	9
	A. The Court Should Preliminarily Approve the Proposed Class Action Settlement	9
	1. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel	10

///

1	2. Class Counsel’s Thorough Investigation Provided an Objective Measurement of the Settlement’s Reasonableness.	11
2	.....	11
3	3. The Settlement Falls Within the Recognized Range of Reasonableness.	11
4	.....	11
5	a. The Gross Settlement Amount Meets the Recognized Range of Reasonableness.	12
6	.....	12
7	(1) Estimated Exposure for Unpaid Wages	12
8	.....	12
9	(2) Estimated Exposure for Meal Period Violations	14
10	.....	14
11	(3) Estimated Exposure for Rest Period Violations	14
12	.....	14
13	(4) Defendants’ Estimated Damages for Unreimbursed Business Expenses	15
14	.....	15
15	(5) Estimated Exposure for Wage Statement Violations	16
16	.....	16
17	(6) Estimated Exposure for Waiting Time Penalties	16
18	.....	16
19	(7) Defendants’ PAGA Exposure	16
20	.....	16
21	b. Inherent Risks of Continued Litigation Support Preliminary Approval	18
22	.....	18
23	B. The Proposed Notice Informs the Class about the Case and Settlement	20
24	.....	20
25	C. The Court Should Preliminary Approve the Class Representative Service Award	21
26	.....	21
27	D. The Court Should Preliminarily Approve the Class Counsel Award	21
28	.....	21
	E. Provisional Certification for Settlement Purposes Is Appropriate	22
	.....	22
	1. The Standard for Class Certification	22
	.....	22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. The Proposed Class is Ascertainable and there is a Well-Defined Community of
Interest Among the Settlement Class Members

.....23

IV. CONCLUSION

.....24

///

TABLE OF AUTHORITIES
CASES

1		
2		
3	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
4	(2000) 85 Cal.App.4th 1135, 1151.....	9
5	<i>Ali v. U.S.A. Cab Ltd.</i>	
6	(2009) 176 Cal.App.4th 1333, 1341.....	18
7	<i>Bufile v. Dollar Financial Group, Inc.</i>	
8	(2008) 162 Cal.App.4th 1193, 1207.....	22
9	<i>Brinker</i>	
10	53 Cal. 4th at 1021-1022.....	19, 23
11	<i>Brown v. Fed Express Corp.</i>	
12	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	19
13	<i>Cacho v. Eurostar, Inc.</i>	
14	(2019) 43 Cal.App.5th 885.....	17-18
15	<i>Campbell v. Best Buy Stores, L.P.</i>	
16	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	19
17	<i>Cardenas v. McLane Foodservice, Inc.</i>	
18	2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....	17
19	<i>Carrington v. Starbucks Corp.</i>	
20	(2018) 30 Cal.App.5th 504, 517, 539.....	18
21	<i>Cart v. Super. Ct.</i>	
22	(1975) 50 Cal.App.3d 960, 972.....	20
23	<i>Cellphone Termination Fee Cases</i>	
24	180 Cal.App.4th 1110, 1118, 1380, 1389, 1393 (2010).....	9-10, 21
25	<i>Chance v. Super. Ct.</i>	
26	(1962) 58 Cal.2d 275, 290.....	20
27	<i>Chavez v. Netflix, Inc.</i>	
28	(2008) 162 Cal.App.4th 43, 66 n.11	21
	<i>Clark v. American Residential Services LLC</i>	
	(2009) 175 Cal.App.4th 785.....	21
	<i>D'Amato v. Deutsche Bank</i>	
	(2d. Cir. 2001) 236 F.3d 78, 85.....	10
	<i>Dunk v. Ford Motor Co.</i>	
	(1996) 48 Cal.App.4th 1794, 1802.....	9
	<i>Duran v. U.S. Bank National Association</i>	
	(2014) 59 Cal.4th 1, 31.....	18
	<i>Fleming v. Covidien</i>	
	2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....	17
	<i>Fontana v. Elrod</i>	
	(7th Cir. 1987) 826 F.2d 729, 732.....	20
	<i>Frank v. Eastman Kodak Co.</i>	
	(W.D.N.Y. 2005) 228 FRD. 174, 186.....	12
	<i>Hopson v. Hanesbrands Inc.</i>	
	No. CV-08-0844 EDL, 2009 WL 928133, at *1, 9 (N.D. Cal. Apr. 3, 2009).....	16
	<i>In re Apple Computer, Inc. Derivative Litig</i>	
	No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008).....	10
	<i>In re Global Crossing Sec. and ERISA Litig.</i>	
	(S.D.N.Y 2004) 225 F.R.D. 436, 460.....	12

1	<i>In re IKON Office Solutions, Inc Sec Litig.</i>	
	(E.D. Pa. 2000) 194 F.R.D. 166, 184.....	12
2	<i>In re Michael Milken and Assoc. Sec. Litig.</i>	
	(S.D.N.Y. 1993) 150 F.R.D. 57, 66.....	12
3	<i>In re Nordstrom Com. Cases</i>	
	186 Cal.App.4th 576, 589 (2010).....	17
4	<i>In re Nvidia Derivs. Litig.</i>	
	(N.D. Cal. 2008) 2008 WL 5382544, at *3.....	19
5	<i>In re Omnivision Tech, Inc.</i>	
	(N.D. Cal. 2008) 559 F.Supp.2d 1036.....	12
6	<i>In re Taco Bell Wage & Hour Actions</i>	
	2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016).....	17
7	<i>Jack v. Hartford Fire Ins. Co.</i>	
	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	16-17
8	<i>Kass v. Young</i>	
	(1977) 67 Cal.App.3d 100, 106.....	20
9	<i>Kullar v. Foot Locker Retail, Inc.</i>	
	(2008) 168 Cal.App.4th 116, 133.....	11
10	<i>Lee v. Dynamex, Inc.</i>	
	(2008) 166 Cal.App.4th 1325, 1332, 1334.....	22-23
11	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
	(9th Cir. 2021) 999 F.3d 668.....	18-19
12	<i>McKenzie v. Fed. Express Corp.</i>	
	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	17
13	<i>Misra v. Decision One Mortg. Co.</i>	
	(C.D. Cal. 2009) 2009 WL 4581276, at *7.....	18
14	<i>Moniz v. Adecco USA, Inc.</i>	
	(2021) 72 Cal.App.5th 56, 77.....	16
15	<i>Munoz v. BCI Coca-Cola Bottling Co.</i>	
	(2010) 186 Cal.App.4th 399, 409.....	11
16	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
	(2022) 13 Cal. 5th 93.....	16
17	<i>Nat'l Rural Telecomms. Coop v. DirecTV</i>	
	(C.D. Cal. 2004) 221 F.R.D. 523, 526-7.....	12, 19
18	<i>Newman v. Stein</i>	
	(2d. Cir. 2002) 464 F.2d 689, 693.....	12
19	<i>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</i>	
	(1994) 27 Cal.App.4th 1085, 1089-90.....	9
20	<i>O'Conner v. Uber Technologies, Inc.</i>	
	(9 th Cir. 2018) 904 F.3d 1087.....	18
21	<i>Officers for Justice v. Civil Serv. Comm'n</i>	
	(9th Cir. 1982) 688 F.2d 615, 625, 628.....	9, 12
22	<i>Ordonez v. Radio Shack, Inc.</i>	
	(C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11.....	15
23	<i>Rebney v. Wells Fargo Bank</i>	
	(1990) 220 Cal.App.3d 1117, 1140, <i>opinion modified</i> (June 18, 1990).....	19
24	<i>Rodriguez v. West Publishing Corp.</i>	
	(9 th Cir. 2009) 563 F.3d 948, 958-59.....	21
25	///	

