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10 **SUPERIOR COURT OF CALIFORNIA**

11 **FOR THE COUNTY OF SACRAMENTO**

12 ROSEMERI AROSEMENA, MARIA
13 RETANA, and MARGARITA MEDINA, as
14 individuals and on behalf of all others
15 similarly situated,

16 Plaintiffs,

17 vs.

18 RANCHHODRAI INC., a California
19 Corporation; KANJIBHAI PATEL, an
20 individual; CHAMP PATEL, an individual;
21 and DOES 1 to 100, inclusive,

22 Defendants.

Case No. STK-CV-UOE-2019-15963

CLASS ACTION

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

Date: April 5, 2024
Time: 9:00 a.m.
Dept.: 10A
Judge: Hon. George J. Abdallah, Jr.

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

2 Plaintiffs Rosemeri Arosemena, Maria Retana, and Margarita Medina (“Plaintiffs”) seeks
3 preliminary approval of a wage and hour class action and Private Attorneys General Act (“PAGA”)
4 settlement in the gross amount of \$135,000. *See generally* Exhibit A (Joint Stipulation Regarding Class
5 Action and PAGA Settlement and Release [“Agreement”]). Plaintiffs brought this class action
6 individually and on behalf of similarly situated employees who worked for Defendants Ranchhodrai,
7 Inc., Kanjibhai Patel and Champ Patel (“Defendants”) (Plaintiffs and Defendants sometimes collectively
8 referred to as the “Parties”). *See generally* Exhibit B (Plaintiffs’ Operative Complaint). There are
9 approximately 46 Class Members.

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

22 It is well within the discretion of this Court to grant preliminary approval of the Agreement as it
23 satisfied all applicable criteria under California law. Accordingly, Plaintiffs requests that the Court: (1)
24 grant preliminary and conditional approval of the proposed Agreement (Exhibit A); (2) approve the
25 form and content of the Notice of Settlement (Exhibit F) and the method for providing notice to Class
26 Members as set forth in the Agreement; and (3) adopt the implementation schedule contained in the
27 proposed order.

28 //

1 **II. PROCEDURAL AND LITIGATION HISTORY**

2 Plaintiff Rosemeri Arosemena filed a class action complaint on approximately December 2,
3 2019, in San Joaquin County Superior Court against Defendants. Plaintiff Rosemeri Arosemena
4 exhausted administrative remedies under the PAGA by providing notice of the claims and violations to
5 the LWDA. *See* Exhibit C; Cal. Lab. Code § 2699.3(a), (c); Decl. Berzin, ¶ 3. Then, she filed a First
6 Amended Class Action Complaint to include a PAGA claim. *See id.* A Second Amended Complaint
7 was filed to add named Plaintiffs Maria Retana and Margarita Medina. *See id.*; Exhibit B. The Court
8 grant class certification in this case on November 14, 2022. *See* Decl. Berzin, ¶ 4; Exhibit H (Court
9 Order Granting Class Certification).

10 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

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

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1 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

2 **a. Plaintiffs and Defendants Engaged in Extensive Arm's Length Negotiations**

3
4 The final settlement occurred only after extended, arm's length negotiations. Over the course of
5 several years, Plaintiffs have been investigating the claims and discussing with Defendants' counsel the
6 merits of the claims and issues present in this case. *See id.* at ¶¶ 6-10. The Parties exchanged
7 substantial amounts of information and legal analysis in connection with these discussions. *See id.* It
8 was only after these extended discussions, that the Parties were able resolve all claims and enter into
9 the Agreement. *See id.* at ¶ 8.

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

11 1. The following groups of individuals are covered by the Agreement: (a) Class Members,
12 which include all non-exempt employees who worked for Ranchhodrai, Inc. in California from
13 December 2, 2015 up to November 14, 2022; and (b) Aggrieved Employees, which include all non-
14 exempt employees who worked for Ranchhodrai, Inc. in California from November 25, 2018 up to
15 November 14, 2022. *See Exhibit A, ¶¶ 1.2, 1.5.* There are approximately 46 Class Members. *See id.*

16 2. Defendants will pay the Gross Settlement Amount of \$135,000, which is exclusive of
17 the employer's share of payroll taxes. *See id.* at ¶ 5.1. No portion of the Gross Settlement Amount will
18 revert to Defendants. *See id.* at ¶ 5.6. Aggrieved Employees will still be paid their share of the PAGA
19 Payment regardless of whether they opt out of being Class Members. *See id.* at ¶¶ 7.5.1, 7.8.3.

