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8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF RIVERSIDE**

11  
12 MARCOS BELTRAN, an individual and on  
behalf of all others similarly situated;

13 Plaintiff,

14 vs.

15 FONDOMONTE CALIFORNIA, LLC, a  
Delaware limited liability company; and DOES  
16 1 through 50,

17 Defendants

Case No.: CVRI2402849

[Assigned for All Purposes to:  
Hon. Harold W. Hopp, Dept. 1]

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

[Filed Concurrently with Notice of Filing  
Class Action and PAGA Settlement  
Agreement, Declarations in Support Thereof,  
and [Proposed] Order]

DATE: February 10, 2026

TIME: 8:30 a.m.

DEPT: 1

Reservation No.: 897260667678

Action Filed: May 24, 2024

Trial Date: Not Set

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

2 PLEASE TAKE NOTICE THAT on February 10, 2026 at 8:30 a.m. in Department 1 of the  
3 Superior Court of the State of California for the County of Riverside, Historic Courthouse, located  
4 at 4050 Main Street, Riverside, CA 92501, before the Honorable Harold W. Hopp, Judge presiding,  
5 Plaintiff MARCOS BELTRAN (“Plaintiff” or “Class Representative”) will and hereby does move  
6 the Court for an Order:

7 1. Preliminarily approving the Class Action and PAGA Settlement Agreement  
8 (“Agreement” or “Settlement”) between Class Representative and Defendant FONDOMONTE  
9 CALIFORNIA, LLC (“Defendant”) and the settlement fund in the amount of Three Hundred Eighty  
10 Thousand Dollars and Zero Cents (\$380,000.00) (“Gross Settlement Amount”), which is to be  
11 distributed as follows: out of the Gross Settlement Amount, (a) an estimated minimum of  
12 \$215,843.33 to be paid to the Participating Class Members; (b) up to \$10,000.00 to be paid to the  
13 Class Representative Service Payment for Plaintiff’s service to the Class; (c) up to a total of  
14 \$126,666.67 (33 1/3%) to be paid to Class Counsel for attorneys’ fees and reimbursement of actual  
15 costs up to a maximum of \$20,000.00; (d) the PAGA Payment of \$20,000.00, 75% of which, or  
16 \$15,000.00 will be paid to the Labor Workforce Development Agency (the “LWDA”) and 25% of  
17 which, or \$5,000.00 will be paid to Aggrieved Employees; and (e) the Settlement Administrator to  
18 be paid for its fees and costs relating to the claims administration process in the amount of  
19 \$7,490.00;

20 2. Finding on a preliminary basis that the Settlement appears to be within the range of  
21 reasonableness of a settlement, and that the Class Representative Service Payment, Class Counsel  
22 fees and costs, the Settlement Administrator fees, and the allocation of payments to Participating  
23 Class Members, could ultimately be given final approval by this Court;

24 3. Approving the Notice of Proposed Settlement or Class Notice packet (“Class  
25 Notice”) to be sent to Class Members, that is attached as Exhibits A to C to the Agreement;

26 4. Appointing Apex Class Action LLC as the Settlement Administrator; and

27 5. Setting the matter for a Final Fairness and Final Approval hearing.

28 ///

1 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which  
2 provides for court approval of the settlement of a purported class action and allows the Court to  
3 preliminarily certify a class for settlement purposes. The basis for this Motion, filed without any  
4 opposition from Defendant, is that the proposed settlement is fair, adequate, and reasonable and the  
5 procedures proposed by the Parties are adequate to ensure the opportunity of Class Members to  
6 participate in, opt out of, or object to the settlement.

7 This Motion will be based on the Memorandum of Points and Authorities included herein,  
8 the Agreement concurrently filed herewith, and the supporting Declarations of William C. Sung,  
9 Tiffany L. Luu, Plaintiff Marcos Beltran, Kimberly Sutherland on behalf of Apex Class Action  
10 LLC, and Kathryn B. Fox, upon the oral arguments of counsel and on the complete records and file  
11 herein.

12  
13 Respectfully submitted,

14 DATED: October 29, 2025

**JUSTICE FOR WORKERS, P.C.**

15  
16 By: 

17 \_\_\_\_\_  
18 William C. Sung  
19 Tiffany L. Luu  
20 Joseph C. Ramli  
21 Attorneys for Plaintiff MARCOS BELTRAN  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION AND SUMMARY OF THE CASE

3 Plaintiff MARCOS BELTRAN (“Plaintiff” or “Class Representative”) brought this wage and  
4 hour class and representative action on behalf of a Class of current and former non-exempt, hourly  
5 employees of Defendant FONDOMONTE CALIFORNIA, LLC (“Defendant”) in California from  
6 November 24, 2022 through the date of Preliminary Approval of the Settlement (the “Class  
7 Period”). The primary issues in this case pertain to Defendant’s alleged failure to factor non-  
8 discretionary incentive compensation into the regular rate for overtime compensation and paid sick  
9 leave; unpaid wages due to off the clock work; and meal and rest period violations. Plaintiff  
10 contends, as a result of these issues, Defendant is also liable for inaccurate wage statement  
11 penalties, waiting time penalties, and civil penalties under the Private Attorneys’ General Act  
12 (“PAGA”). Plaintiff now requests that this Court preliminarily approve this non-reversionary,  
13 common-fund class action settlement, in which Defendant has agreed to pay the Gross Settlement  
14 Amount (“GSA”) of **\$380,000.00**.