1	<i>Sav-On Drug Stores, Inc.</i>	
2	(2014) 34 Cal.4th 319, 326, 333.....	22-23
3	<i>See's Candy Shops, Inc. v. Super. Ct.</i>	
4	(2012) 210 Cal. App. 4th 889, 907.....	13
5	<i>Stambaugh v. Super. Ct</i>	
6	(1976) 62 Cal.App.3d 231, 236.....	9
7	<i>State of Cal. v. Levi Strauss & Co.</i>	
8	(1986) 41 Cal.3d 460, 482, 485.....	10, 21
9	<i>Tien v. Tenet Healthcare Corp.</i>	
10	(2012) 209 Cal.App.4th 1077, 1088.....	18
11	<i>Trotsky v. Los Angeles Fed Savings & Loan Assn.</i>	
12	(1975) 48 Cal.App.3d 143, 151-52.....	20
13	<i>Villa v. United Site Servs. of California, Inc.</i>	
14	(N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8.....	15

RULES, CODES AND STATUTES

15	<i>Cal. Bus. & Prof. Code</i> §§ 17200 <i>et seq.</i>	4
16	<i>Cal. Code of Civ. Proc.</i> § 382.....	22-23
17	<i>Cal. Code of Civ. Proc.</i> § 384.....	3
18	<i>Cal. Lab. Code</i> § 201.....	4
19	<i>Cal. Lab. Code</i> § 202.....	4
20	<i>Cal. Lab. Code</i> § 203.....	4, 16
21	<i>Cal. Lab. Code</i> § 226.....	4
22	<i>Cal. Lab. Code</i> § 226.7.....	4
23	<i>Cal. Lab. Code</i> § 510 <i>et seq.</i>	4
24	<i>Cal. Lab. Code</i> § 512.....	4
25	<i>Cal. Lab. Code</i> § 1194.....	4
26	<i>Cal. Lab. Code</i> § 1197.....	4
27	<i>Cal. Lab. Code</i> § 1197.1.....	4
28	<i>Cal. Lab. Code</i> §§ 2698 <i>et seq.</i>	4
29	<i>Cal. Lab. Code</i> §§ 2802.....	4
30	<i>Cal. Lab. Code</i> § 2802(a).....	15
31	<i>Rule of Court Rule</i> 3.769(c)-(g).....	9
32	<i>Rule of Court Rule</i> 3.776(e)-(f).....	21

SECONDARY SOURCES

33	Conte & Newberg, <i>Newberg on Class Actions</i> , §§ 11.26, 11.51 (4th ed. 2022) § 1 1:38	
34	.....	9-10, 21
35	Eisenberg & Miller, <i>Incentive Awards to Class Action Plaintiffs: An Empirical Study</i> , 53 UCLA L. Rev. 1303 (2006)	
36	.....	21
37	Theodore Eisenberg & Geoffrey P. Miller, <i>Attorneys Fees in Class Action Settlements: An Empirical Study</i> , <i>J. of Empirical Legal Studies</i> , Vol. 1, Issue 1, 27-78, March 2004, at 35	
38	.....	22

1 Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986)20

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION

Plaintiff MANUEL DIAZ NUNEZ (“Plaintiff”) seeks preliminary approval of the Stipulation of Settlement of Class Action and PAGA Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 9,784 Class Members and 5,125 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**Class**” and “**Class Members**” shall mean “all non-exempt employees who are or previously were employed by Defendant Titan AG Services, Inc. (“Titan AG”), staffed to work at Defendant Royal Farms, Inc.’s (“Royal Farms”) farms and performed work in California during the Class Period defined as March 21, 2019 through September 11, 2022. Agreement at §§ I(H)-(I). As of the date of the Agreement, there were approximately 9,784 Class Members who worked approximately 60,191 Workweeks during the Class Period. Agreement at § III(A)(2).

2. The “**Settlement Class Member**” refers to all Class Members who do not file a timely and valid Request for Exclusion. Agreement at § I(KK).

3. The “**Aggrieved Employees**” and “**PAGA Period**” refers to all non-exempt employees who are or previously were employed by Defendant Titan AG Services, Inc., staffed to work at Defendant Royal Farms, Inc.’s farms and performed work in California during the PAGA Period [March 21, 2022, through September 11, 2022]. Agreement at §§ I(B), I(X). Aggrieved employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § III(K)(7). As of the date of the Agreement, there were approximately 5,125 Aggrieved Employees who worked approximately 31,675 pay periods during the PAGA Period. JCL Dec., ¶ 55.