20 3. Up to \$10,000 will be paid to each Plaintiff as an Enhancement Payment. This amount
21 will be in addition to any amount Plaintiffs may be entitled to under the terms of the Agreement. *See*
22 *id.* at ¶ 5.4.

23 4. Subject to Court approval, the Parties have selected Apex Class Action to act as the
24 Settlement Administrator, who has provided a maximum cost estimate of \$5,500. *See Exhibit D (Apex*
25 *Class Action Quote); Exhibit A, ¶ 1.33; Decl. Berzin, ¶ 21.*

26 5. The Parties agree that \$10,000 of the Gross Settlement Amount shall be allocated to
27 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
28 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See Exhibit A, ¶*

1 5.5. Given the risk to proving the claims on the merits, the derivative nature of the penalties, the efforts
2 by Defendants to maintain compliant policies, the presence of what may likely be deemed good faith
3 disputes, and the Court's discretion to reduce any penalty award, Plaintiffs believe the \$10,000 PAGA
4 Payment allocation represents a meaningful settlement aimed at deterring non-compliance given the
5 facts of this case. See Decl. Berzin, ¶¶ 6-10; see also *Nordstrom Com. Cases*, 186 Cal.App.4th 576,
6 589 (2010) (approving \$0 allocation to the resolution of PAGA claims based on their being disputed
7 and being part of a class settlement which was evaluated based on the terms of the agreement overall);
8 *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at *8 n.2 (E.D. Cal. 2022) (collecting cases
9 with PAGA settlement values ranging from .037%-1%); *Jennings v. Open Door Marketing, LLC*, 2018
10 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA claims at 0.6% of total estimated
11 value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016)
12 (approving \$10,00 PAGA settlement allocation where total PAGA penalty exposure was approximately
13 \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc 'ns California, LLC*, 2017 U.S.
14 Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000
15 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving
16 \$2,500 PAGA allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford*
17 *Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation
18 in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D.
19 Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands*
20 *Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in
21 \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017)
22 (approving \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was
23 calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012
24 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000
25 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in
26 PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL
27 672645, at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of
28 \$6.9 million common-fund settlement).

1 6. The Parties agree that up to thirty-Five Percent (35%) of the Gross Settlement Amount
2 (\$47,250) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant
3 will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2.
4 Additionally, the Parties agree that Plaintiffs will also be entitled to the actual litigation costs as
5 approved by the Court in an amount not to exceed \$12,000. *See id.* The proposed notice to be sent to
6 Class Members will state this information. *See Exhibit F.*

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

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

17 9. For any portion of the Net Settlement Amount or PAGA Payment allocated to
18 Participating Class Members and/or Aggrieved Employees that is not claimed by them by cashing their
19 respective settlement checks within 180 calendar days of issuance, that remaining amount shall be
20 donated equally, *i.e.*, 50/50 to Capital Pro Bono, Inc., and the Center for Workers' Rights under the
21 doctrine of *cypres*. *See Exhibit A, at ¶ 5.6.* Because the Agreement provides for all funds such that
22 there is no residue, the provisions of California Civil Procedure Code section 384 are inapplicable. *See*
23 *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720 (2006). The designated beneficiaries clearly
24 promote the law consistent with the objectives and purposes underlying the lawsuit as they are non-
25 profits aimed at assisting employees with wage and hour claims who cannot afford legal representation,
26 including providing representation for employees in wage claims before the California Labor
27 Commissioner. *See id.* at 722-724; *see also Decl. Berzin, ¶ 25-32.*

28 //

1 **c. Allocation of Settlement Funds**

2 Payment to Participating Class Members and Aggrieved Employees will not require the
3 submission of a claim form. A Net Settlement Amount will be determined by subtracting from the
4 Gross Settlement Amount any attorneys' fees and costs, Enhancement Payment to the Class
5 Representative, Settlement Administrator Costs, PAGA Payment that are approved and/or awarded by
6 the Court. Each Class Member's share will be determined by dividing their total weeks worked within
7 the Class Period by the total weeks worked by all Class Members within the Class Period. That
8 fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's
9 individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion
10 of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA
11 Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period.
12 That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the
13 Aggrieved Employee's individual share. *See* Exhibit A, at ¶¶ 1.17, 5.5, 5.8.