15 After deducting administration costs, Plaintiff’s requested Class Representative Service  
16 Payment, the amount set aside as PAGA civil penalties, and requested attorneys’ fees and costs, the  
17 Net Settlement Amount (“NSA”) of approximately **\$215,843.33** will be distributed to all Class  
18 Members who do not opt out of the Settlement based on the proportionate number of workweeks  
19 worked by each Class Member during the Class Period. Employees with standing for PAGA civil  
20 penalties will receive additional consideration for their release of PAGA claims.

21 Significantly, all Class Members will automatically receive a payment unless they  
22 affirmatively opt-out. There are approximately 340 Class Members, and **the average payment to**  
23 **participating Class Members is projected to be approximately \$634.83**. This is an excellent  
24 result for Class Members, who will be releasing only those claims alleged in the Action. The  
25 Settlement complies with the Court’s Class Action Case Management Order and meets all of the  
26 elements required for approval. The Court should grant preliminary approval because the proposed  
27 Settlement is within the range of possible approval in light of the significant legal and factual  
28 obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible monetary

1 benefits to be received by Plaintiff and the Class.

2 **II. PROCEDURAL POSTURE**

3 Defendant owns and operates farms in Blythe, California. (Declaration of William C. Sung  
4 (“Sung Decl.”) at ¶ 2.) Defendants employed Plaintiff as an hourly-paid, non-exempt employee  
5 from approximately 2019 to approximately December 2023 as a farm mechanic. (Declaration of  
6 Marcos Beltran [“Beltran Decl.”], ¶ 2.)

7 On May 24, 2024, Plaintiff submitted a letter to the California Labor & Workforce  
8 Development Agency (“LWDA”) initiating administrative exhaustion of his claim for civil penalties  
9 under the PAGA. (Sung Decl. at ¶ 3, Ex. 1.) On the same date, May 24, 2024, Plaintiff commenced  
10 this class action by filing the Class Action Complaint alleging the following causes of action against  
11 Defendant: (1) Minimum Wage Violations; (2) Overtime Wage Violations; (3) Meal Period  
12 Violations; (4) Rest Period Violations; (5) Wage Statement Penalties; (6) Waiting Time Penalties;  
13 and (7) Unfair Competition. (Sung Decl., ¶ 4.) On August 15, 2024, following the Court’s grant of  
14 Plaintiff’s Stipulation for Leave to Amend, Plaintiff filed the operative First Amended Complaint  
15 adding a cause of action for Civil Penalties under the PAGA. (Sung Decl., ¶ 5, Ex. 2.)

16 The Parties agreed to engage in private mediation with well-respected mediator, Gig  
17 Kyriacou, Esq., and engaged informal discovery and document exchange. (*Id.* at ¶ 6.) On August  
18 28, 2025, the Parties attended mediation with Mr. Kyriacou and successfully reached a resolution of  
19 this Action on a class action and PAGA representative basis. (*Ibid.*)

20 **III. THE PARTIES’ SETTLEMENT NEGOTIATIONS**

21 Prior to mediation, the Parties also engaged in informal discovery, where Defendant  
22 provided Plaintiff with data which included (1) class and PAGA demographic information,  
23 including number of Class Members and workweeks worked and number of Aggrieved Employees  
24 and pay periods worked; (2) a 20% sampling Class Members’ time and payroll records; (3)  
25 Defendant’s employee handbooks and relevant policies and procedures in effect during the Class  
26 Period; and (4) Plaintiff’s personnel records and wage statements. (Sung Decl., ¶ 7.)

27 Class Counsel engaged an expert data analyst to conduct an analysis of the sampling  
28 records, Class Counsel analyzed and investigated the facts and law relevant to the Plaintiff’s claims,

1 and the Parties outlined their respective positions in mediation briefs for the mediator. (Sung Decl.,  
2 ¶ 8.) Based on data provided by Defendant, Class Counsel also calculated the maximum exposure  
3 under the Labor Code in preparation for mediation. (Sung Decl., ¶10.)

4 The Parties participated in a full-day mediation with Mr. Serratore. (Sung Decl., at ¶ 6.)  
5 During the mediation, the Parties debated the strengths and weaknesses of Plaintiff’s claims and  
6 Defendant’s defenses thereto and the scope of employees whom Plaintiff could represent even if  
7 Plaintiff’s legal claims had merit. (*Ibid.*) After a full day of mediation, the Parties resolved the  
8 Actions. (*Ibid.*) The Parties subsequently memorialized all formal terms in a Class Action and  
9 PAGA Settlement Agreement (the “Agreement”), attached as Exhibit 1 to the Notice of Filing of  
10 Class Action and PAGA Settlement Agreement. (*Ibid.*)

#### 11 **IV. DISCUSSION**

12 Any settlement of class litigation must be reviewed and approved by the Court. This is done  
13 in two steps: (1) an early (preliminary) review by the trial court; and (2) a final review after notice  
14 has been distributed to the class members for their comment or objections. The Manual for  
15 Complex Litigation (Third), § 30.41 states:

16 Approval of class action settlements involves a two-step process. First, counsel  
17 submits the proposed terms of settlement and the court makes a preliminary fairness  
18 evaluation. If the preliminary evaluation of the proposed settlement does not  
19 disclose grounds to doubt its fairness or other obvious deficiencies, such as undue  
20 preferential treatment of class representatives or of segments of the class, or  
excessive compensation for attorneys, and appears to fall within the range of  
possible approval, the court should direct that notice . . . be given to the class  
members of a formal fairness hearing, at which arguments and evidence may be  
presented in support of and in opposition to the settlement.