4. The “**Gross Settlement Amount**” is One Million, Two Hundred Thousand Dollars and Zero Cents (\$1,200,000.00). Agreement at § I(Q). The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Class Representative Service Award**” in the amount of \$10,000 to Plaintiff for his services on behalf of the Class Members. Agreement at §§ I(J), III(L)(9);

b. A payment of “**Class Counsel Award**” in the amount not to exceed one-third of

¹ The Agreement is attached as Ex “A” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

the Gross Settlement Amount for attorney’s fees, currently estimated to be \$400,000.00 **and** litigation costs and expenses not to exceed \$25,000.00, to be paid to Class Counsel. Agreement at §§ III(L)(10). The Attorneys’ Fees shall be divided between Class Counsel as follows: 37.5% to JCL Law Firm, APC, 37.5% to Zakay Law Group, APLC, and 25% to the Law Office of Tatiana Hernandez, P.C. Agreement at § I(F). As of the filing of this Motion, Class Counsel worked a total of 408.3 hours successfully litigating this action with the attorney’s hourly fee rate of \$400-\$829 and paralegal rates at \$225 per hour, resulting in a current lodestar of \$234,993.30. JCL Dec., ¶¶ 10-17; Declaration of Shani O. Zakay (“Zakay Dec.”) ¶ 6-8; Declaration of Tatiana Hernandez (“Hernandez Dec.”) ¶¶ 16-18. Additionally, Class Counsel has incurred a total of \$15,920.57 (JCL Law Firm, APC - \$8,659.97 and Zakay Law Group, APLC - \$7,260.60) in litigation costs prosecuting this action to date. JCL Dec., ¶¶ 19-21, Zakay Dec., ¶ 11-12. On Plaintiff’s Motion for Final Approval and Motion for Fees, Class Counsel will submit additional declarations providing the Court with sufficient detail regarding Class Counsel’s additional lodestar and expenses incurred.;

c. A **“PAGA Payment”** in the amount of \$60,000.00 shall be set aside from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004. Agreement at § I(Y). The Administrator, Apex Class Action, LLC (“Administrator” or “Apex”) shall pay \$45,000.00 representing 75% of the PAGA Payment to the Labor and Workforce Development Agency (“LWDA Payment”). Agreement at §§ III(L)(11). The Administrator shall distribute \$15,000.00 representing 25% of the PAGA Payment to the Aggrieved Employees (“Individual PAGA Payment”). *Id.*; and

d. **“Settlement Administration Costs”** not to exceed \$53,000.00 payable to the Administrator for, *inter alia*, the administration of the Class Notice and Individual Class Payments. Agreement at § III(L)(12).

3. The **“Net Settlement Amount”** means the Gross Settlement Amount less the PAGA Payment, the Class Representative Service Award, the Class Counsel Award, and the Settlement Administration Costs, in the amount approved by the Court. Agreement at § I(T). The Net Settlement Amount is approximately \$652,000.00 which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during

1 the Class Period. Agreement at § III(L)(1). The entire Net Settlement Amount will be paid to all
2 Settlement Class Members who do not opt out of the Settlement resulting in an average Individual Class
3 Payment of approximately **\$66.64**. JCL Dec., ¶ 22. The Parties have named The Children’s Advocacy
4 Institute (“CAI”) as the Cy Pres recipient of uncashed funds pursuant to California Code of Civil
5 Procedure section 384. Counsel does not have any interest, pecuniary or otherwise, or involvement in
6 the governance or work of CAI. JCL Dec., ¶ 3(a); Zakay Dec., ¶ 5; Hernandez Dec., ¶ 5.

7 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the
8 Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length.
9 The Settlement confers substantial benefits to the Class Members. The relief offered by the Settlement
10 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
11 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Settlement Class
12 Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class
13 certification being denied or of Defendants prevailing at trial. JCL Dec., ¶ 22.

14 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
15 approval and falls within the range of reasonableness. The average Individual Class Payment to the
16 Class Members meets or exceeds awards in similar wage and hour class actions. Moreover, the
17 proposed Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests
18 the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 23.

19 II. FACTS AND PROCEDURE

20 A. Overview of the Litigation

21 Titan AG and Royal Farms (collectively, “Defendants”) operate agriculture and farming
22 business in the state of California, including Tulare County, where Plaintiff worked. This action
23 asserts claims on behalf of all non-exempt employees who are or previously were employed by
24 Defendant Titan AG Services, Inc., staffed to work at Defendant Royal Farms, Inc.’s farms and
25 performed work in California during the Class Period. Plaintiff worked for Defendants as a non-
26 exempt employee in California from September 2022 to October 2022. At all times during his
27 employment, Plaintiff earned an hourly wage and was entitled to legally compliant meal and/or rest
28 periods, and minimum, regular and overtime wages for all hours worked. Throughout his

1 employment, Plaintiff was subject to Defendants’ policies and procedures contained in, among other
2 documents, the “Titan AG Service Inc. Employee Handbook.” JCL Dec., ¶ 24; Nunez Dec. at ¶¶ 1-5.

3 Generally, Plaintiff claims that Defendants failed to pay for all time worked, failed to provide
4 compliant meal and rest periods, failed to reimburse for mandatory business expenses, failed to furnish
5 accurate itemized wage statements, and failed to pay all wages upon separation. Defendants forcefully
6 deny liability for each of Plaintiff’s claims. Further, Defendants assert that they fully complied with all
7 applicable employment laws and raised several other significant defenses to Plaintiff’s claims,
8 including but not limited to, asserting that it paid employees for all hours worked, maintained facially
9 compliant meal and rest period policies, reimbursed employees for expenses, issued compliant wage
10 statements, and timely paid all wages due upon separation of employment. JCL Dec., ¶ 25.

11 On March 21, 2023, Plaintiff served Defendants., and the Labor and Workforce Development
12 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth
13 the facts and theories supporting Defendants’ alleged violations of various provisions of the California
14 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to
15 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
16 2698 *et seq.* (“PAGA”). JCL Dec., ¶ 26.

