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6 individually and on behalf of similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**
9
10 **FOR THE COUNTY OF YUBA**

11 RAFAEL GUEVARA SANCHEZ,
12 individually and on behalf of all other
13 similarly situated employees,
14 Plaintiff,
15 vs.
16 DANNA FARMS INC., a California
17 Corporation; and DOES 1 to 100, inclusive,
18 Defendants.

Case No. CVCV21-01213

CLASS ACTION

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

Date: November 27, 2023
Time: 10:00 a.m.
Dept.: 4
Judge: Hon. Stephen W. Berrier

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Trial Date: None Set

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1 **I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

2 Plaintiff RAFAEL GUEVARA SANCHEZ (“Plaintiff”) seeks preliminary approval of a wage and
3 hour class action and Private Attorneys General Act (“PAGA”) settlement in the gross amount of
4 \$275,000. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and
5 Release [“Agreement”]). Plaintiff brought this class action individually and on behalf of similarly
6 situated employees who worked for Defendant Danna Farms Inc., (“Defendant”) (Plaintiff and
7 Defendant sometimes collectively referred to as the “Parties”). *See generally* Exhibit B (Plaintiff’s
8 Operative Complaint). There are approximately 292 Class Members.

9 Plaintiff has alleged that Defendant 1) failed to pay overtime wages, 2) failed to pay minimum
10 wages, 3) failed to provide meal periods or pay premiums in lieu thereof, 4) failed to provide rest
11 periods or pay premiums in lieu thereof, 5) failed to provide accurate wage statements, 6) failed to
12 timely pay all final wages, 7) failed to reimburse expenses for incurred expenses, and 8) engaged in
13 unfair competition. *See generally* Exhibit B; *see also* Declaration of Justin P. Rodriguez (“Decl.
14 Rodriguez”), ¶¶ 2, 9-10. Plaintiff has also alleged Defendant is liable for a civil penalties under the
15 PAGA based on these violations. *See id.*; Exhibit C (Plaintiff’s Ltr. to the Labor and Workforce
16 Development Agency [“LWDA”] Regarding PAGA Claims). Defendant has denied all of Plaintiff’s
17 allegations in their entirety and any liability or wrongdoing of any kind. *See* Decl. Rodriguez, ¶ 5.
18 Defendant has also denied that this case is appropriate for class certification other than for purposes of
19 settlement. *See id.* However, subject to Court approval, the Parties have been able to compromise and
20 settle all asserted claims as a result of extensive investigations, document and data exchanges, and
21 extended negotiations. *See* Exhibit A. Plaintiff and Plaintiff’s counsel believe the proposed Agreement
22 is fair, reasonable, and adequate based on the investigations, discovery, employee data exchanges,
23 negotiations, and a detailed knowledge of the issues in this case. *See* Decl. Rodriguez, ¶¶ 6-10.

24 It is well within the discretion of this Court to grant preliminary approval of the Agreement as it
25 satisfied all applicable criteria under California law. Accordingly, Plaintiff requests that the Court: (1)
26 certify the proposed settlement class on a preliminary and conditional basis; (2) grant preliminary and
27 conditional approval of the proposed Agreement (Exhibit A); (3) approve the form and content of the
28 Notice of Settlement (Exhibit F) and the method for providing notice to Class Members as set forth in

1 the Agreement; and (4) adopt the implementation schedule contained in the proposed order.

2 **II. PROCEDURAL AND LITIGATION HISTORY**

3 Plaintiff filed a class action complaint on approximately December 22, 2021, in YUBA County
4 Superior Court against Defendant. Plaintiff exhausted administrative remedies under the PAGA by
5 providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code § 2699.3(a),
6 (c); Decl. Rodriguez, ¶ 3. Then, Plaintiff filed a First Amended Class Action Complaint on
7 approximately May 11, 2022, to include a PAGA claim. *See id.*; Exhibit B. There is no date set for a
8 motion for certification or trial in this matter. *See* Decl. Rodriguez, ¶ 4.