21 Thus, the preliminary approval by the trial court is simply a conditional finding that the  
22 settlement appears to be within the range of acceptable settlements. As Professor Newberg  
23 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference  
24 concerning a tentative settlement proposal may vary. The court may find that the settlement  
25 proposal contains some merit, is within the range of reasonableness required for a settlement offer,  
26 or is presumptively valid subject only to any objections that may be raised at a final hearing.”  
27 Newberg on Class Actions, § 11.26 (4th ed. 2002).

28 ///

1 The procedures for the parties’ submission of a proposed settlement for preliminary  
2 approval by the court also are discussed in Newberg on Class Actions:

3 When the parties to an action reach a monetary settlement, they will usually prepare  
4 and execute a joint stipulation of settlement, which is submitted to the court for  
5 preliminary approval. The stipulation should set forth the central terms of the  
6 agreement, including but not limited to, the amount of settlement, form of payment,  
7 manner of determining the effective date of settlement and any recapture clause.

8 (*Id.* at § 11.24.)

9 Here, the Parties have reached such an agreement and have submitted to this Court in  
10 connection with this Motion a copy of the Agreement fully setting forth the agreement reached  
11 among the Parties. The Agreement sets forth all terms of the agreement reached by the Parties,  
12 which complies with the Court’s Class Action Case Management Order (“CMO”).

13 **A. PROPOSED CLASS - CMO (G)(3)(a)(i)**

14 The current settlement is being settled on behalf of:

15 “All current and former non-exempt, hourly employees of Defendant in California  
16 who were employed at any time during the Class Period (defined as November 24,  
17 2022 through the date of Preliminary Approval of the Settlement).”

18 (Agreement ¶¶ I.C., I.I.) The number of Class Members is estimated at 340 individuals and the  
19 number of PAGA Aggrieved Employees is estimated at 199 individuals. (Sung Decl. ¶ 9.)

20 **B. ESTIMATE OF THE TOTAL AMOUNT OF DAMAGES, PENALTIES OR OTHER  
21 RELIEF THAT THE CLASS WOULD BE AWARDED - CMO (G)(3)(a)(ii)**

22 Based on the data provided, Plaintiff believes that the class could have obtained damages of  
23 approximately **\$1,183,766.82** plus PAGA penalties. (Sung Decl. ¶ 10.) Specifically, Plaintiff  
24 estimates the following damages for each of the causes of action as follows:

25 **1. Unpaid Wages Due to Regular Rate Violations**

26 Plaintiff alleges that Defendant failed to incorporate non-discretionary incentive  
27 compensation into the regular rate of pay for overtime, meal period premium, and paid sick leave  
28 purposes. (Sung Decl., ¶ 10.a.) “Regular rate of pay, which can change from pay period to pay  
period, includes adjustments to the straight time rate, reflecting, among other things, shift  
differentials and the per-hour value of any nonhourly compensation the employee has earned.”  
*Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554.

1 Here, Defendant paid Class Members various types of incentive compensation, including an  
2 incentive coded as “Meal Premium” equal to 30 minutes of straight time pay to irrigation and  
3 security employees who were unable to take an uninterrupted meal period; an incentive coded as  
4 Train 1.25 paid to employees who were scheduled to unload trains and whose shifts were cancelled  
5 due to train delay; and the value of meals paid to H2-A visa workers. (Sung Decl., ¶ 10.a.) Based on  
6 Class Counsel’s analysis of the payroll records, damages for underpayment of overtime is  
7 **\$42,966.27** and damages for underpayment of meal period premiums is **\$56.62**<sup>1</sup>. (*Ibid.*)

## 8 **2. Unpaid Wages Due to Off-the-Clock Work**

9 Plaintiff alleges that he and Class Members sometimes worked off the clock up waiting in  
10 line for up to 5 minutes to clock in and out. (Sung Decl., ¶ 10.b.) Here, any instances of off-the-  
11 clock work would not be reflected in the records. (*Ibid.*) Estimating that Class Members worked on  
12 average 30 minutes off the clock per week and at an average hourly rate of \$18.82, Defendant’s  
13 maximum exposure to the Class for unpaid of wages, including overtime, to be approximately  
14 **\$357,942.29**. (*Ibid.*)

## 15 **3. Meal and Rest Period Premiums**

16 Plaintiff alleges that he and Class Members did not receive all of their meal periods and rest  
17 periods. (Sung Decl., ¶ 10.c.) Here, in analyzing the time records, Plaintiff’s expert found 13.10%  
18 of shifts had a meal period violation without payment of premiums, broken down as 0.70% of  
19 eligible shifts had a missed first meal period violation; 0.26% of eligible shifts had a late first meal  
20 period violation; 0.44% of eligible shifts has a short meal violation; and 11.83% of eligible shifts  
21 had a missed second meal violation. (Sung Decl., ¶ 10.c.) Class Counsel estimates Defendant’s  
22 maximum exposure to the Class for unpaid meal period premiums to be approximately **\$62,520.59**.  
23 (*Ibid.*) As to rest periods, any instances of rest period violations would not be reflected in the  
24 records. (*Ibid.*) Given Defendant’s meal period compliance rate, and estimating that Class Members  
25 had a 10% rest period non-compliance rate (i.e., one violation every week), Defendant’s maximum  
26

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27 <sup>1</sup> There is no private right of action for paid sick leave claims. Paid sick leave violations are included in Class Counsel’s  
28 analysis for derivative waiting time, wage statement, and PAGA penalties under Labor Code §§ 203, 226, and 2699, *et*  
*seq.* (Sung Decl., ¶ 10.a.; *see* Lab. Code § 248.5(e) [stating only the “Labor Commissioner or the Attorney General may  
bring a civil action” against an employer for violating Labor Code §§ 245, *et seq.*].)