17 On March 21, 2023, Plaintiff filed a class action complaint in the Tulare Superior Court, Case
18 Number VCU296822 (“Action”). The Action alleged eight causes of action against Defendants Titan
19 AG Services, Inc. and Royal Farms, Inc. for: (1) Unfair Competition in Violation of Cal. Bus. & Prof.
20 Code §§ 17200, *et seq.*; (2) Failure to Pay Minimum Wages in Violation Of Cal. Lab. Code §§ 1194,
21 1197 & 1197.1; (3) Failure to Pay Overtime Wages in Violation Of Cal. Lab. Code §§ 510, *et seq.*; (4)
22 Failure to Provide Required Meal Periods in Violation Of Cal. Lab. Code §§ 226.7 & 512 and the
23 Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation Of Cal. Lab
24 Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Pay Wages When Due in
25 Violation Of Cal. Labor Code §§ 201, 202 and 203; (7) Failure to Provide Accurate Itemized Statements
26 in Violation Of Cal. Lab. Code § 226; and (8) Failure to Reimburse Employees for Required Expenses
27 in Violation of Cal. Lab. Code § 2802. JCL Dec., ¶ 27.

28 In May 2023, Plaintiff propounded discovery. After responding to discovery, the Parties agreed

1 to mediate the Action. To prepare for mediation, the Parties agreed that Defendants would informally
2 produce additional documents and data points subject to the mediation privilege, including but not
3 limited to, a sample of the Class Members' time and payroll data and certain payroll data points. As
4 discussed infra, Plaintiff's counsel retained the forensic consultants at Berger Consulting Group
5 ("BCG") to analyze Defendants' time and payroll data. JCL Dec., ¶ 28.

6 On June 6, 2023, Plaintiff filed a First Amended Complaint (the "Operative Complaint") alleging
7 an additional cause of action for violations of PAGA. JCL Dec., ¶ 29.

8 On December 13, 2023, the Parties participated in a full day mediation with Lisa Klerman, Esq.,
9 an experienced mediator of wage and hour class and PAGA actions. The mediation concluded with a
10 settlement after both sides agreed to a Mediator's proposal which was subsequently memorialized in
11 the form of a Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-
12 form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 30.

13 **B. Class Counsel Thoroughly Investigated the Factual and Legal Issues**

14 Months before filing the Action, Class Counsel began their pre-filing investigation into
15 Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with
16 Plaintiff. As part of the interview process, Plaintiff produced documents related to his employment,
17 including, but not limited to, wage statements and handwritten timesheets. At the conclusion of the
18 interviews and review of documents, Class Counsel determined that each Plaintiff's complaints
19 justified further inquiry. JCL Dec., ¶ 31.

20 Class Counsel subsequently requested Plaintiff's employee file from Defendants. In response,
21 Defendants produced various documents, including but not limited to, copies of Plaintiff's time and
22 payroll records. Class Counsel reviewed and analyzed the documents and determined the documents
23 appeared to substantiate Plaintiff's claim that Defendants failed to, among other things, record time,
24 pay for all time worked, issue accurate itemized wage statements, and provide compliant meal and rest
25 periods or else pay premium wages in lieu thereof. JCL Dec., ¶ 32.

26 Class Counsel then retained the statisticians and economists at Berger Consulting Group
27 ("BCG") to evaluate the Class Members' payroll and time data. BCG provides data analysis and
28 damage modeling consulting services, specializing in wage and hour class actions. BCG's team of

1 financial and data analysts are credentialed and experienced experts in their fields and have provided
2 their expertise on thousands of cases. Stated differently, the BCG is well-qualified to analyze
3 Defendants' time and payroll data. JCL Dec., ¶ 33.

4 BCG analyzed Defendants' time and payroll data to assist in the development of various damage
5 models. Among other things, BCG determined the approximate number of work shifts, workweeks,
6 pay periods, average length of shift, and average number of hours worked per workweek and pay
7 periods during the Class Period. BCG also estimated the number of meal and rest period violations,
8 the amount of unpaid wages, the amount of unreimbursed business expenses, and the amount of off-
9 the-clock work performed by the Class Members during the Class Period. JCL Dec., ¶ 34.

10 In advance of mediation, Class Counsel created several damage models predicated on the BCG
11 analysis. Class Counsel's models calculated Defendants' potential liability exposure while accounting
12 for the uncertainties of continued litigation. These damage models informed and guided Class Counsel
13 during the mediated settlement discussions. JCL Dec., ¶ 35.

14 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
15 Plaintiff's suitability as a putative class representative through interviews, background investigations,
16 and analysis of his employment file; (2) evaluating all of Plaintiff's potential claims; (3) researching
17 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
18 of employer; (4) analyzing the Class Members' time and payroll records; (5) analyzing Defendants'
19 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
20 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants'
21 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the
22 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the
23 claims being settled, as well as the impediments to recovery, such as to make an independent
24 assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 36.

25 Class Counsel only agreed to enter the Settlement following this thorough investigation and
26 evaluation of Plaintiff's claims. Based on their investigation of the facts, applicable law, and
27 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated
28 with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believe this

Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 37.

C. The Parties Settled at Mediation

On December 13, 2023, the Parties conducted a full day of mediation with Lisa Klerman, Esq., a mediator of wage and hour class and representative actions. Mediator Klerman helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Mediator Klerman's assistance. Namely, the Parties exchanged information regarding their respective claims and defense, including their respective evaluation of the damages. The mediation concluded with a settlement, the complete and final terms of which are now set forth in the Agreement. Class Counsel submit that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 38.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class Members

The Settlement Class Members consist of all non-exempt employees who are or previously were employed by Defendant Titan AG Services, Inc., staffed to work at Defendant Royal Farms, Inc.'s farms and performed work in California during the period between March 21, 2019 through September 11, 2022. Agreement at §§ I(H)-(I). At the time the Agreement was executed, there were approximately 9,784 Class Members that worked approximately 60,191 Workweeks. Agreement III(A)(2).

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$1,200,000.00. The Gross Settlement Amount includes: (1) Individual Class Payments to the Settlement Class Members; (2) a Class Representative Service Award of \$10,000.00 to Plaintiff for his services on behalf of the Settlement Class Members; (3) a PAGA Payment in the amount of \$60,000.00; (4) Settlement Administration Costs estimated at \$53,000.00; (5) Class Counsel Award in the amount of \$425,000.00, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be \$400,000.00 and an estimated \$25,000.00 for actually incurred litigation expenses. *See generally* Agreement at § III(L)(9)-(12).

Subject to the Court approving the Class Representative Service Award, Class Counsel Award,

PAGA Payment, and the Settlement Administration Costs, the Net Settlement Amount will be distributed to each participating member of the Settlement Class Member. Agreement at § III(L)(1). There is no reversion to Defendants and Defendants must separately pay for their share of the employer payroll taxes. Agreement at § I(Q).