9 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

10 Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and
11 potential damages for such claims. *See id.* at ¶¶ 3, 6-10; Declaration of Rafael Guevara Sanchez
12 (“Decl. Guevara Sanchez”) ¶ 5-7, 10. Plaintiff worked during the time all of Defendant's policies and
13 practices at issue in the Complaint were in effect and provided information regarding these policies and
14 practices, enabling pre-filing investigations to take place. *See* Decl. Guevara Sanchez, ¶ x. The Parties
15 engaged in formal and informal discovery and exchange of documents, including a representative
16 sampling of employee data, such as timecards, paystubs, payroll data, and relevant policies for the
17 entirety of the statute of limitations applicable to the asserted claims. The discovery covered all aspects
18 of the asserted claims, including certification issues, merits issues, damages, the scope and
19 configuration of Class Members, the content and implementation of the wage and hour policies at issue,
20 issues relating to manageability concerns at trial, among other relevant areas. *See* Decl. Rodriguez, ¶ 6-
21 7. The information allowed Plaintiff to determine the extent and frequency of any violations in
22 accordance with Plaintiff's contentions and create an accurate damages model to assess the
23 reasonableness of any settlement. *See id.*

24 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

25 **a. Plaintiff and Defendant Engaged in Extensive Arm’s Length Negotiations**

26 The final settlement occurred only after extended, arm’s length negotiations. Over the course of
27 approximately two (2) years, Plaintiff has been investigating the claims and discussing with
28

1 Defendant's counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 5-8. The
2 Parties exchanged substantial amounts of information and legal analysis in connection with these
3 discussions. *See id.* It was only after these extended discussions, which included a full day mediation
4 with Hon. Patrick J. O'Hara, (RET) and a mediator's proposal, that the Parties were able resolve all
5 claims and enter into the Agreement. *See id.* at ¶ 8.

6 **b. The Terms of the Agreement**

7 1. The following groups of individuals are covered by the Agreement: (a) Class Members,
8 which include all non-exempt employees who have or continue to work for Defendants in California
9 from December 22, 2017, up to either (1) the Preliminary Approval Date, or (2) sixty (60) days after
10 the Agreement was fully executed, whichever is earlier; and (b) Aggrieved Employees, which include
11 all non-exempt employees who have or continue to work for Defendants in California from December
12 22, 2020, up to either (1) to the Preliminary Approval Date or (2) sixty (60) days after the Agreement
13 was fully executed, whichever is earlier. *See* Exhibit A, ¶¶ 1.2, 1.5. There are approximately 292 Class
14 Members and 102 Aggrieved Employees. *See id.*

15 2. Defendant will pay the Gross Settlement Amount of \$275,000, which is exclusive of the
16 employer's share of payroll taxes. *See id.* at ¶ 5.1. No portion of the Gross Settlement Amount will
17 revert to Defendant. *See id.* at ¶ 5.6. Aggrieved Employees will still be paid their share of the PAGA
18 Payment regardless of whether they opt out of being Class Members. *See id.* at ¶¶ 7.5.1, 7.8.3.

19 3. Up to \$15,000 will be paid to Plaintiff as an Enhancement Payment. This amount will
20 be in addition to any amount Plaintiff may be entitled to under the terms of the Agreement. *See id.* at ¶
21 5.4.

22 4. Subject to Court approval, the Parties have selected CPT Group to act as the Settlement
23 Administrator, who has provided a maximum cost estimate of \$10,000. *See* Exhibit D (CPT Group
24 Quote); Exhibit A, ¶¶ 1.33, 5.3; Decl. Rodriguez, ¶ 21.

25 5. The Parties agree that \$20,000 of the Gross Settlement Amount shall be allocated to
26 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
27 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See* Exhibit A, ¶
28 5.5. Given the risk to proving the claims on the merits, the derivative nature of the penalties, the efforts

1 by Defendant to maintain compliant policies and take corrective action, the presence of what may likely
2 be deemed good faith disputes, and the Court's discretion to reduce any penalty award, Plaintiff
3 believes the \$20,000 PAGA Payment allocation represents a meaningful settlement aimed at deterring
4 non-compliance given the facts of this case. *See* Decl. Rodriguez, ¶¶ 5-10; *see also Nordstrom Com.*
5 *Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims
6 based on their being disputed and being part of a class settlement which was evaluated based on the
7 terms of the agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at *8 n.2
8 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v.*
9 *Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA
10 claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016
11 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,000 PAGA settlement allocation where total PAGA
12 penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox*
13 *Comm'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily
14 approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S.
15 Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award
16 alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D.
17 Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson*
18 *& Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in
19 \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal.
20 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S.
21 Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000
22 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated
23 value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012)
24 (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*,
25 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement
26 fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving
27 PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