1 exposure to the Class for unpaid rest period premiums is **\$47,699.29**. (*Ibid.*)

2 **4. Statutory Penalties for Wage Statement and Waiting Time Violations**

3 Plaintiff alleges that Defendant failed to provide compliant wage statements and pay all  
4 wages due upon separation of employment as a result of underpaid overtime and paid sick leave due  
5 to regular rate violations, unpaid wages including overtime due to off the clock work, and unpaid  
6 meal and rest period premiums. (Sung Decl., ¶ 10.d.) Statutory penalty wage statement violations is  
7 \$50 for the first pay period and \$100 for each subsequent pay period in which there is a violation,  
8 with a cap of \$4,000 per employee. (Lab. Code § 226(e).) Based on Class Counsel’s analysis and at  
9 a 27.16% violation rate, Class Counsel estimates Defendant’s maximum exposure for wage  
10 statement penalties is **\$279,394.92**. (Sung Decl., ¶ 10.d.) Waiting time penalty is calculated as 30  
11 days’ wages per former employee who was not paid all wages due upon separation of employment.  
12 (Lab Code § 203.) Based on Counsel Counsel’s analysis and at a 61.54% violation rate for 142  
13 formerly employed Class Members, Class Counsel estimates Defendant’s maximum exposure for  
14 waiting time penalties is **\$436,153.11**. (Sung Decl., ¶ 10.d.)

15 **5. Civil Penalties Under the PAGA**

16 Plaintiff seeks civil penalties under the PAGA for the aforementioned wage and hour  
17 violations (unpaid wages, meal and rest period violations, wage statement violations, and failure to  
18 pay all wages upon separation) and paid sick leave violations. (Sung Decl. at ¶ 10.e.) Based on  
19 Class Counsel’s analysis, Class Counsel estimate potential exposure for civil penalties under the  
20 PAGA to be approximately **\$1,028,700.00** (\$100 initial violation rate X 10,287 pay periods). (*Ibid.*)

21 **C. ESTIMATE OF WHAT THE CLASS COULD REASONABLY EXPECT TO BE**  
22 **AWARDED AT TRIAL - CMO (G)(3)(a)(iii)**

23 Plaintiff believes that he can prevail at trial and be awarded the entire amount of the  
24 maximum exposure. (Sung Decl. at ¶ 11.) However, having tried wage and hours cases to verdict,  
25 Class Counsel believes there is also a reasonable possibility that the Court may find in favor of  
26 Defendant and award nothing to Plaintiff based on Defendant’s defenses. (*Ibid.*)

27 As to the regular rate theory, Defendant contends that Plaintiff is an inadequate class  
28 representative because he did not earn any of the incentive compensation at issue and therefore a

1 regular rate subclass cannot be certified. (Sung Decl. at ¶ 11.)

2 As to the off-the-clock work theory, Defendant contends that it has compliant policies  
3 prohibiting employees from working off the clock, and the sampling records evidence that Class  
4 Members were paid 46,339 overtime hours totaling over \$1,339,000 and 1,067.14 double time  
5 hours totaling over \$39,000. (*Ibid.*) Thus, Defendant maintains that its policies, practices, and class  
6 records evidence highly complaint policies and practices, Plaintiff’s off-the-clock work theory is not  
7 suited for class certification, nor can classwide liability be proven at trial, due to numerous  
8 individualized inquiries as to whether which employees worked off-the-clock, whether Defendant  
9 knew or should have known that employees were working off the clock, and whether they were  
10 instructed or permitted to work off the clock by their supervisors or managers. (*Ibid.*)

11 As to the claim for failure to provide compliant meal and rest periods, Defendant asserts that  
12 it has compliant policies in its employee handbook on the provision of meal and rest periods to  
13 Class Members. (*Ibid.*) Defendant asserts that Class Members signed valid and enforceable meal  
14 period waivers (the enforceability of which is contended by Plaintiff) which significantly reduces  
15 the meal period violation rate. Defendant asserts that, against a low meal period violation rate on the  
16 records, its policies and records evidence a highly compliant meal and rest period practice, and any  
17 non-compliant meal and rest periods resulted from lawful employee waiver or voluntary choice,  
18 rather than any systemic policy and/or practice of Defendant. (*Ibid; Brinker Rest. Corp. v. Sup. Ct.*  
19 (2012) 53 Cal.4th 1004, 1034 (rejecting “ensure” standard.) Finally, Defendant maintains Plaintiff’s  
20 meal and rest period claims are not suited for class certification since individual inquiries would be  
21 needed to assess which employees, if any, took non-compliant or missed meal and rest periods, how  
22 many meal and rest periods were non-compliant or missed, and the reasons why a particular  
23 employee did not take a meal or rest period on a particular shift. (Sung Decl. at ¶ 11.)