3. The Funding Date and Installment Plan

Assuming there are no objectors, and no appeal is filed, Defendants will fund the \$1,200,000.00 Gross Settlement Amount in two (2) installments as follows: Defendants shall transfer \$1,000,000 of the Gross Settlement to the Settlement Administrator within sixty (60) days of the Effective Date (“Funding Date #1”), and Defendants shall transfer the remaining \$200,000 within six (6) months of Funding Date #1 (“Funding Date #2”). Agreement at § I(O)-(P).

4. Formula for Calculating Individual Class Payments

Each Settlement Class Member will receive an Individual Class Payment. The Class Data provided by Defendants to the Settlement Administrator will include the number of eligible Workweeks for each Settlement Class Member. The Individual Class Payments will be calculated by adding up the total number of Workweeks for all Class Members. The respective Workweeks for each Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each Class Member. Each Class Member’s Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member’s estimated Individual Class Payments. Agreement at § III(L)(1). Each Individual Class Payments will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). *Id.*

Given that there are approximately 9,784 Class Members, *the average gross recovery is approximately \$66.64* (Net Settlement Amount divided by Settlement Class Members). JCL Dec., ¶ 22.

5. Release by Settlement Class Members

Generally, as of the Funding Date #2, Plaintiff and the Settlement Class Members will agree to release the Released Parties from the Released Class Claims that accrued during the Class Period. Agreement at §§ III(B).

///

1 action litigation”).)

2 Additionally, in reviewing the fairness of a class action settlement, due regard should be given
3 to what is “otherwise a private consensual agreement between the parties.” (*Cellphone Termination*
4 *Fee Cases* (2010) 186 Cal.App.4th 1380, 1389.) The inquiry “must be limited to the extent necessary
5 to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
6 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable
7 and adequate to all concerned.” (*Id.*)

8 1. The Parties Reached the Settlement Through Arm’s-Length Bargaining Led by
9 Experienced Counsel.

10 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
11 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
12 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
13 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
14 § 11.51.)

15 The Parties participated in mediation with the highly respected mediator and retired judge Hon.
16 Brian C. Walsh (Ret.). Judge Walsh managed the Parties’ expectations and provided a useful, neutral
17 analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-
18 4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation
19 weighs considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d.
20 Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps
21 to ensure that the proceedings were free of collusion and undue pressure.”).) At all times, the Parties’
22 negotiations were at an arm’s length, adversarial, and non-collusive. Judge Walsh only arrived at his
23 proposal after hearing arguments, reviewing evidence, and evaluating the Parties’ respective claims
24 and defenses. JCL Dec., ¶ 39.

25 Once the Parties agreed to the Mediator’s proposal, the parties subsequently executed a binding
26 and enforceable Memorandum of Understanding. The Agreement is the final product of these mediated
27 negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable
28 compromise of the claims at issue. JCL Dec., ¶ 40.

2. Class Counsel's Thorough Investigation Provided an Objective Measurement of the Settlement's Reasonableness.

As set forth in greater detail above, Class Counsel conducted a very thorough investigation into the factual and legal issues in dispute. In addition to informal discovery, document review, data analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no two cases are identical, this research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against. The investigation allowed Class Counsel to realistically assess the value of the claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶ 41.

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiff's claims. Based on an investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 42.

3. The Settlement Falls Within the Recognized Range of Reasonableness.

The Gross Settlement Amount of \$1,200,000.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might

1 have received if they had succeeded at trial.² Indeed, “[t]he determination whether a settlement is
2 reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’ ”
3 (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and*
4 *Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

5 **a. The Gross Settlement Amount Meets the Recognized Range of**
6 **Reasonableness.**

7 The Gross Settlement Amount of \$1,200,000.00 is fair and reasonable considering the nature
8 and magnitude of the claims being settled and the various potential impediments to recovery. Prior to
9 mediation, Class Counsel retained BCG to develop economic damage models measuring Defendants’
10 liability exposure while accounting for the uncertainties of continued litigation. The various models
11 were informed by Class Counsel’s investigation, including the analysis of a significant sample of time
12 and payroll data. Class Counsel projected Defendants’ liability exposure for *class claims* (excluding
13 PAGA penalties) ranged between \$3,655,464.70 (“Conservative Model”) and \$13,250,192
14 (“Aggressive Model”) if successful at trial. This range reflects the uncertainty regarding several of the
15 claims, together with the uncertainty surrounding derivative liability for inaccurate wage statements
16 and waiting time penalties. Thus, the Gross Settlement Amount of \$1,200,000.00 represents
17 approximately between 6.17% (“Aggressive Model”) and 32.83% (“Conservative Model”) of
18 Defendants’ *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. The
19 following summarizes Defendants’ estimated exposure. JCL Dec., ¶ 43.

20 (1) Estimated Exposure for Unpaid Wages

21 Plaintiff’s primary claim in this Action alleges that Defendants failed to pay its employees for
22 all hours worked. Specifically, Plaintiff alleges that throughout the entire Class Period, Defendants

23 ² Federal district courts recognize that there is an inherent “range of reasonableness” in determining whether to approve a
24 settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs
25 necessarily inherent in taking any litigation to completion.” *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re*
26 *Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat’l Rural Telecomm. Coop. v. Directv. Inc.* (C.D.
27 Cal. 2004) 221 F.R.D. 523, 527 (“well settled law that a proposed settlement may be acceptable even though it amounts to
28 only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436,
460 (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration
when assessing settlements fairness”); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184 (“the
fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself,
weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers for*
Justice v. Civil Serv. Comm. (9th Cir. 1982) 688 F.2d 615, 628 (it is “the complete package, taken as a whole rather than the
individual component parts, that must be examined for overall fairness”).

1 failed to record the actual time the Plaintiff and Class Members worked. Rather, Plaintiff alleges that
2 Defendants instructed its supervisors to fill in handwritten time sheets consistent with the employees'
3 schedules, without any regard to the amount of time employees actually worked. Plaintiff contends
4 that the time records produced by Defendants show that 100% of all time entries were rounded to
5 quarter-hour intervals. As a result, Plaintiff, Class Members, and Aggrieved Employees forfeited
6 compensation, including overtime wages, for all the time they spent working under Defendants'
7 control. Based on Plaintiff's testimony and Class Counsel's investigation, BCG estimated that Class
8 Members and Aggrieved Employees spent a total of 1 minutes of unpaid work every shift completing
9 work-related tasks such as, among other things, cleaning up equipment and work areas after their shifts
10 ended. JCL Dec., ¶ 44.