28 6. The Parties agree that up to Thirty Five Percent (35%) of the Gross Settlement Amount

1 (\$96,250) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant
2 will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2.
3 Additionally, the Parties agree that Plaintiff will also be entitled to the actual litigation costs as
4 approved by the Court in an amount not to exceed \$10,000. *See id.* The proposed notice to be sent to
5 Class Members will state this information. *See Exhibit F.*

6 7. Any allocated amounts under the Agreement for Settlement Administrator Costs, Class
7 Representative Enhancement Payment, and attorney's fees and costs that are not ultimately awarded by
8 the Court will remain part of the Net Settlement Amount and be paid out to Participating Class
9 Members on a pro rata basis as set forth in the Agreement. *See Exhibit A, ¶¶ 5.1-5.5, 5.8.* These
10 amounts will be paid out from the Gross Settlement Amount, not in addition to the Gross Settlement
11 Amount. *See Exhibit A, ¶¶ 5.1-5.5, 5.11.*

12 8. Class Members who fail to timely opt-out of this settlement will waive all Released
13 Class Claims as set forth in the Agreement. *See Exhibit A, ¶¶ 1.5, 1.14, 1.26, 1.30, 1.32, 6.1, 7.5.1.*
14 Aggrieved Employees will waive all Released PAGA Claims as set forth in the Agreement regardless
15 of whether they opt out of being a Class Member. *See id.* at ¶¶ 1.2, 1.14, 1.31-1.32, 6.2, 7.5.1.

16 9. For any portion of the Net Settlement Amount or PAGA Payment allocated to
17 Participating Class Members and/or Aggrieved Employees that is not claimed by them by cashing their
18 respective settlement checks within 180 calendar days of issuance, that remaining amount shall be
19 donated equally, *i.e.*, 50/50 to Capital Pro Bono, Inc., and the Sacramento Food Bank & Family
20 Services under the doctrine of *cy pres*. *See Exhibit A, at ¶ 5.6.* Because the Agreement provides for all
21 funds such that there is no residue, the provisions of California Civil Procedure Code section 384 are
22 inapplicable. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720 (2006). The designated
23 beneficiaries clearly promote the law consistent with the objectives and purposes underlying the lawsuit
24 as they are non-profits aimed at assisting employees with wage and hour claims who cannot afford
25 legal representation, including providing representation for employees in wage claims before the
26 California Labor Commissioner. *See id.* at 722-724; *see also Decl. Rodriguez, ¶¶ 24-33.*

27 **c. Allocation of Settlement Funds**

28 Payment to Participating Class Members and Aggrieved Employees will not require the

1 submission of a claim form. A Net Settlement Amount will be determined by subtracting from the
2 Gross Settlement Amount any attorneys' fees and costs, Enhancement Payment to the Class
3 Representative, Settlement Administrator Costs, PAGA Payment that are approved and/or awarded by
4 the Court. Each Class Member's share will be determined by dividing their total weeks worked within
5 the Class Period by the total weeks worked by all Class Members within the Class Period. That
6 fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's
7 individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion
8 of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA
9 Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period.
10 That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the
11 Aggrieved Employee's individual share. See Exhibit A, at ¶¶ 1.17, 5.5, 5.8.

12 **V. THE PROPOSED PROCEDURES TO NOTIFY CLASS MEMBERS SATISFY DUE**
13 **PROCESS AS THEY PROVIDE THE BEST NOTICE PRACTICABLE UNDER THE**
14 **CIRCUMSTANCES**

15 It is not required that Class Members be given actual notice of a class settlement; instead, the
16 best practicable notice under the circumstances is all that is required. See *Silber v. Mabon*, 18 F.3d
17 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017);
18 *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, at *12-14 (N.D. Cal. 2017); *Wright v.*
19 *Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d 1449 (9th Cir.
20 1994), the Court rejected a class member's argument that he had not received due process because he
21 did not receive notice until after the opt out period, finding that, so long as the notice process utilized is
22 the best practicable under the circumstances, due process is satisfied even if there is no actual receipt of
23 the notice. See *Silber*, 18 F.3d at 1453-1454. A similar finding was made in *Briseno v. Conagra*
24 *Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017). With regard to any potential for undeliverable notice
25 mailings, the Court in *Rannis v. Recchia*, 380 F. App'x 646 (9th Cir. 2010) found that class members
26 who did not receive actual notice due to their mailings being deemed undeliverable were still properly
27 held to be part of the class settlement because they received the best notice practicable under the
28 circumstances. See *Rannis v. Recchia*, 380 F. App'x at 650-651. In *Noel v. Thrifty Payless, Inc.*, 7
Cal.5th 955, 980-984 (2019), the California Supreme Court noted that California has adopted a similar

1 approach regarding providing notice to class members.