24 For wage statement penalties under Labor Code § 226(e) and waiting time penalties under  
25 Labor Code § 203, Defendant contends that it would not be subject to statutory penalties based on  
26 its good-faith defenses as stated above, and these issues cannot meet the willfulness standard in  
27 Labor Code § 203 or the knowing and intentional standard in Labor Code § 226(e). (*Ibid.*) Notably,  
28 Defendant relied on the California Supreme Court decision in *Naranjo v. Spectrum Security*

1 *Services, Inc.* (2024) 15 Cal.5th 1056, 1065, which held that an employer’s good-faith defenses  
2 precludes a “willfulness” finding under Labor Code § 203 and a “knowing and intentional” finding  
3 under Labor Code § 226(e) for the imposition of statutory penalties. (Sung Decl. at ¶ 11.)

4 PAGA penalties are also subject to any good-faith defenses that Defendant may raise. (*Ibid.*)  
5 Moreover, PAGA penalties are discretionary and subject to reduction by this Court. (*Ibid.*) Pursuant  
6 to Labor Code § 2699(f)(2), the Court can decline to award the full amount of PAGA penalties  
7 where “. . . if, based on the facts and circumstances of the particular case, to do otherwise, would  
8 result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Indeed, courts have  
9 affirmed the reduction of PAGA penalties in the past. As shown in *Carrington v. Starbucks Corp.*  
10 (2018) 30 Cal.App.5th 504, 517, the Court of Appeal affirmed the trial court’s reduction of PAGA  
11 penalties by 90%, citing the employer’s good-faith attempt at complying with the law. Defendant  
12 argued that based on their compliant policies and practices and the fact that class recovery is  
13 available, the Court will significantly reduce any award of PAGA penalties based on its good-faith  
14 compliance with the Labor Code. (Sung Decl. at ¶ 11.)

15 While the Parties disagree on the application of the law to the facts, each Party recognized in  
16 negotiations that, if taken to class certification and trial, the other Party would at least have  
17 reasonable arguments, such that the Gross Settlement Amount to which the Parties ultimately  
18 agreed was reasonable. (*Ibid.*) The total maximum exposure for class claims amounts to  
19 approximately **\$1,183,766.82**. (*Ibid.*) On the regular rate theory, if the Court finds that Plaintiff is  
20 not an adequate class representative, then it will deny certification as to this subclass, and Class  
21 Counsel believes there is at least a 20% risk factor, bringing the realistic recovery for underpaid  
22 overtime to **\$34,373.02** and underpaid double time to **\$45.30**. (*Ibid.*)

23 On the off-the-clock work and failure to provide meal and rest period claims, given  
24 Defendant’s defenses and its policies, the Court could deny class certification, resulting in no  
25 recovery for the Class, or classwide damages may be severely limited at trial. (*Ibid.*) Thus, Class  
26 Counsel believes there is at least a 50% risk factor, bringing the realistic recovery for unpaid wages  
27 due to off-the-clock work to **\$178,971.15**, unpaid meal period premiums to **\$31,260.30**, and unpaid  
28 rest period premiums to **\$23,849.65**. (*Ibid.*) Given the California Supreme Court’s decision in

1 *Naranjo*, there is an 80% risk factor that the Court might find Defendant's good-faith defenses  
2 preclude wage statement and waiting time penalties, bringing the realistic recovery to **\$55,878.98**  
3 for wage statement penalties and **\$87,230.62** for waiting time penalties. (*Ibid.*)

4 Total PAGA penalties amounted to **\$1,028,700**. (*Ibid.*) However, if the Court were to reduce  
5 the PAGA penalties by 80% similar to *Carrington*, the PAGA penalties exposure would amount to  
6 approximately **\$205,740.00**. (*Ibid.*)

7 Thus, the total realistic class damages and PAGA penalties are **\$617,349.00**. (*Ibid.*) The  
8 Gross Settlement Amount is 61.55% of the maximum class and PAGA recovery and well within the  
9 reasonable range of settlement for class/PAGA actions. (*Ibid.*)

10 **D. ESTIMATE OF RECOVERY BY AVERAGE CLASS MEMBER AND AGGRIEVED**  
11 **EMPLOYEE IF THE SETTLEMENT WERE APPROVED - CMO (G)(3)(a)(iv)&(v)**

12 Based on the estimated number of Class Members, which is **340** individuals, each Class  
13 Member will receive, on a raw average, approximately **\$634.83**, which is the pro-rata amount per  
14 Class Member based on the estimated Net Settlement Amount of **\$215,843.33**. (Sung Decl., ¶ 12.)  
15 Each Aggrieved Employee would be a member of the Class. (Sung Decl., ¶ 13.) Thus, in addition to  
16 the average recovery for Class Members, each of the estimated 199 Aggrieved Employees will  
17 receive, on a raw average, an additional **\$25.13** for the PAGA claims. (*Ibid.*)

18 **E. DISCOVERY AND OTHER FACTUAL INVESTIGATION - CMO (G)(3)(a)(vi)**

19 As noted above, the Parties engaged in informal discovery prior to mediation, where  
20 Defendant provided Plaintiff with data which included (1) class and PAGA demographic  
21 information, including number of Class Members and workweeks worked and number of Aggrieved  
22 Employees and pay periods worked; (2) a 20% sampling Class Members' time and payroll records;  
23 (3) Defendant's employee handbooks and relevant policies and procedures in effect during the Class  
24 Period; and (4) Plaintiff's personnel records and wage statements. (Sung Decl., ¶ 13.) Class Counsel  
25 and its expert utilized the data from the class list, sampling time and payroll records, and class  
26 statistics to perform damages calculation. (Sung Decl., ¶ 14)

27 **F. OTHER PENDING LITIGATION - CMO (G)(3)(a)(vii)&(b)**

28 The Parties are not aware any existing class and/or PAGA actions that assert claims similar

1 to those asserted in this action on behalf of a class or group of individuals some of whom would  
2 also be members of the Class defined in this Action. (Sung Decl. ¶ 15; Declaration of Kathryn B.  
3 Box, ¶ 3.)

