

PROPOSED TENTATIVE

The lawsuit was initiated April 26, 2021. On September 8, 2021, plaintiff Cameron Nicholson (plaintiff) filed a first amended class and representative action complaint against defendants Velazquez Packing, Inc., Betteravia Farms, LLC, Lompoc Farming LLC, and Betteravia Ranches, LLC (defendants), raising nine (9) causes of action for wage and hour violations, as follows: 1) failure to pay overtime wages; 2) failure to pay minimum wages 3) failure to provide meal periods; 4) failure to provide rest periods; 5) waiting time penalties; 6) wage statement violations; 7) failure to indemnify; 8) unfair business practices per Business and Professions Code section 17200, et seq.; and 9) civil penalties under the Private Attorney General Act (the PAGA). Plaintiff was employed by defendants as an hourly paid, nonexempt employee, applying fertilizer and pesticides, transplanting, weeding, thinning, pruning, picking, cutting, cleaning, sorting, packing, processing, and harvesting food products, between 2014 and September 2020. Defendants were joint employers. The class consists of all persons who worked for any defendant in California or non-exempt employee at any time during the period beginning four years before the filing of the initial complaint in this action and ending when notice to the class is sent. Defendants have answered.

On April 5, 2025, plaintiff Joel Lopez Ochoa filed a representative action under PAGA against Velazquez Packing, Inc, Betteravia Farms LLC, Bob Campbell Ranches, Inc., Lompoc Farming LLC, Santa Barbara Farms, LLC, and Ocean View Flowers LLC, Case No. 24CV01966, asking for civil penalties for aggrieved employees for the period (beginning 1 year preceding notice sent to the Labor Workforce Development Agency (LWDA) and when the lawsuit was filed), asking for civil penalties based on numerous Labor Code violations (failure to pay overtime, failure to pay for time actually worked, failure to pay for missing meal periods, indemnification, as well as variety of other alleged transgressions). The court ordered the present case and Case No. 24CV01966 to be related. Counsel in the present matter and Case No. 24CV01966 are from the same law firm Bibiyan Law Group, P.C.

On June 6, 2026, plaintiffs Quiroz and Ochoa filed a motion for preliminary approval of all settlements reached in the class action and representative actions, following an all-day mediation session with mediator Nikk Tolt, Esq. Expressly excluded from the settlement is defendant Velazquez Packing Inc (meaning only Betteravia Farms, LLC, Betteravia Ranches, LLC, and Lompoc Farming, LLC are settling defendants). The motion involves a global settlement that includes the PAGA claims in Case No. 24CV01966, as plaintiff acknowledges that the PAGA claims in Case No. 24CV01966 “are substantially the same alleged violations” at issue in the present matter, and plaintiff Quiroz and Ochoa each seek enhancements. According to Mr. Vedang Patel’s declarations, as part of the settlement, “the Parties agreed to stipulate to

consolidate the Quiroz Class Action, the PAGA Action and the Ochoa PAGA action for settlement purposes.”¹

According to the declaration filed by Vedang J. Patel, counsel, the gross settlement is for \$570,000, a nonreversionary amount,² of which \$30,000 is designated for settlement of claims for PAGA penalties (with 75 % going to the LWDA (\$22,500) and 25% going to aggrieved employees (\$7,500)). “Aggrieved Employees” for the PAGA payout are defined as “all persons employed by Defendants in California and classified as nonexempt, hourly paid employees who worked for Defendants during the period from March 12, 2020 through the end of the Class Period [January 8, 2025] (‘PAGA Period’)” The class is defined as all persons employed by defendants in California and classified as nonexempt, hourly paid employee who worked for defendants during the period from April 26, 2017 through January 8, 2025. Class members will be paid their pro rata share of the class action settlement based on the total number of workweeks worked during the class period. Plaintiff’s counsel informs us that there are 23,000 workweeks during the class period, and approximately 14,000 pay periods during the PAGA period. According to counsel, there are 535 putative class members (and one assumes that there are the same number of aggrieved employees, although the court is not told – this will have to be confirmed at the hearing). This will leave \$533.64 as the average payout for each class member; if there are 535 aggrieved employees, with \$7,500 earmarked for them, the average payout will be \$14.10 per employee.³

The gross settlement amount of \$570,000 will be reduced by the following: 1) \$199,500 for attorney’s fees (amounting to 35% of the gross settlement); 2) up to \$30,000 for litigation costs; 3) \$30,000 for the PAGA settlement, of which 75% (\$22,500 will be paid to LWDA and 25% (\$7,500) will be paid to all aggrieved employees); 4) appointment of a third-party administrator Phoenix Settlement Administrators, with expenses up to \$10,000; and 5) enhancements of \$7,500 for Quiroz in this matter and \$7,500 for plaintiff Ochoa in Case No. 24CV01966 (for a total of \$15,000). As noted, amount to be dispersed will be calculated for each class member on a pro rata basis share based on the total number of workweeks worked during the class period.