2 Under the proposed notice procedures, Class Members will have forty-five (45) days from the
3 date of mailing to review and respond to the Notice of Settlement, which will also be available online.
4 See Exhibit A, ¶¶ 1.21, 7.2. The Notice of Settlement contains all information necessary for a Class
5 Member to assess the litigation, the settlement, and whether they want to participate, object, or opt-out.
6 See *id.* at ¶¶ 7.2, 7.5.1-7.5.3; Exhibit F. National change of address database searches, skip-traces, and
7 surveying of current employees will be utilized as set out in the Agreement to provide the best practical
8 means of ensuring Class Members receive the notice mailing. See Exhibit A, ¶¶ 7.3-7.4. Any
9 individual whose initial mailing was deemed undeliverable will have additional time to respond. See
10 *id.* at ¶ 7.4. Additional time to respond will also be provided to cure any deficiencies in opt-outs,
11 objections, or disputes. See *id.* ¶ 7.5.4. This notice method is regularly utilized in wage and hour class
12 actions and similar to the one approved in *Rannis*. Thus, the proposed procedures for notifying Class
13 Members satisfy due process and should be approved in this case.

14 **VI. THE AGREEMENT WARRANTS PRELIMINARY APPROVAL AS IT IS FAIR,**
15 **REASONABLE, AND ADEQUATE AS TO ALL CLASS MEMBERS BASED ON THE**
16 **FACTS OF THIS CASE**

17 A class action may not be dismissed, compromised, or settled without Court approval and the
18 decision to approve or reject a settlement is committed to the Court's sound discretion. See Cal. Rules
19 of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal. App.
20 4th 224, 234-35 (2001); see also Cal. Lab. Code §§ 2699(1)(2). However, "[d]ue regard should be given
21 to what is otherwise a private consensual agreement between the parties. The inquiry 'must be limited to
22 the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
23 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole,
24 is fair, reasonable and adequate to all concerned.'" See *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794,
25 1801 (1996); see also *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009); *In re*
26 *Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th 576,
27 581 (2010). The law favors settlement of lawsuits, particularly class actions and other complex cases

28 ¹The California Supreme Court has authorized California's trial courts to rely on these federal resources to decide class certification issues. See *Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 where substantial resources can be conserved by avoiding the time, expense, and rigors of formal
2 litigation. *See Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-1118 (2009); *In re*
3 *Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 n.14 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th
4 576, 581 (2010); *see also Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

5 **a. The Terms of The Settlement Are Fair and Within the Range of Reasonableness**

6 The purpose of the Court’s preliminary evaluation of a proposed class action settlement is to
7 determine only whether it is within the range of possible approval such that notice to the class of its
8 terms and conditions and the scheduling of a formal fairness hearing is warranted. *See Wershba*, 91 Cal.
9 App. 4th at 234-35. If the Court finds a proposed settlement falls within “the range of reasonableness,”
10 it should grant preliminary approval of the class action settlement. *See, e.g., North County Contr.’s*
11 *Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90 (1994); *Kullar v. Foot Locker*
12 *Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008). Factors to consider in determining whether the
13 settlement is fair, reasonable, and adequate include the strength of the Plaintiff’s case, the risk, expense,
14 complexity and likely duration of further litigation, the risk of maintaining class action status through
15 trial, the amount offered in settlement, the extent of discovery completed and the stage of the
16 proceedings, the experience and views of counsel, the presence of a governmental participant, and the
17 reaction of the class members to the proposed settlement. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th
18 1794, 1801 (1996). However, this Court should begin its analysis with a presumption that the proposed
19 settlement is fair. “A presumption of fairness exists where: (1) the settlement is reached through arm’s
20 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
21 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
22 small.” *Id.* at 1802.