11 Defendants vigorously denied liability for this claim. As a preliminary matter, Defendants
12 argued that the written time records accurately reflected all hours worked by the Class Members and
13 Aggrieved Employees. Defendants maintain that the nature of the work, i.e., field work, is such that
14 employees do in fact start and stop at the direction of their supervisor and at the same time so the time
15 records are accurate. Defendants also argued that the practice of rounding start and end times is lawful
16 under *See's Candy Shops, Inc. v. Super. Ct.* (2012) 210 Cal. App. 4th 889, 907 and any rounding was,
17 as a matter of practice, done in favor of the employees. Defendants maintain that employees did not,
18 and would have no reason to, perform work off-the-clock. JCL Dec., ¶ 45.

19 Further, Defendants argued that this claim was not suitable for class treatment because
20 individualized issues predominated. Defendants argued that there is no common policy or practice of
21 requiring employees to perform work off-the-clock. Accordingly, proof of liability would necessarily
22 require individualized evidence as to whether any time was spent working off-the-clock, and whether
23 Defendants knew or should have known that such work was allegedly being performed. Liability
24 cannot, according to Defendants, be established by common proof. Due to Plaintiff's position that
25 Defendants failed to keep accurate timekeeping records, Plaintiff only applied a 75% discount for this
26 claim. As a result, Plaintiff estimated Defendants' exposure for unpaid wages ranged from
27 approximately \$37,811 to approximately \$151,244. JCL Dec., ¶ 46.

28 ///

1 (2) Estimated Exposure for Meal Period Violations.

2 Plaintiff also alleges that Defendants failed to provide compliant meal periods. Specifically,
3 Plaintiff alleges that as a result of their rigorous work schedules, Plaintiff, Class Members, and
4 Aggrieved Employees were not able to take timely and duty-free meal periods. Further, Plaintiff alleges
5 that Defendant failed to record the actual time that Class Members worked. As a result, most all of the
6 meal periods were allegedly rounded to exactly thirty (30) minutes, which Plaintiff argued creates a
7 presumption of a meal period violation. Because Defendant produced mostly rounded time records, a
8 majority of the time records reflect compliant meal periods. Plaintiff also provided limited testimony
9 that his meal periods were occasionally late and short. Thus, Plaintiff reasonably assumed that meal
10 period violations occurred approximately 25% of the time. JCL Dec., ¶ 47.

11 Defendants deny liability for this claim. Defendants argued that the work schedules were not so
12 “rigorous” that employees were unable to stop working. Defendants argued, and the documents in fact
13 reflect, that the written time records evidence nearly a 100% meal period compliance rate. Defendants
14 maintain that the nature of the work is such that the workers on each crew take meal periods together,
15 and that the supervisor announces the start and stop of each meal period and the times recorded
16 accurately reflect those meal periods. JCL Dec., ¶ 48.

17 Defendants also argued that it did not engage in rounding of meal period start and end times and
18 provided all its employees, i.e., Class Members and Aggrieved Employees, with the opportunity to take
19 compliant meal periods. Further, Defendant argued that it maintained facially compliant meal period
20 policies. Thus, Defendants argued that there was no potential liability for Plaintiff’s alleged meal
21 period violations and any claimed violations required a highly individualized inquiry not suitable to
22 class treatment. Consequently, Plaintiff applied a 50% discount to this claim and estimated Defendants’
23 exposure for this claim ranged from \$782,411 to approximately \$1,564,822. JCL Dec., ¶ 49.

24 (3) Estimated Exposure for Rest Period Violations

25 Plaintiff also alleged that Defendants failed to provide compliant rest periods. Specifically,
26 Plaintiff alleged that because of their rigorous work schedules, Plaintiff, Class Members, and Aggrieved
27 Employees were not able to take timely and duty-free rest periods. Specifically, Plaintiff argued that
28 he was required to work through his rest periods in order to finish work-related tasks. JCL Dec., ¶ 50.

1 Again, Defendants denied liability and asserted that the workload is not such that it prevented
2 employees from taking a break. Defendants maintained legally compliant written policies and actual
3 practices concerning rest periods throughout the Class Period. Moreover, Plaintiff recognizes the
4 evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim would rely,
5 almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability
6 stages. Certification likely would have required depositions of Class Members who provided
7 declarations, and Defendants argued that they obtained opposing declarations stating either rest breaks
8 were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal.
9 Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court,
10 plaintiff's evidence that Defendants may have an illegal, written rest break policy is insufficient for this
11 Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D.
12 Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the
13 written policy does not generate uniform practices"). Accordingly, Plaintiff's Conservative Model
14 applied a 50% discount to the rest break claim. Plaintiff estimated the range of potential outcomes for
15 this claim was between approximately \$782,411 dollars to approximately \$1,564,822. JCL Dec., ¶ 51.

16 (4) Defendants' Estimated Damages for Unreimbursed Business Expenses

17 Plaintiff alleged that Defendants required Class Members to incur personal expenses for the use
18 of their own personal vehicles. California employers who require employees to incur personal business
19 expenses for work purposes must reimburse the employee for the cost incurred. (See Cal. Lab. Code §
20 2802(a), providing that "[a]n employer shall indemnify his or her employee for all necessary
21 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
22 duties, or of his or her obedience to the directions of the employer...."). While investigating this claim,
23 Class Counsel found that Plaintiff only used his personal vehicle once or twice during the Class Period
24 and that it was not due to any common policy or practice. Accordingly, Plaintiff could not give any
25 value to this claim and determined that Defendants' incurred no liability for this claim. However,
26 Plaintiff provided a release for this claim because Plaintiff alleged that Defendants failed to reimburse
27 mandatory business expenses in the Operative Complaint. JCL Dec., ¶ 52.