4 **G. UNCASHED CHECKS, UNPAID RESIDUE OR OTHER UNCLAIMED OR**  
5 **ABANDONED FUNDS - CMO (G)(3)(c)**

6 Participating Class Members shall have 180 days from the date of issuance of the check to  
7 negotiate the check. (Agreement, § III.E.9.) The funds from any checks returned as undeliverable,  
8 and any checks not negotiated within 180 days, shall be transmitted to the California State  
9 Controller’s office in the name of the Class Member. (*Ibid.*) Plaintiff believes that sending the funds  
10 to the unclaimed funds is superior to redistribution to Class Members that cashed their checks  
11 because Class Members that either had their checks lost in the mail or otherwise did not deposit  
12 their checks within 180 days will still have an opportunity to receive their settlement funds beyond  
13 the 180 days. (Sung Decl. ¶ 16.) In Class Counsel’s experience, there have been occasions where  
14 Class Members have contacted Class Counsel after the expiration to claim their settlement  
15 proceeds, and because the funds were sent to the State Controller’s office, the Class Members were  
16 able to receive their settlement funds. (*Ibid.*) Thus, Class Members’ right to receive their settlement  
17 proceeds will be best protected by this process. (*Ibid.*)

18 **H. SETTLEMENT ADMINISTRATOR - CMO (G)(3)(d)**

19 The Agreement provides an amount not to exceed \$8,000 will be paid for administration  
20 fees. (Agreement ¶ III.B.4.) Plaintiff obtained bids from two reputable class action administrators  
21 and received the lowest bid from Apex Class Action LLC. (Sung Decl. ¶ 16.) Apex Class Action  
22 LLC has extensive experience in administering employment class action settlements and submitted  
23 a bid of \$7,490 including discounts. (Declaration of Kimberly Sutherland (“Admin. Decl.”) ¶¶ 4-7,  
24 Exs. A, B.)

25 **I. RELEASE BY CLASS MEMBERS IS LIMITED - CMO (G)(3)(e)**

26 The release is limited to Defendant Fondomonte California, LLC and its officers, directors,  
27 employees and agents. (Agreement, § I.FF.) The following is a description of the Participating Class  
28 Members’ Released Class Claims:

1 Upon entry of final judgment and payment by Defendant of the Gross Settlement  
2 Amount plus employer-side payroll taxes, Participating Class Members, on behalf  
3 of themselves and their respective representatives, agents, attorneys, heirs,  
administrators, successors, and assigns, hereby do and shall be deemed to have  
released the Released Parties from the Released Class Claims.

4 “Released Class Claims” mean all claims, rights, demands, liabilities, and causes  
5 of action alleged or which could have reasonably been alleged based on the facts  
6 alleged in the Operative Complaint that arose during the Class Period, including  
7 claims for (1) Minimum Wage Violations; (2) Overtime Wage Violations; (3)  
Meal Period Violations; (4) Rest Period Violations; (5) Wage Statement Penalties;  
(6) Waiting Time Penalties; and (7) Unfair Competition.

8 (*Id.* at ¶ I.DD & III.F.1.)

9 The following is a description of the Aggrieved Employees’ Released PAGA Claims:

10 Upon entry of final judgment and payment by Defendant of the Gross Settlement  
11 Amount plus employer-side payroll taxes, the State of California and Plaintiff hereby  
do and shall be deemed to have released the Released Parties from the Released  
PAGA Claims.

12 “Released PAGA Claims” means all claims for PAGA civil penalties that are alleged  
13 or which reasonably could have been alleged based on the facts alleged in the PAGA  
14 Notices and the Operative Complaint, including claims for (1) Minimum Wage  
Violations; (2) Overtime Wage Violations; (3) Meal Period Violations; (4) Rest  
15 Period Violations; (5) Wage Statement Penalties; and (6) Waiting Time Penalties.

16 (*Id.* at ¶ I.EE & III.F.2.)

17 **J. NOTICE TO CLASS MEMBERS, NON-CLAIMS MADE SETTLEMENT, AND NO**  
18 **REVERSION TO DEFENDANT - CMO (G)(3)(f)-(h)**

19 Notice to Class Members will be given by First Class Mail. (Agreement, § III.E.2.)

20 Specifically, no later than 14 calendar days after the Court enters an Order Granting Preliminary  
21 Approval of the Settlement, Defendant will provide to the Settlement Administrator an electronic  
22 database containing each Class Member’s Class Data. (*Id.* at ¶ III.E.2.a.) The Settlement  
23 Administrator shall update the Class Data using the National Change of Address database prior to  
24 mailing the Class Notice Packets. (*Id.* at ¶ III.E.2.b.) No later than 14 days after receiving the class  
25 data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via first-  
26 class regular U.S. Mail using the mailing address information provided by Defendant. (*Ibid.*) If a  
27 Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will  
28 promptly, and not longer than 14 days from receipt of the returned packet, search for a more current

1 address for the Class Member and re-mail the Class Notice Packet to the Class Member. (*Id.* at ¶  
2 III.E.2.c.) If a Notice Packet is returned as undeliverable with no forwarding address, the Settlement  
3 Administrator shall take reasonable steps including, performing address searches for all mail  
4 returned without a forwarding address using available email addresses, phone numbers, social  
5 security numbers, credit reports; and promptly re-mailing to Class Members for whom new  
6 addresses are found. (*Ibid.*)

7 Class Members will be automatically paid from the settlement and do not need to submit  
8 claim forms to be entitled to settlement payments pursuant to the terms of the Agreement.