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

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

1 under the circumstances. *See Rannis v. Recchia*, 380 F. App'x at 650-651. In *Noel v. Thrifty Payless,*
2 *Inc.*, 7 Cal.5th 955, 980-984 (2019), the California Supreme Court noted that California has adopted a
3 similar approach regarding providing notice to class members.

4 Under the proposed notice procedures, Class Members will have forty-five (45) days from the
5 date of mailing to review and respond to the Notice of Settlement, which will also be available online.
6 *See Exhibit A*, ¶¶ 1.21, 7.2. The Notice of Settlement contains all information necessary for a Class
7 Member to assess the litigation, the settlement, and whether they want to participate, object, or opt-out.¹
8 It also provides them with a link to the Court's Public Case Access website and informs them they will
9 be able to access the final approval order there. *See id.* at ¶¶ 7.2, 7.5.1-7.5.3; Exhibit F. National
10 change of address database searches, skip-traces, and surveying of current employees will be utilized as
11 set out in the Agreement to provide the best practical means of ensuring Class Members receive the
12 notice mailing. *See Exhibit A*, ¶¶ 7.3-7.4. Any individual whose initial mailing was deemed
13 undeliverable will have additional time to respond. *See id.* at ¶ 7.4. Additional time to respond will
14 also be provided to cure any deficiencies in opt-outs, objections, or disputes. *See id.* ¶ 7.5.4. This
15 notice method is regularly utilized in wage and hour class actions and similar to the one approved in
16 *Rannis*. Thus, the proposed procedures for notifying Class Members satisfy due process and should be
17 approved in this case.

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

21 A class action may not be dismissed, compromised, or settled without Court approval and the
22 decision to approve or reject a settlement is committed to the Court's sound discretion. *See Cal. Rules*
23 *of Court*, Rule 3.769; *Fed. R. Civ. Proc.*, Rule 23(e)²; *Wershba v. Apple Computer, Inc.*, 91 Cal. App.
24 4th 224, 234-35 (2001); *see also Cal. Lab. Code* §§ 2699(1)(2). However, "[d]ue regard should be given
25 to what is otherwise a private consensual agreement between the parties. The inquiry 'must be limited to
26 the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or

27 ¹ To avoid any potential issues with approval, the Agreement provides Class Members with an opportunity to opt out even
28 though the class has already been certified. *See Fed. Rule Civ. Proc.* 23(e)(4) (stating a Court may refuse to approve a
settlement unless a second opportunity to opt out is provided).

²The California Supreme Court has authorized California's trial courts to rely on these federal resources to decide class action
procedures. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole,
2 is fair, reasonable and adequate to all concerned.” See *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794,
3 1801 (1996); see also *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009); *In re*
4 *Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th 576,
5 581 (2010). The law favors settlement of lawsuits, particularly class actions and other complex cases
6 where substantial resources can be conserved by avoiding the time, expense, and rigors of formal
7 litigation. See *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-1118 (2009); *In re*
8 *Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 n.14 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th
9 576, 581 (2010); see also *Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

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

11 The purpose of the Court’s preliminary evaluation of a proposed class action settlement is to
12 determine only whether it is within the range of possible approval such that notice to the class of its
13 terms and conditions and the scheduling of a formal fairness hearing is warranted. See *Wershba*, 91 Cal.
14 App. 4th at 234-35. If the Court finds a proposed settlement falls within “the range of reasonableness,”
15 it should grant preliminary approval of the class action settlement. See, e.g., *North County Contr. ’s*
16 *Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90 (1994); *Kullar v. Foot Locker*
17 *Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008). Factors to consider in determining whether the
18 settlement is fair, reasonable, and adequate include the strength of the Plaintiff’s case, the risk, expense,
19 complexity and likely duration of further litigation, the risk of maintaining class action status through
20 trial, the amount offered in settlement, the extent of discovery completed and the stage of the
21 proceedings, the experience and views of counsel, the presence of a governmental participant, and the
22 reaction of the class members to the proposed settlement. See *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th
23 1794, 1801 (1996). However, this Court should begin its analysis with a presumption that the proposed
24 settlement is fair. “A presumption of fairness exists where: (1) the settlement is reached through arm’s
25 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
26 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
27 small.” *Id.* at 1802.