28 ///

1 (5) Estimated Exposure for Wage Statement Violations

2 Plaintiff also alleged that Defendants failed to furnish its employees with accurate itemized wage
3 statements. Specifically, Plaintiff alleges that as a result of Defendants' failure to provide meal and rest
4 periods as required by the California Labor Code, Plaintiff and other Class Members are entitled to
5 derivative wage statement penalties. (See *Naranjo v. Spectrum Security Services* (2022) 13 Cal. 5th 93
6 (concluding that meal premiums are "wages" entitling employees to derivative wage statement
7 penalties). Further, Defendants argued that even if it failed to furnish accurate wage statements,
8 Plaintiff could not establish the injury requirement on a class-wide basis. As a result, Plaintiff
9 discounted this claim 50% to account for this risk. Plaintiff estimated that Defendants' exposure on
10 this claim ranged between \$727,812.50 and \$2,911,250. JCL Dec., ¶ 53.

11 (6) Estimated Exposure for Waiting Time Penalties

12 Plaintiff also alleged that the Defendants' labor code violations resulted in derivative liability for
13 waiting time penalties. Although these *penalties* represented Defendants' largest dollar amount of
14 exposure, this is Plaintiff's most uncertain claim. Specifically, Defendants argued that Plaintiff could
15 not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203.
16 Notwithstanding the uncertain nature of the claims, Class Counsel's Conservative Model discounted
17 the waiting time penalty claim by 90% and estimated Defendants' exposure for these claims ranged
18 between \$1,325,019.20 and \$12,250,192. JCL Dec., ¶ 54.

19 (7) Defendants' PAGA Exposure

20 In all, Class Counsel projected Defendants' liability exposure for PAGA claims ranged between
21 \$158,375 ("Conservative Model") and \$9,932,450 ("Aggressive Model") if successful at trial. JCL
22 Dec., ¶ 55. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable.
23 *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate a good faith
24 amount" for PAGA Payment and "there is no indication that this amount was the result of self-interest
25 at the expense of class members," such amounts are generally considered reasonable. *Hopson v.*
26 *Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts
27 routinely approve of amounts for PAGA Payment in the range of zero to two percent of the settlement.
28 *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683

1 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of
2 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5
3 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of
4 zero to two percent of the total settlement).

5 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$60,000 which is 5%
6 of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payment.
7 The LWDA Payment of \$45,000.00 represents seventy-five percent (75%) of the PAGA Payment and
8 will be paid to the LWDA. The Aggrieved Employee Payment of \$15,000 represents the remaining
9 twenty-five percent (25%) of the PAGA Payment, which shall be distributed to the Aggrieved
10 Employees and is within the range of PAGA Payment approved by courts and should be approved. JCL
11 Dec., ¶ 56.

12 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
13 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
14 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
15 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
16 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186
17 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
18 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
19 6, 2016) (PAGA penalties denied after trial).

20 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the
21 underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
22 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on
23 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
24 defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for
25 each pay period the employee worked. Again, Defendants raised several defenses that presented serious
26 threats to the claims of the Plaintiff and the Aggrieved Employees. In addition to those arguments
27 discussed, *supra*, Defendants also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*
28

(2019) 43 Cal.App.5th 885, weakened Plaintiff’s claims, on liability, value, and manageability as to the rest period claims. JCL Dec., ¶ 57.

Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504, illustrates the risk of PAGA claims. In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after Plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%.

For the aforementioned reasons, the PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable.

b. Inherent Risks of Continued Litigation Support Preliminary Approval.

“It can be difficult to ascertain with precision the likelihood of success at trial. The Court cannot and need not determine the merits of the contested facts and legal issues at this stage, [Citation], and to the extent courts assess this factor, it is to ‘determine whether the decision to settle is a good value for a relatively weak case or a sell-out of an extraordinary strong case.’” (*Misra v. Decision One Mortg. Co.* (C.D. Cal. 2009) 2009 WL 4581276, at *7.)

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show

1 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
2 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
3 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
4 certification of driver meal and rest period claims based on the predominance of individual issues).
5 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
6 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
7 settlement. JCL Dec., ¶ 58.

8 “The Settlement eliminates these and other risks of continued litigation, including the very real
9 risk of no recovery after several years of litigation.” (*In re Nvidia Derivs. Litig.* (N.D. Cal. 2008) 2008
10 WL 5382544, at *3.) Indeed, potential appeals aside, litigating a complex case through trial is
11 inherently perilous regardless of the strengths of merits of the claims:

12 [N]othing is assured when litigating against commercial giants with vast
13 litigative resources, particular in such complex litigation as this, which
14 would strain the cognitive capacities of any jury. Defense judgments were
15 hardly beyond the realm of possibility. Accordingly, this factor weighs in
16 favor of preliminary approval.

17 (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1140, *opinion modified* (June 18, 1990).)

18 Finally, continuing to litigate this action would require continued and extensive resources
19 coupled with significant Court time to proceed through trial and post-trial motions; which can often
20 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
21 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
22 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
23 Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
24 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 59. “Avoiding such a trial and the
25 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
26 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
27 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
28 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

1 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$1,200,000.00 that is
2 roughly between 6.17% (“Aggressive Model”) and 32.83% (“Conservative Model”) of Defendants’
3 maximum class wide liability exposure for damages and statutory penalties. Given the amount of the
4 settlement here, as compared to potential value of the claims, offset by the various inherent risks to
5 continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 60.

6 **B. The Proposed Notice Informs the Class about the Case and Settlement**

7 The Class Members are entitled to the best practical notice under the circumstances. (*Kass v.*
8 *Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient
9 information to decide whether they should accept the benefits offered, opt out and pursue their own
10 remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48
11 Cal.App.3d 143, 151-52.) The notice must advise class members “that they may be excluded from the
12 class if they so request and that they will be bound by the judgment, whether favorable or not, if they
13 do not request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the
14 class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart*
15 *v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)³

16 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
17 Members of their rights and remedies. The Administrator will first verify addresses, then mail the
18 proposed Class Notice in English and Spanish to all Class Members. The Notice will include
19 information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms,
20 the procedure, and time period within which to requests for exclusions or objections to the Settlement,
21 the date for the final approval hearing, the formula used to calculate settlement payments, and the terms
22 and scope of the Released Class Claims. Agreement at § III(K)(2). The Parties negotiated this method
23 to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost
24 effective administration of the Settlement. JCL Dec., ¶ 61.