¹ There has been no request to consolidate the actions, and thus they remain separate as of this writing. **Counsel should come prepared to discuss the consolidation process at the hearing. Consolidation should occur at least before final approval of the class action settlement, with a new amended pleading to be filed.**

² Counsel will have to explain the conflicts in the settlement agreement about the gross settlement amount. At one point the settlement agreement (in section 1.22) defines “gross settlement amount” as \$570,000. But in Section 3.1, the gross settlement amount is described as \$600,000. It appears the latter is a typographical error, although the court directs counsel to explain.

³ Counsel does not inform the court what the average payout for the class or representative actions will be. Accordingly, based on the basic math, the court has taken the net settlement amount and divided that number by 535 (\$533.64 per class member) and divided \$7,500 by 535 (\$14.10 per each aggrieved employee). The court directs counsel to provide a showing of the average payout for each group at the hearing and at the final approval hearing.

Attached to the noticed motion are the following documents: 1) a memorandum of points and authorities; 2) a declaration from attorney Vedang Patel, class counsel, which includes the Class and PAGA Settlement Agreement; the actual notice to be sent to both the putative class and the aggrieved employees, which includes the “Exclusion Request Form” if a putative class member wishes to be excluded from the class, and the “Objection to Settlement Form” if a class members wishes to object to the settlement; the March 12, 2021, letter sent to the LWDA concerning the PAGA claims; and a copy of the electronic transmission confirmation that counsel sent the proposed settlement to the LWDA on June 25, 2026, contemporaneously with the submission here, in compliance with Labor Code⁴ section 2699, subdivision (s)(2); 2) a declaration from counsel David Bibiyian, detailing the efforts made in these matters and the adequacy of class counsel; 3) a declaration from Jodey Lawrence, a representative from Phoenix Class Action Administration Solutions; and 4) declarations from plaintiffs Franciscos Quiroz and Joel Ochoa, respectively, in support of the enhancement requests.

The court will detail the legal standards that govern and frame the court’s inquiry; it will then address some preliminary issues; and then assess the merits of the requests made. The court will conclude with a summary of its conclusions.

A) What are the General Standards for Approvals of a Class Action Settlement?

The general rules for class action precertification settlements are governed by California Rules of Court, rule 3.769. “Rule 3.769 of the California Rules of Court [hereafter, CRC] sets forth the procedures for settlement of class actions in California. (See also Code Civ. Proc., § 581, subd. (k).) A two-step process is required. First, the court preliminarily approves the settlement, and the class members are notified as directed by the court. [CRC 3.769(c)-(f).] ‘The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.’ [CRC 3.769(f).] Second, the court conducts a final approval hearing to inquire into the fairness of the proposed settlement. [CRC 3.769(g).] If the court approves the settlement, a judgment is entered with provision for continued jurisdiction for the enforcement of the judgment. [CRC, rule 3.769(h).]” (*Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.)

A party to the settlement must move for “preliminary approval of the settlement.” (CRC 3.769(c).) After the hearing, the court makes an order approving or denying “certification of a provisional settlement class.” (CRC 3.769(d).) If the court grants preliminary approval, it must set a final approval hearing, and provide for notice to be given to the class. (CRC 3.769(e).) “The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and

⁴ All further statutory references are to the Labor Code unless otherwise indicated.

state any objections to the proposed settlement.” (CRC 3.769(f).) At the final approval hearing, “the court must conduct an inquiry into the fairness of the proposed settlement.” (CRC 3.769(g).) If the court approves the settlement agreement, it enters judgment accordingly. (CRC 3.769(h).) (See *Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.)