28 //

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

3 Settlement of this case was reached only after substantial litigation and extensive arm’s length
4 negotiations over several years, which included a full day mediation. *See* Decl. Berzin, ¶¶ 7-8. At all
5 times, the negotiations were adversarial, although still professional in nature. *See id.*

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

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

16 **iii. Plaintiffs’ Counsel are Experienced in Similar Litigation**

17 Plaintiffs’ counsel have considerable experience in complex litigation such as class and PAGA
18 actions. *See* Decl. Berzin, ¶¶ 12-19. Thus, Plaintiffs’ counsel are qualified to evaluate the class claims,
19 the value of settlement versus moving forward with litigation, and viability of possible affirmative
20 defenses. Plaintiffs’ counsel believe that the Agreement is fair, reasonable, and adequate in light of the
21 risks associated with the claims, the uncertainties of complex litigation, and the secured benefit to Class
22 Members. *See id.*

23 **iv. The Settlement is Fair, Reasonable, and Adequate Based on the Strength of**
24 **Plaintiff’s Case and the Risks and Costs of Further Litigation**

25 Plaintiffs’ claims and the ability to obtain and maintain certification all the way through trial
26 were heavily disputed by Defendants. *See* Decl. Berzin, ¶¶ 5, 6-10. Based on the records and facts of
27 this case, Plaintiff has secured a gross recovery of approximately 15.6% of the maximum likely value
28 of the claims in this matter. *See* Decl. Berzin, ¶¶ 9-10. The net recovery represents approximately 3%

1 of the maximum likely value of the claims in this matter. The average net award is approximately
2 \$559.78. *See id.*

3 This settlement is a reasonable compromise of the class and PAGA claims, and is within the
4 percentile ranges of the total available damages that have been approved in other class settlements. *See*
5 *Wershba*, 91 Cal.App.4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139
6 (1990); *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re*
7 *Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in
8 settlement of 6% of maximum potential recovery after reduction for attorney's fees was higher than
9 median percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from
10 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017)
11 (approving a settlement where the net recovery to class members was approximately 7.5% of the
12 projected maximum recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS
13 130878 (E.D. Cal. 2017) (approving a settlement with a gross recovery of 11% of the projected
14 maximum damages available and a net recovery of approximately 6.7% of the projected maximum
15 recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal. 2015) (approving a
16 settlement where the gross recovery was approximately 8.5% of the projected maximum recovery);
17 *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal. 2012) ("Class
18 Members will receive an average of approximately \$198.70, with the highest payment to a Class
19 Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is
20 highlighted by the fact that there was no objection to the settlement amount or the attorneys' fees
21 requested."); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) ("the
22 results achieved in this case were very favorable. Class members are provided with immediate
23 monetary relief, with an average award of around several hundred dollars and a minimum award of
24 \$50").

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

26 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional
27 information be presented in class action settlements "to ensure that the recovery represents a reasonable
28 compromise, given the magnitude and apparent merit of the claims being released, discounted by the

1 risks and expenses of attempting to establish and collect on those claims by pursuing the
2 litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399
3 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure
4 without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar*
5 also does not require an explicit statement of the maximum amount to be recovered if a plaintiff
6 prevailed on all the claims, provided there is a record that allows “an understanding of the amount that
7 is in controversy and the realistic range of outcomes of the litigation.” *Id.* at 409.