25 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice

26
27 ³ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to
28 reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If
appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice.
Fontana v. Elrod (7th Cir. 1987) 826 F.2d 729, 732.

1 satisfy due process. (See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485
2 (the class notice must “fairly apprise the class members of the terms of the proposed compromise and
3 of the options open to dissenting class members.”).)

4 **C. The Court Should Preliminarily Approve the Class Representative Service Award**

5 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
6 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
7 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
8 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
9 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives
10 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
11 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
12 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
13 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
14 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
15 (2009) 175 Cal.App.4th 785.)

16 The Settlement provides for a Class Representative Service Award of \$10,000.00 for Plaintiff.
17 The Class Representative Service Award is fair and reasonable compensation for the Plaintiff’s efforts
18 bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with
19 Class Counsel on the status of his case and the strategies for prosecuting the claims, and reviewing the
20 proposed Settlement to ensure that its terms are fair and provide adequate relief for the Class Members.
21 JCL Dec., ¶ 62; Nunez Dec., ¶ 6-10.

22 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
23 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff
24 respectfully submits that the above showing is sufficient for preliminary approval of the negotiated
25 Class Representative Service Award. JCL Dec., ¶ 63.

26 **D. The Court Should Preliminarily Approve the Class Counsel Award**

27 The purpose of a payment to Class Counsel for Class Counsel Award in class action litigation is
28 to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial

1 positive result for the class. California courts routinely award attorneys’ fees equaling one-third or more
2 of the potential value of the common fund, the amount requested under this settlement. (*See Chavez v.*
3 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (“Empirical studies show that regardless whether the
4 percentage method or the lodestar method is used, fee awards in class actions average around one-third
5 of the recovery.”); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action*
6 *Settlements: An Empirical Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at
7 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a
8 one-third fee is consistent with market rates).)

9 Class Counsel took this matter on a contingency fee basis and invested significant time and
10 expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average
11 Individual Class Payment illustrates the demonstrably positive outcome for the Settlement Class
12 Members. Considering the positive outcome for the Class Members, and in light of the supporting
13 authority, the proposed Class Counsel Award payment is fair and reasonable. JCL Dec., ¶ 64.

14 Plaintiff will file a formal motion for the negotiated Class Counsel Award, including arguments
15 and lodestar information in support of the request, once preliminary approval of the Settlement is
16 granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of
17 the negotiated attorneys’ fees. JCL Dec., ¶ 65.

18 **E. Provisional Certification for Settlement Purposes Is Appropriate**

19 For Settlement, Plaintiff contends, and Defendants do not dispute, that provisional certification
20 of the Class is appropriate. JCL Dec., ¶ 66.

21 **1. The Standard for Class Certification**

22 Class actions are statutorily authorized “when the question is one of common or general interest,
23 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
24 court” (*Cal.Civ.Proc. Code* § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class
25 certification is appropriate when there is an “ascertainable class and a well-defined community of
26 interest among class members.” (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class treatment
27 is appropriate even if class members at some point may be required to make an individual showing as
28 to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207;

1 *Sav-On*, 34 Cal.4th at 333.)

2 2. The Proposed Class is Ascertainable and there is a Well-Defined Community of
3 Interest Among the Settlement Class Members.

4 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 is
5 “determined by examining (1) the class definition, (2) the size of the class, and (3) the means available
6 for identifying class members.” (*Lee, supra*, 166 Cal.App.4th at 1334.) Class members are
7 ascertainable where they may be readily identified without unreasonable expense or time by reference
8 to official records. (*Id.*)

9 The community of interest requirement embodies three factors: (1) predominant common
10 questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3)
11 a class representative and counsel who can adequately represent the class. (*Cal. Civ. Proc. Code* § 382.)

12 In April 2012, the Supreme Court expounded on the element of predominance: The “ultimate
13 question” the element of predominance presents is whether “the issues which may be jointly tried, when
14 compared with those requiring separate adjudication, are so numerous or substantial that the
15 maintenance of a class action would be advantageous to the judicial process and to the litigants.”
16 (*Brinker*, 53 Cal. 4th at 1021-1022 (citations omitted).)

17 Because all Class Members are Defendants’ current and former employees, the class is readily
18 ascertainable from Defendants’ regular business records, i.e., payroll records. JCL Dec., ¶ 67.

19 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
20 Class. Factually, Defendants’ policies and practices apply class-wide and Defendants’ liability can be
21 determined by facts common to all members of the Class. The wage and hour issues are both numerous
22 and substantial, and a class action is the most advantageous method of dealing with the claims of the
23 Class Members. JCL Dec., ¶ 68.

24 Plaintiff’s wage and hour claims are typical of the proposed Class because they arise from the
25 same factual basis and are based on the same legal theories applicable to the other Class Members.
26 Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Class Members. Plaintiff
27 alleges that she was injured by the same company-wide practices to which the proposed Class Members
28 were subject to and seek the same relief. Plaintiff has already demonstrated his ability to advocate for

1 the interests of the Class Member by initiating this litigation, undertaking extensive class discovery,
2 and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 69.

3 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
4 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
5 gained state court settlement approval of the same class-wide causes of action that are at issue in this
6 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
7 represent the interests of this Class. JCL Dec., ¶¶ 70, 73-78, SOZ Dec., ¶¶ 1-3, Hernandez Dec. ¶¶ 12-
8 19.

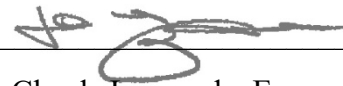
9 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
10 each individual claim, the Class Members likely have little incentive to litigate their claims on an
11 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
12 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
13 adjudication. JCL Dec., ¶ 71. Finally, Class Counsel is not aware of any other pending matters or
14 actions asserting claims that will be extinguished or adversely affected by the Settlement. JCL Dec., ¶
15 72; SOZ Dec., ¶ 4; Hernandez Dec., ¶ 4.

16 IV. CONCLUSION

17 The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately
18 presented the materials and information necessary for preliminary approval, the Parties request that
19 the Court preliminarily approve the settlement.

20
21 Dated: June 21, 2024

JCL LAW FIRM, APC

22 By: 
23 Jean-Claude Lapuyade, Esq.