This is of course is a preliminary approval, not a final approval. Nevertheless, precertification settlements in class actions should be scrutinized. (*Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 743.) This is accomplished through careful review by the trial court; precertification settlements are routinely approved where they are found fair, adequate and reasonable. (*Ibid*; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 240 [precertification settlements in class action suits should be scrutinized more carefully].) “‘Due regard,’ . . . ‘should be given to what is otherwise a private consensual agreement between the parties. The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” [Citation.] . . . ’ ” (7–*Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1145, quoting from *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802; see *Roos v. Honeywell Internat., Inc.* (2015) 141 Cal.App.4th 1472, 1481-1482, overruled on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 269.) The test is not whether the maximum amount is secured, but whether the settlement is reasonable under all circumstances. For example, a trial court does not abuse its discretion in approving a settlement when it finds that the settlement was achieved at an arm’s length negotiation; the fact the case was vigorously litigated; plaintiff was represented by experienced counsel; the number of class members who objected or opted out was very small; and plaintiff faced considerable risk in proceeding to trial. (*Cho, supra*, at p. 745.)

The proponents have the burden to show the settlement is fair, although a presumption of fairness exists where the settlement is reached through arm’s length bargaining; investigation and discovery are sufficient to allow counsel and the court to act intelligently; and counsel is experienced in similar litigation; and the percentage of objectors is small. (*Dunk, supra*, at p. 1802.) This is only an initial presumption; a trial court’s ultimate approval of a class action settlement will be vacated if the court “is not provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” In short, the trial court may not determine the adequacy of a class-action settlement “without independently satisfying itself that the consideration being received for the release of the class members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408.)

The court undoubtedly gives considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct. While an agreement reached under these circumstances presumably will be fair to all concerned, particularly when few of the affected class members express objections, in the final analysis it is the court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement. (*Munoz, supra*, 186 Cal.App.4th at p. 408, fn. 6.)

The court's gatekeeping function in the class action context differs from its role in reviewing PAGA settlements. In class actions, courts have a fiduciary duty to protect the interests of absent class members, whose individual claims for wrongfulness will be discharged. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129 [court acts as guardian of rights of absentee class members].) A PAGA representative action, however, is "not akin to a class action"; it "is a species of *qui tam* action." As our high court has reiterated, PAGA suits exhibit virtually none of the procedural characteristics of class actions. (*Estrada v. Royalty Carpet Mills, Inc.* (2024) 15 Cal.5th 582, 599.) In that regard, when reviewing a PAGA settlement, courts do not consider the value of individuals' claims for damages because a PAGA settlement does not release those claims. (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73 87 [PAGA claims have no individual component]; *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 197-198 [PAGA damages limited to civil penalties].) "The state's interest in such an action is to enforce its laws, not to recover damages on behalf of a particular individual." (*Huff, supra*, 23 Cal.App.5th at p. 760.) Instead of focusing on fair recovery for individual claims, the goal of PAGA enforcement is to achieve "maximum compliance with state labor laws." (*Huff*, at p. 756.)

That being said, section 2699, subdivisions (s)(1) to (4) require the court to follow certain requirements for PAGA settlements. First, for cases filed on or after July 1, 2016, the aggrieved employee or representative shall, within 10 days following commencement of a civil action pursuant to this part, provide the LWDA with a file-stamped copy of the complaint that includes the case number assigned by the court. (Subd. (s)(1)). Second, "the superior court shall review and approve any settlement of any civil action filed pursuant to this part. *The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.*" (Subd. (s)(2), italics added.) Third, "a copy of the superior court's judgment in any civil action filed pursuant to this part and any other order in that action that either provides for or denies an award of civil penalties under this code shall be submitted to the agency within 10 days after entry of the judgment or order." (Subd. (s)(3).) And fourth, "[i]tems required to be submitted to

the [LDWA] under this subdivision or to the Division of Occupational Safety and Health pursuant to paragraph (4) of subdivision (b) of Section 2699.3, shall be transmitted online through the same system established for the filing of notices and requests under subdivisions (a) and (c) of Section 2699.3.” (Subd. (s)(4).) Courts under this scheme consider (1) whether the statutory requirements of notice to the LDWA have been satisfied, and (2) whether the settlement agreement is fair, reasonable, and adequate, as well as meaningful and consistent with PAGA's public policy goals, which include “augmenting the state's enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring noncompliance.” (*Kang v. Wells Fargo Bank, N.A.*, 2021 WL 5826230, *15 (N.D. Cal. Dec. 8, 2021); see *Gilmore v. McMillan-Hendryx Incorporated* (E.D. Cal., Jan. 20, 2022, No. 1:20-CV-00483-HBK) 2022 WL 184004, at *2.)