8 Plaintiffs have thoroughly set forth the realistic range of outcomes in this litigation as well as
9 the data points relied upon in reaching these ranges. *See* Decl. Berzin ¶¶ 9-10. The record
10 demonstrates that the compromises made by Plaintiffs were reasonable and have resulted in a
11 settlement with recovery percentage well within the range of what has been found to be sufficient in
12 several other cases. *See, supra*, Section VI.a.iv; *see also* *Linney v. Cellular Alaska P’ship*, 151 F.3d
13 1234, 1242 (9th Cir. 1998) (“The fact that a proposed settlement may only amount to a fraction of the
14 potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate
15 and should be disapproved”); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (“In
16 fact there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth
17 or even a thousandth part of a single percent of the potential recovery”). This is especially true where,
18 as here, Defendants ceased operations in November 2022, causing financial hardship and the potential
19 for bankruptcy should the matter continue to trial and any judgement beyond the Gross Settlement
20 Amount be awarded. *See* Decl. Berzin, ¶¶ 6, 10.

21 **vi. The Enhancement Payment to the Named Plaintiffs for Plaintiffs’ Services to the**
22 **Class Is Reasonable and Routinely Awarded by Courts**

23 The Enhancement Payment to the named Plaintiffs is intended to recognize the time and effort
24 expended on behalf of the class. Indeed, Courts routinely approve enhancement payments to
25 compensate named plaintiffs for the services they provide and the risks they incurred during the course
26 of the class action litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001).
27 In *Ingram*, the Court approved enhancement payments of \$300,000.00 to each named plaintiff in
28 recognition of the services they provided to the class by responding to discovery, participating in the

1 mediation process, and taking the risk of stepping forward on behalf of the class. *See Id.* at 694; *see*
2 *also Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00
3 enhancement payment).

4 In this case, Plaintiffs provided and explained documents, being available at all times to discuss
5 the case with Plaintiffs' counsel. *See* Decl. Berzin, ¶ 7; Decl. Arosemena, ¶¶ 3-8; Decl. Retana, ¶¶ 3-8;
6 Decl Medina, ¶¶ 3-8. Plaintiffs spent a significant amount of time pursuing this litigation for the
7 benefit of all Class Members over the past five (5) years. *See id.* Plaintiffs brought this action knowing
8 there would be a delay in any payment as the litigation progressed, rather than proceeding on individual
9 claims in front of the California Labor Commissioner. *See id.* Payment of \$10,000.00, each, to
10 Plaintiffs is appropriate given the risk, assistance, time required in bringing this case and resolution of
11 this case.

12 **vii. Awarding Attorneys' Fees as a Percentage of the Common Fund Is Reasonable**
13 **and Customarily Approved by Courts**

14 California state and federal courts have recognized that when a litigant's efforts create or
15 preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally
16 among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*,
17 444 U.S. 472, 477-478 (1980) ("A lawyer who recovers a common fund for the benefit of persons other
18 than . . . her client is entitled to a reasonable attorney's fee from the fund as a whole."); *Vincent v.*
19 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375
20 (1970); *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); *see also Serrano v.*
21 *Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016).
22 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation
23 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
24 burden alone." *Vincent*, 557 F.2d at 769; *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026,
25 1027 (9th Cir. 1977). California state courts have approved use of a percentage of the fund to calculate
26 reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable
27 sum of money. *See Dunk*, 48 Cal. App. 4th at 1808.

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1 The Ninth Circuit has also held that the common fund doctrine applies when: (1) the class of
2 beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be
3 shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v. Graulity*, 886
4 F.2d 268, 271 (9th Cir. 1989). These criteria are “easily met” when “each member of a certified class
5 has an undisputed and mathematically ascertainable claim to part of a lump-sum settlement recovered
6 on her behalf.” *Id.* at 271 (citations omitted). Under the three (3) factors set forth in *Paul, Johnson,*
7 *Alston & Hunt*, the common fund doctrine applies in this case because there is a sufficiently identifiable
8 class of beneficiaries (*e.g.* the settlement class), the benefits can be accurately traced to the settlement
9 Plaintiffs and Plaintiffs’ counsel were able to negotiate on behalf of the class, and the fee can be shifted
10 with exactitude to those benefitting as the fee request is a specific, lump-sum percentage of the common
11 fund. As set forth in the fee award examples provided below for the Court’s reference, it is an accepted
12 practice in wage and hour class action settlements to award attorneys’ fees based on a percentage of the
13 common fund. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 967-972 (9th Cir. 2003); *Sanders v. City*
14 *of Los Angeles*, 3 Cal.3d 252, 261, 263 (1970); *Wershba*, 91 Cal. App. 4th at 254; *Bell v. Farmers Ins.*
15 *Exchange*, 115 Cal. App. 4th 715, 726, 765 (2004).