9 (*Id.* at ¶ III.E.3.c., Ex. A.) If a Class Member does not wish to take part in this settlement and be  
10 bound by the release, the Class Member must submit an exclusion/opt-out request. (*Id.* at ¶  
11 III.E.3.c., Exs. B, C.) Should any Class Member not submit an exclusion/opt-out request, the Class  
12 Member will automatically become a Participating Class Member, will receipt payment, and will be  
13 bound by all terms and conditions of the Settlement. (*Id.* at ¶ III.E.3.c.) Such obligations are  
14 thoroughly identified in each Class Member’s Notice. (*Id.* at Ex. A.) This is a non-reversionary  
15 settlement, as the entirety of the settlement amount will be fully paid out. (*Id.* at ¶ III.A.)

16 **K. COMPENSATION FOR UNPAID WAGES - CMO (G)(3)(i)&(j)**

17 20% of each Participating Class Member’s Settlement Share is in settlement of wage claims  
18 (“Wage Portion”) and is subject to wage withholdings and shall be reported on IRS Form W-2.  
19 (Agreement, § III.C.3.a.) 80% of each Participating Class Member’s Settlement Share is in  
20 settlement of claims for interest and penalties allegedly due to Class Members and shall not be  
21 subject to wage withholdings and shall be reported on IRS Form 1099. (*Id.* at ¶ III.C.3.b.) The  
22 portion of the PAGA Payment distributed to Aggrieved Employees shall not be subject to wage  
23 withholdings and shall be reported on IRS Form 1099. (*Id.* at ¶ III.B.3.) The Gross Settlement  
24 Amount excludes any employer-side payroll taxes on the Wage Portion, which must be paid by  
25 Defendant. (*Id.* at III.A.)

26 **L. PROPOSED NOTICE, OBJECTION AND EXCLUSION FORMS - CMO (G)(3)(k)**

27 Attached as Exhibits A, B and C to the Agreement are the Proposed Class Notice, Objection  
28 Form and Exclusion Forms. Plaintiff prepared the forms based on previously approved forms by

1 this Court. The Parties have drafted the Proposed Class Notice in a manner that will be likely to be  
2 readily understood and the notice will be provided in both English and Spanish by the  
3 Administrator. (Sung Decl., ¶ 17; Agreement, § I.H., Ex. A.)

4 **M. TYPICALITY AND ADEQUACY OF REPRESENTATION**

5 **1. Class Representative’s Claims are Typical of the Class**

6 The commonality requirement is met when there are questions of law and fact common to the  
7 class. *See Hanlon v. Chrysler Corp.* (1998) 150 F.3d 1011, 1019. (“The existence of shared legal  
8 issues with divergent legal factual predicates is sufficient, as is a common core of salient facts  
9 couple with disparate legal remedies within the class.”) Commonality requires only that some  
10 common legal or factual questions exist; the plaintiffs need not show that all issues in the litigation  
11 are identical. *See Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 473. Defendant’s conduct  
12 is central to the commonality inquiry. *See City of San Jose v. Superior Court* (1974) 12 Cal.3d 447,  
13 460 (1974). Where the employer’s conduct is uniformly directed at a class of employees, as it is  
14 here, the class wide impact of the Defendant’s policies satisfies the commonality requirement. *See*  
15 *Stephens v. Montgomery Ward & Co., Inc.* (1987) 193 CalApp.3d 411, 421.

16 Plaintiff claims that Defendant, as a matter of its corporate policy, practice, or procedure  
17 violated the Labor Code by failing to factor in non-discretionary incentive compensation into the  
18 regular rate for overtime, meal period premiums, and paid sick leave; did not provide all meal and  
19 rest periods due to Class Members; caused Class Members to work off the clock; did not furnish  
20 accurate wage statements to Class Members; and did not pay all wages due to Class Members upon  
21 their separation of employment. (Beltran Decl., ¶ 3.) Plaintiff was employed by Defendant, like all  
22 of the other Class Members, and allegedly suffered the same Labor Code violations at issue,  
23 namely, unpaid wages including minimum and overtime wages, meal and rest period violations, and  
24 derivative penalties. (*Ibid.*) Thus, Plaintiff’s claims are typical to those of Class Members.

25 The Class Representative does not have any interests adverse to the class, nor has any such  
26 issue been raised or presented. (*Id.* at ¶ 4.) The Class Representative has taken all necessary steps to  
27 represent the interests of the Class, by making himself available to answer questions, gather and  
28 provide documents, and review and execute the Agreement and his accompanying declaration. (*Id.*

1 at ¶ 5.) For such reasons, the Class Representative has adequately represented the Class Members  
2 and will continue to do so.