23 **i. The Agreement is a Result of Extensive, Non-Collusive Arm’s Length**
24 **Negotiations Between the Parties**

25 Settlement of this case was reached only after substantial litigation and extensive arm’s length
26 negotiations lasting nearly two (2) years, which included a full day mediation and resolution through a
27 mediator’s proposal. *See Decl. Rodriguez*, ¶¶ 3, 6-10. At all times, the negotiations were adversarial,
28 although still professional in nature. *See id.*

1 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
2 **Information to Enter Into an Informed and Reasonable Settlement**

3 The Parties were in possession of all necessary information during the negotiations. The Parties
4 engaged in substantial formal and informal discovery, which included all necessary components for
5 evaluating the class claims and creating an accurate damages model. *See id.* at ¶¶ 6-10. Plaintiff was
6 in possession of this information prior to calculating any damages in this case. *See id.* As a result,
7 Plaintiff was able to make a reasonable estimation of Defendant's potential liability. *See id.* For these
8 reasons, the settlement now before the Court was reached at a stage where “the parties certainly have a
9 clear view of the strengths and weaknesses of their cases” sufficient to support the settlement. *See*
10 *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

11 **iii. Plaintiff's Counsel are Experienced in Similar Litigation**

12 Plaintiff's counsel have considerable experience in complex litigation such as class and PAGA
13 actions. *See Decl. Rodriguez*, ¶¶ 12-19. Thus, Plaintiff's counsel are qualified to evaluate the class
14 claims, the value of settlement versus moving forward with litigation, and viability of possible
15 affirmative defenses. Plaintiff's counsel believe that the Agreement is fair, reasonable, and adequate in
16 light of the risks associated with the claims, the uncertainties of complex litigation, and the secured
17 benefit to Class Members. *See id.*

18 **iv. The Settlement is Fair, Reasonable, and Adequate Based on the Strength of**
19 **Plaintiff's Case and the Risks and Costs of Further Litigation**

20 Plaintiff's claims and the ability to obtain and maintain certification all the way through trial
21 were heavily disputed by Defendant. *See Decl. Rodriguez*, ¶¶ 5-9. Based on the records and facts of
22 this case, Plaintiff has secured a gross recovery of approximately 5% of the maximum likely value of
23 the claims in this matter and between 20% and 50% of the more realistic range of recovery. *See Decl.*
24 *Rodriguez*, ¶¶ 9-10. The net recovery represents approximately 2% of the maximum likely value of the
25 claims in this matter and between 10% and 24% of the more realistic range of recovery. The average
26 net award is approximately \$456.36. *See id.*

27 This settlement is a reasonable compromise of the class and PAGA claims, and is within the
28 percentile ranges of the total available damages that have been approved in other class settlements. *See*

1 *Wershba*, 91 Cal.App.4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139
2 (1990); *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re*
3 *Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in
4 settlement of 6% of maximum potential recovery after reduction for attorney’s fees was higher than
5 median percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from
6 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017)
7 (approving a settlement where the net recovery to class members was approximately 7.5% of the
8 projected maximum recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS
9 130878 (E.D. Cal. 2017) (approving a settlement with a gross recovery of 11% of the projected
10 maximum damages available and a net recovery of approximately 6.7% of the projected maximum
11 recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal. 2015) (approving a
12 settlement where the gross recovery was approximately 8.5% of the projected maximum recovery);
13 *Schiller v. David’s Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal. 2012) (“Class
14 Members will receive an average of approximately \$198.70, with the highest payment to a Class
15 Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is
16 highlighted by the fact that there was no objection to the settlement amount or the attorneys’ fees
17 requested.”); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) (“the
18 results achieved in this case were very favorable. Class members are provided with immediate
19 monetary relief, with an average award of around several hundred dollars and a minimum award of
20 \$50”).

21 **v. The Proposed Settlement is a Reasonable Compromise of Claims**

22 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional
23 information be presented in class action settlements “to ensure that the recovery represents a reasonable
24 compromise, given the magnitude and apparent merit of the claims being released, discounted by the
25 risks and expenses of attempting to establish and collect on those claims by pursuing the
26 litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399
27 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure
28 without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar*

1 also does not require an explicit statement of the maximum amount to be recovered if a plaintiff
2 prevailed on all the claims, provided there is a record that allows “an understanding of the amount that
3 is in controversy and the realistic range of outcomes of the litigation.” *Id.* at 409.