Until recently no published California appellate case had explored the standard a trial court should employ in evaluating the reasonableness of a PAGA settlement. That changed in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56 overruled in part on other grounds in *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664, 708-710. (See also *Flores v. Starwood Hotels & Resorts Worldwide* (C.D. Cal. 2017) 253 F.Supp.3d 1074, 1075.) In *Moniz*, despite the differences between class and PAGA actions, the appellate court determined that “a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” (*Moniz, supra*, 72 Cal.App.5th at 76.) The *Moniz* court also indicated: “Because many of the factors used to evaluate class action settlements bear on a settlement's fairness—including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement.” (*Ibid.*) “Given PAGA's purpose to protect the public interest, we also agree with the LWDA and federal district courts that have found it appropriate to review a PAGA settlement to ascertain whether a settlement is fair *in view of PAGA's purposes and policies*.” (*Ibid.*, italics added.) “We therefore hold that a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable and adequate in view of the PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” (*Ibid.*) Put another way: “We emphasize that in any case involving a proposed PAGA settlement, the trial court must review the settlement for fairness and ‘scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the state's interests, and hence the public interest.’” (*Shaw v. Superior Court of Contra Costa County* (2022) 78 Cal.App.5th 245, 263, citing *Moniz*; see also *LaCour v. Marshalls of California, LLC* (2023) 94 Cal.App.5th 1172, 1195 [same].) Once approved, under the newly enacted rules, for out purposes, 75% of civil penalties recovered go to the state, while 25% go to the PAGA class.

B) Preliminary Matters

Plaintiff should file a “Notice of Settlement” of the entire case, as contemplated by CRC 3.1385(a), at least before final approval.

It appears counsel has submitted the proposed settlement to the LWDA contemporaneously with the submissions here. Counsel should confirm that the settlement involves a global determination of this action as well as the action in Case No. 24CV01966, and how and when the alleged consolidation between the two matters will occur.

The court directs plaintiff to confirm that there are 535 putative class members and 535 aggrieved employees. If that is not the case, counsel must provide the appropriate numbers, which should be submitted in writing with the class action final approval documentation. Additionally, the court directs counsel to address at the hearing whether both named plaintiffs will be the class and PAGA representatives, meaning they are similarly situated for the ultimate lawsuit and thus the enhancement requests. The importance of this point will be evidence in the enhancement discussion portion of this tentative.

Plaintiff should submit, also before final approval, a copy of (or its verbatim contents) of the attorney-fee agreement with plaintiffs as mandated by CRC 3.769(b) [“any agreement, express or implied, that has been entered into with respect to the payment of attorney’s fees or the submission for the approval of attorney’s fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action”].) This provision requires that any attorney-fee agreement, express or implied, that has been entered into with respect to payment of attorney’s fees or the submission of an application for the approval of attorney’s fees must be set forth in full in any application for approval of the settlement that has been certified as a class action. That has not been done.

Finally, the court will want to confirm with counsel that it will comply with section 2699, subdivision (s)(3), which requires that a copy of the superior court’s judgment as to civil penalties “shall be submitted to the [LWDA] within 10 days after entry of judgment.”

C) Are the Class Action and PAGA Settlements Fair, Adequate and Reasonable?

As noted, the amount of the gross settlement is \$570,000. Subtracted from this are 1) requested attorney’s fees of \$199,500 (35 % of the gross settlement amount); 2) up to \$30,000 in litigation costs; 3) settlement administration costs of up to \$10,000; 4) enhancement awards of \$15,000 (\$7,500 for each plaintiff); and 5) the PAGA settlement amount of \$30,000 (with \$22,500 going to the LWDA and \$7,500 going to the aggrieved employees), leaving a net settlement amount of \$285,500. In determining whether the class settlement is fair, adequate and reasonable a trial court’s broad discretion is exercised through several well-recognized factors, as noted above. The list, which is not exhaustive and should be tailored to each case, includes the

strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. (*Roos, supra*, at 241 Cal.App.4th at pp. 1481-1482.) The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement. While the court “must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case,” it must eschew any rubber stamp approval in favor of an independent evaluation. (*Munoz, v. BCI Coca-Cola Bottling Co. of Los Angeles, supra*, 186 Cal.App.4th at pp. 407–08.)

The settlement amount is nonreversionary, and it appears both sides engaged in a rigorous, arms-length negotiation through mediation, culminating in a global settlement for both cases. As revealed in the declarations of both Mr. Patel and Mr. Bibyan, class counsel appear experienced wage and hour attorneys. There is no evidence of collusion, particularly as the settlement was the result of a neutral mediation, with the mediator seemingly also experienced in wage and hour settlements. Plaintiffs’ counsel has been involved in a number of class action suits, as detailed in the briefing and the individual declarations. There have been no objections to the settlement either by class members, aggrieved employees, or the LWDA.