3           **2. Class Counsel Have Adequately Represented the Class and Has Experience**  
4           **with Wage and Hour Class Actions**

5           From the inception of the case, Class Counsel have protected the interests of the Class. Class  
6 Counsel analyzed the pre-mediation production, including the time and pay records, prior to the  
7 mediation to perform a damages analysis. The mediation and settlement were obtained for the  
8 benefit of the Class, not for the individual Class Representative. Class Counsel are experienced  
9 wage and hour class action attorneys and are competent to represent the class. (Sung Decl. ¶¶ 17-22;  
10 Declaration of Tiffany L. Luu ¶¶ 2-6.)

11 **N. CLASS REPRESENTATIVE ENHANCEMENT AND ATTORNEYS' FEES/COSTS**

12           **1. Attorneys' Fees and Costs**

13           The Agreement allows Plaintiff to seek up to one-third (approximately 33 1/3%) of the  
14 Gross Settlement Amount, or \$126,666.67, as payment for attorneys' fees. (Agreement, § II.B.2.)  
15 The California Supreme Court established that when class action litigation establishes a monetary  
16 fund for the benefit of the class members, and the trial court in its equitable powers awards class  
17 counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing  
18 an appropriate percentage of the fund created. (*Laffitte v. Robert Half Int'l* (2016) 1 Cal. 5th 480,  
19 503.) "The recognized advantages of the percentage method—including relative ease of calculation,  
20 alignment of incentives between counsel and the class, a better approximation of market conditions  
21 in a contingency case, and the encouragement it provides counsel to seek an early settlement and  
22 avoid unnecessarily prolonging the litigation." (*Ibid.* [internal citations omitted].) In *Laffitte*, the  
23 Court affirmed an award of attorneys' fee award of \$6,333,333.33, based on one-third of the \$19  
24 million common fund. (*Id.* at 503.) As in *Laffitte*, the Parties have agreed to a one-third of the  
25 common fund for attorney's fees.

26           Further, the Parties have agreed to payment of up to \$20,000 as reimbursement for Class  
27 Counsel's litigation costs. (Agreement, § III.B.2.) Class counsel have, at their own risk, expended  
28 costs, for example, to file this instant action, service of process, payment of mediation fees, expert

1 fees, and other litigation related costs. Class Counsel will only request the amounts actually  
2 expended up to a maximum of \$20,000 and will provide their supporting declarations at the time of  
3 final approval. Based on the foregoing, the Court should preliminarily approve the attorney’s fees  
4 and costs being requested by class counsel.

5 **2. Proposed Payment to Class Representative**

6 Plaintiff requests an enhancement award of \$10,000.00. Plaintiff has not previously been a  
7 named plaintiff in any other class action cases. (Beltran Decl., ¶ 5.) Plaintiff understood that the  
8 filing of this action was a matter of public record and this was being prosecuted on a classwide  
9 basis. (*Id.* at ¶ 6.) Plaintiff further understood that a representative action would take longer in  
10 litigation than an individual action and undertook such risks. (*Ibid.*) Plaintiff did not incur any  
11 expenses, but has expended a large amount of time on this matter. (*Ibid.*) Plaintiff spent  
12 approximately 20 hours discussing this matter with Class Counsel on a number of occasions,  
13 including proving substantive information regarding Defendant’s practices, and providing  
14 documents related to his own claims and the claims of Class Members. (*Ibid.*)

15 Plaintiff took these risks upon himself and the whole class benefited from this. Class  
16 Members did not have to file individual lawsuits and bear the risks of payment of fees and costs if  
17 they did not prevail, nor did they have to face the potential for retaliation and not getting future  
18 employment had they filed a lawsuit which is a public record. These are significant benefits, even  
19 apart from the time the Plaintiff has spent working on this case, that weigh in favor of granting the  
20 requested enhancement, which is also consideration for the general individual release to which  
21 Plaintiff agrees on his own behalf. Courts have routinely granted approval of settlements containing  
22 such enhancements. In *League of Martin v. City of Milwaukee* (E. D. Wis. 1984) 588 F.Supp. 1004,  
23 the court held that the proposal settlement properly granted the class representatives individual  
24 relief. It is “not uncommon for Class Members . . . to receive special relief in settlement . . . [The  
25 Plaintiff] . . . had been instrument in prosecuting this lawsuit since the date it was filed.” (*Id.* at  
26 1024.) In *Kyriazi v. Western Elec. Co.* (D. N. J. 1981) 527 F.Supp. 18, a named plaintiff in a Title  
27 VII class action was awarded individual relief of back-pay and interest, reinstatement, punitive  
28 damages and counsel fees. Similarly, in *Women’s Committee for Equal Employment Opportunity v.*

1 *NBC* (S.D.N.Y. 1977) 76 F.R.D. 173, the court approved as fair a settlement that included awards to  
2 16 Class Representatives of virtually all the damages they sought.

3 **V. CONCLUSION**

4 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary  
5 approval of the proposed settlement, sign the proposed Order, and approve and authorize mailing of  
6 the proposed Class Notice. Plaintiff further requests that a hearing date for the final fairness and  
7 final approval hearing be set for a date on or about June 12, 2026.

8  
9 DATED: October 29, 2025

Respectfully submitted,

10 **JUSTICE FOR WORKERS, P.C.**

11  
12 By:   
13 \_\_\_\_\_  
14 William C. Sung  
15 Tiffany L. Luu  
16 Joseph C. Ramli  
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