4 Plaintiff has thoroughly set forth the realistic range of outcomes in this litigation as well as the
5 data points relied upon in reaching these ranges. *See Decl. Rodriguez ¶¶ 9-10.* The record
6 demonstrates that the compromises made by Plaintiff was reasonable and have resulted in a settlement
7 with recovery percentage well within the range of what has been found to be sufficient in several other
8 cases. *See, supra*, Section VI.a.iv; *see also Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th
9 Cir. 1998) (“The fact that a proposed settlement may only amount to a fraction of the potential recovery
10 does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
11 disapproved”); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (“In fact there is no
12 reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a
13 thousandth part of a single percent of the potential recovery”).

14 **b. Provisional Certification of the Class is Appropriate**

15 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-
16 defined community of interest in the questions of law and fact involved affecting the parties to be
17 represented.” *Dunk*, 48 Cal. App. 4th at 1806. The “community of interest” element “embodies three
18 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
19 defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.*
20 Here, the Parties agree that, for the purposes of settlement, these prerequisites are met. *See Exhibit A.*

21 **i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous**

22 The proposed settlement class is ascertainable because all putative Class Members can be
23 readily identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7
24 Cal.5th 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex,*
25 *Inc.*, 166 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 292
26 individuals who fall within the definition of Class Member, which makes joinder of all members
27 impracticable. *See Gay v. Waiters' & Dairy Lunchmen's Union*, 489 F.Supp. 282 (N.D. Cal. 1980),
28 *aff'd* 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no

1 set minimum to meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is
2 acceptable). Thus, these requirements are satisfied.

3 **ii. The Commonality, Predominance, and Typicality Requirements are Met**

4 The commonality requirement is met when there are questions of law or fact regarding the class
5 as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or
6 factual questions exist; Plaintiff need not show that all issues in the litigation are identical. *See*
7 *Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d
8 447, 460 (1974). Common questions of law or fact must also predominate over individual questions
9 and class-wide treatment of a dispute must be superior to individual litigation.² *See Richmond*, 29
10 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication
11 by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the
12 named representative are typical of those of the class, though “they need not be substantially identical.”
13 *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

14 The common questions of law and fact in this case stem from Plaintiff's contention that
15 Defendant violated California law by 1) failing to pay Plaintiff and Class Members all minimum wages
16 and overtime wages due to managers and supervisors making unauthorized reduction to the hours that
17 Plaintiff and Class Members worked, 2) failing to pay all daily and/or weekly overtime in accordance
18 with the schedule outlined in Wage Order 14 for employers with 26 or more employees, 3) failing to
19 authorize and permit Plaintiff and Class Members to take all meal and rest periods owed to them, 4)
20 failing to authorize and permit Plaintiff and Class Members to take their first meal period before the
21 completion of the fifth hour worked or take a second meal period or third rest period when they worked
22 over ten (10) or twelve (12) hours in a day, and 5) failing to reimburse Plaintiff and Class Members for
23 using their cell phones, vehicles and tools and equipment for work purposes. *See Exhibit B*. The
24 waiting time penalties, unfair competition, and PAGA claims are derivative of these violations. *See id.*
25 Plaintiff and the Class Members seek the same remedies under state law. Under these specific
26 circumstances, the commonality and predominance requirements are satisfied. Regarding the typicality
27

28 ²When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 requirement, Plaintiff contends he suffered from the same unlawful policies, treatment, and
2 circumstances as Class Members did, will request the same remedies, and will rely on the same
3 methods of proof to establish liability and damages. *See id.* Thus, the typicality requirement is also
4 satisfied for settlement purposes.

5 **iii. The Adequacy Requirement is Met**

6 The adequacy of representation requirement is met if the named representative and counsel have
7 no interests adverse to those of the putative class members and are committed to vigorously prosecuting
8 the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60
9 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the proposed Agreement,
10 Plaintiff and the putative Class Members will receive a pro rata share of the settlement based on the
11 number of workweeks they worked for Defendant. *See Exhibit A.* Finally, any settlement class
12 member who wishes to opt-out of the settlement may do so, and he or she may also dispute the number
13 of workweeks stated in the Notice of Settlement (Exhibit F).

14 There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's
15 counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class.
16 Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by
17 speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter
18 engaged Defendant's counsel in settlement discussions over the course of approximately two (2) years.
19 Moreover, Plaintiff's counsel has experience defending and bringing wage and hour claims. Because
20 Plaintiff's counsel has vigorously pursued Plaintiff's and the Class Members' claims, the adequacy
21 requirement is met. *See generally* Decl. Rodriguez.