Counsel Vedang Patel declares that prior to attending the mediation on January 8, 2025, the parties “agreed to exchange informal discovery Prior to mediation, Plaintiff obtained, through informal discovery: (1) time and payroll records for Class Members through mediation; (b) a class list of hire dates, termination dates, and rates of pay for all Class Members; (c) wage and hour policy documents; (d) employee handbooks; and all documents pertaining to Plaintiff available to Defendants.” Mr. Vedang also declares that the settlement was reached “after extensive factual and legal investigation and research; substantial debate regarding applicability of Collective Bargaining Agreements (‘CBAs’) and purported arbitration agreements; debate included review of time and pay records and analysis thereof the aid of Plaintiffs and expert consultants; and analysis of shifts and Workweeks worked by Class Members in the Class Period, analysis of the number of pay periods and the number of Class members’ eligible for wage statement penalties and waiting time penalties; an analysis of Plaintiffs employment records; extensive correspondence and communication between counsel,” and other ongoing efforts.

Defendant’s maximum liability was determined to be, after expert review of all documentation, as follows: 1) for failure to pay for work for completed off the clock - \$763,729.31; 2) for failure to track and pay for all time worked - \$607,215.53; 3) for noncompliant meal periods -- \$391,794; 3) for noncompliant rest periods - \$582,008; 4) for wage statement violations - \$280,000; and 5) for waiting time penalties - \$290,496. According to

counsel, defendant's total exposure was estimated to be \$2,800,527 – although these figures actually add up to \$2,915,242.53. This amount was reduced because counsel recognized the potential risk, expense, and complexity posed by further litigation. Counsel also understood during mediation that defendants had compelling defenses, and in light of all the risks involved and obstacles to class certification, liability, and manageability, settlement for the gross settlement amount was reasonable. As for PAGA, civil penalties, as detailed in Mr. Patel's declaration, counsel found defendant's maximum exposure to be \$4,925,000. However, according to Mr. Patel, a class counsel "understood from the mediator and the mediation process" that "no PAGA penalties are likely to be awarded and, even if they were, the maximum exposure calculated by Class Counsel was vastly overrated." Stacking was unlikely; individual issues predominate; there likely was not a violation for each pay period; and the court was likely to exercise its discretion to award civil penalties under PAGA only where defendants' actions were knowing and intentional, which arguably was not the case. In light of all of these impediments, class counsel "believe[d] a 90% discount of this claim to be reasonable, resulting in a valuation of \$492,500 as a reasonable estimate of the likelihood of what Plaintiff may recover at trial for the PAGA penalties" \$30,000 (a little over 6% of this new estimate maximum value) was considered by counsel reasonable given the risks involved.

With these figures in mind, the following is relevant: "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." [Citation.]" (7–Eleven Owners for Fair Franchising, *supra*, 85 Cal.App.4th at p. 1150.) "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial." (*Wershba, supra*, 91 Cal.App.4th at p. 246.) Class counsel is experienced, and they detail the inherent risks of any continued litigation, and these assessments appear reasonable. (*Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 801) The court finds the gross settlement amount of \$570,000 to be reasonable, fair and adequate, in light counsel's attestations, ruminations, and assessments, following the arm's length negotiations, the evidence presented, and counsel's extensive experience.

That being said, the court must separately address the fairness of the PAGA settlement, which is \$30,000 (separate and apart from its inclusion into the *overall fairness* of the \$570,000) with 75% to the state (\$22,500) and 25% (\$7,500) to the aggrieved employees on a proportionate basis, based on the number of payroll periods, during the "PAGA period." As an initial matter, the court directs counsel at the hearing **to confirm that the number of aggrieved employees matches the number of putative class members – 535.** Counsel should inform the court if the two numbers are different.