16 Historically, attorneys’ fee awards in common fund cases in general range from 20% to 50% of
17 the fund, depending on the circumstances of the case. *See Newberg on Class Actions*, (3rd Ed.), 1992,
18 §14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are
19 generally approved as reasonable in wage and hour settlements below \$10 million:

20 More particularly, courts may award attorneys fees in the 30-40% range in wage and hour
21 class actions that result in recovery of a common fund under \$10 million. *See Vasquez v.*
22 *Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-492 (E.D. Ca. 2010) (citing to five
23 recent wage and hour class actions where federal district courts approved attorney fee
24 awards ranging from 30 to 33%); *Singer v. Becton Dickenson and Co.*, 2010 U.S. Dist.
25 LEXIS 53416, 2010 WL 2196104, *8 (S.D. Ca. June 1, 2010) (approving attorney fee
award of 33.33% of the common fund and holding that award was similar to awards in
three other wage and hour class action cases where fees ranged from 33% to 40%);
Romero v. Producers Dairy Foods, Inc., 2007 U.S. Dist. LEXIS 86270, 2007 WL
3492841 (E.D. Ca. Nov. 14, 2007).

26 *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011). Plaintiffs’
27 request of thirty-five percent (35%) of the settlement sum for attorneys’ fees is within established rates
28 for fee awards in class settlements pursuant to the common fund doctrine, especially in light of the

1 excellent results achieved in this case. See *In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379
2 (N.D. Cal. 1989); *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-00634;
3 *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745; *Green, et al. v.*
4 *Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069; *Benitez et al. v.*
5 *Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122; *Chavez et al. v. Petrissans et al.*, USDC
6 Eastern District, Case No. 1:08-cv-00122; *Willis et al. v. Cal-Western Transport*, USDC Eastern
7 District, Case No. 1:00-cv-05695. To determine whether a percentage is reasonable, a court should
8 consider: (1) the percentage that would likely be negotiated between parties in a similar case; (2) the
9 percentage applied in other class actions; (3) the quality of class counsel; (4) the size of the award; and
10 (5) whether there are any objections by class members. See *In re Ikon Office Solutions, Inc. Secur.*
11 *Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000); *In re Heritage Bond Litig.*, 2005 WL 1594403, at *21
12 (C.D. Cal. June 10, 2005) (“the absence of objections or disapproval by class members to class
13 counsel’s fee request further supports finding the fee request reasonable”).

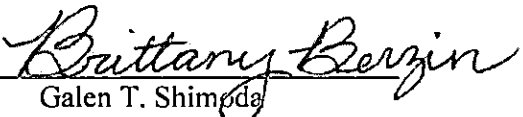
14 These factors support Plaintiffs’ request for reasonable attorneys’ fees. The typical percentage
15 negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation
16 depending on the complexity of the case. In class action litigation, the typical percentage negotiated
17 between parties ranges from thirty to forty percent (30% to 40%) based on the same factors. Plaintiffs’
18 request of 35% falls within these typical fee arrangements. See Decl. Berzin, ¶ 21. The quality of
19 counsel and the average size of settlement payments to Class Members and Aggrieved Employees
20 (\$559.78) also support the fee request when compared to other settlements courts have considered as
21 good results. See *Schiller v. David’s Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal.
22 2012) (“Class Members will receive an average of approximately \$198.70, with the highest payment to
23 a Class Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is
24 highlighted by the fact that there was no objection to the settlement amount or the attorneys’ fees
25 requested.”); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) (“the
26 results achieved in this case were very favorable. Class members are provided with immediate
27 monetary relief, with an average award of around several hundred dollars and a minimum award of
28 \$50”).

1 **VII. CONCLUSION**

2 For all of the foregoing reasons, Plaintiffs respectfully requests that this Court grant preliminary
3 and conditional approval of the proposed settlement; approve the proposed notification procedures,
4 including the Notice of Settlement and proposed deadlines relating thereto; and schedule the final
5 approval hearing. A copy of Plaintiffs' proposed order is being filed concurrently herewith.
6

7 **Shimoda & Rodriguez Law, PC**

8
9 Dated: March 11, 2024

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