22 **VII. ATTORNEYS FEES AND COSTS, ENHANCEMENT PAYMENT TO THE CLASS 23 REPRESENTATIVE, AND SETTLEMENT ADMINISTRATOR COSTS TO BE 24 REQUESTED IN CONNECTION WITH FINAL APPROVAL**

25 Plaintiff is not requesting any determination with respect to attorney's fees and costs,
26 Enhancement Payment, or Settlement Administrator Costs at this time. Rather, should the Court grant
27 preliminary approval, Plaintiff will make the request for these amounts as set out in the Agreement as
28 part of their final approval briefing. Specifically, Plaintiff will request the Court award attorney's fees
in the amount of \$96,250 (35% of the Gross Settlement Amount), costs in an amount not to exceed

1 \$10,000, Settlement Administrator Costs in an amount not to exceed \$15,000, and an Enhancement
2 Payment for the Class Representative in the amount of \$15,000.

3 Plaintiff believes an award of attorney's fees under the common fund doctrine is appropriate in
4 this case as there is a sufficiently identifiable class of beneficiaries (*e.g.* the settlement class), the
5 benefits received can be accurately traced to the settlement Plaintiff and Class Counsel were able to
6 negotiate on behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as
7 the fee request is a specific, lump-sum percentage of the fund. *See Laffitte v. Robert Half Internat.,*
8 *Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir.
9 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) ("A lawyer who recovers a common
10 fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney's fee from
11 the fund as a whole."); *see also Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23
12 (S.D. Cal. 2011) (collecting cases); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No.
13 06cv1690 DMS (WMC) (awarding 40% fee on a \$16 million wage and hour class action settlement);
14 *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a
15 40% fee on a \$3.75 million wage and hour class action settlement); *West v. Circle K Stores, Inc.*, 2006
16 U.S. Dist. LEXIS 76558, at *7-*8, *12, *27 (E.D. Cal. 2006) (awarding a \$15,000 representative
17 enhancement where 10,000 class members were to receive a *gross* award of approximately \$500 each
18 from the \$5,000,000 settlement); *Dent v. ITC Serv. Croup*, 2013 U.S. Dist. LEXIS 139359, at *9-*10,
19 *15-*16 (D. Nev. Aug. 6, 2013) (awarding a \$15,000 representative enhancement out of a \$150,000
20 settlement for approximately 530 class members); *Patel v. Nike Retail Services, Inc.*, 2019 WL
21 2029061 at *2 (N.D. Cal. 2019) (\$5,261 for settlement administrator's fees was not excessive where
22 PAGA group consisted of 40 employees).

23 Plaintiff's final approval briefing will include information and analysis regarding the
24 appropriateness of the fee percentage sought, a lodestar cross check of the requested fee, a detailed
25 declaration from Plaintiff regarding their time spent on the case as well as any risks and burdens
26 incurred as the Class Representative, an itemized costs spreadsheet, and a declaration from the
27 Settlement Administrator detailing the work performed and Settlement Administrator Costs incurred.
28 *See Decl. Rodriguez ¶¶ 20.* The Notice of Settlement will state the amounts to be requested to provide

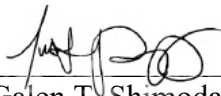
1 Class Members the ability to comment thereon, providing evidence of whether the requested amounts
2 are reasonable. *See* Exhibit F at pg. 2, § II.A; *see also In re Heritage Bond Litig.*, 2005 U.S. Dist.
3 LEXIS 13555, 71 (C.D. Cal. 2005) (“the absence of objections or disapproval by class members to
4 class counsel’s fee request further supports finding the fee request reasonable”). Any allocated
5 amounts not ultimately awarded by the Court will be distributed to Class Members pro rata. *See*
6 Exhibit A, ¶¶ 5.2-5.4, 5.8.

7 **VIII. CONCLUSION**

8 For all of the foregoing reasons, Plaintiff respectfully requests that this Court preliminarily and
9 conditionally certify the class for settlement purposes; grant preliminary and conditional approval of
10 the proposed settlement; approve the proposed notification procedures, including the Notice of
11 Settlement and proposed deadlines relating thereto; and schedule the final approval hearing. A copy of
12 Plaintiff’s proposed order is being filed concurrently herewith.

13
14 **Shimoda & Rodriguez Law, PC**

15 Dated: October 6, 2023

16 By: 
17 Galen T. Shimoda
18 Justin P. Rodriguez
19 Renald Konini
20 Attorneys for Plaintiff