Counsel reduces defendant's maximum liability in this context from \$4,925,000 to \$492,500, based on number of factors (as detailed above). In the end, the \$30,000 PAGA

settlement is 6.09% of \$492,500, and it is not entirely clear whether this amount satisfies the standards enunciated under *Moniz*, as there is a paucity of published California appellate case law discussing the reasonableness of PAGA settlements when reached in conjunction with a class action settlement. That is not true with California federal case authority, however, which expressly indicates that “courts have raised concerns about settlements of less than 1% of the total value of a PAGA claim” when made in conjunction with class action settlement. (*Cole v. Lane Bryant, Inc.* (N.D. Cal., Feb. 10, 2025) 2025 WL 823268, at p. 3, citing *Haralson v. U.S. Aviation Services Corp.* (N.D. Cal. 2019) 383 F.Supp.3d 959, 972, emphasis added.) As was observed in *Vasquez v. Leprino Foods Company* (E.D. Cal., June 17, 2024), 2024 WL 3026131 at page 23, “federal district courts have approved a broad range of PAGA penalties. *See Magadia v. Wal-Mart Assocs., Inc.*, 384 F. Supp. 3d 1058, 1101 (N.D. Cal. 2019) [collecting cases in which settlements providing for \$10,000 in PAGA penalties were preliminarily or finally approved despite total settlement amounts of \$900,000 and \$6.9 million]; see also *Alcala v. Meyer Logistics, Inc.* (C.D. Cal. June 17, 2019), 2019 WL 4452961, at p. 9 [collecting cases in which PAGA penalties within the zero to two percent range were approved by courts].”) The settlement amount here is clearly not less than 1% and falls within the general range approved by federal courts, under the authorities noted above. As the LWDA has not objected to the PAGA settlement amount (and there are no objections by any aggrieved employees), and as the \$570,000 overall settlement seems sufficiently robust to further the remedial purposes of PAGA per *Moniz*, the court will approve the \$30,000 PAGA settlement as reasonable, fair and adequate.

D) Is Preliminary Certification Appropriate for the Class Action?

Class action certification questions are essentially procedural and involve an assessment of whether there is a common or general interest between numerous people. The burden is on the proponent to show an ascertainable class with a well-defined community interest, meaning predominant common questions of law or fact, class representatives with claims or defenses typical of class, and class representatives who can adequately represent the class. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.)

There has been a sufficient preliminary showing of numerosity, ascertainability, and predominance or commonality. The class, while somewhat large – 535 members during a defined class period, with names obtained through existing employment records, as well as 535 aggrieved employees for PAGA purposes (assuming this is conferred by counsel at the hearing) - is not cumbersome. It appears the claims are sufficiently similar, subject to the same policies or practices, with similar job duties and universal formula. It also appears the representatives have typical claims of the class/aggrieved employees as a whole. A class action appears the superior way to a fair and efficient adjudication of the lawsuit. Certification of the class seems appropriate.

E) Are the Procedures for the Claim Forms and Opt-Out Adequate?

Attached to Mr. Patel's declaration is the settlement agreement consummated by the parties, which in turn contains the "Notice of Proposed Class Action Settlement and Date for Final Approval Hearing" (hereafter, the notice) as well as an "Exclusion Form Request" and an "Objection to Settlement Form". The notice is a 6-page document; it describes the nature of the lawsuit (both the class and PAGA claims), a class member's/aggrieved employee's legal rights and options – doing nothing, opting out of the settlement, and objecting the settlement; it describes the procedures; it describes the nature of the case and why the member/employees is receiving notice; it summarizes the settlement terms; it indicates how distributions will be made and how taxes are reported; and it details the options under the settlement (doing nothing, opting out (although the PAGA claims remain binding), or objecting; it describes the final approval hearing; and it provides where additional information can be sought. The "Exclusion Request Form" and "Objection to Settlement Form" appear clear.

These descriptions outline the nature of the class claims; who may be eligible; the gross and net settlement amounts minus the amounts for attorney's fees, costs, settlement administration expenses, enhancements, and PAGA disbursement (and the formula utilized). They explain how an individual class member's award will be calculated (excluding those who opt out), and how the PAGA formula will be distributed to aggrieved employees. The Notice makes it clear that a form need not be submitted for payment, and indicates how the distribution will be calculated if no form is submitted. It indicates that plaintiffs are bound by the settlement agreement unless the class member affirmatively excludes himself or herself from the settlement (making it clear that the recipient will not be able to opt out of PAGA settlement distribution). The Notice informs the recipient that he or she can be part of the settlement group, how he or she can be part of the settlement but object; how he or she can opt-out. It advises of the preliminary and final approval hearings and their possible dates, and who to contact for more information. The notice adequately explains the options before the putative class member, including disputes and opt-out procedures. It explains the nature of the release given to defendants from all causes of action; and details where to contact counsel for more information.

The court has one concern. At no point does counsel explain whether these forms will be translated and sent in Spanish. Although the invoice attached to Jodey Lawrence's declaration indicates that Phoenix will charge \$1,000 for translation, no explanation is offered. The court directs counsel to address the court's translation issues as to the notice and all associated documentation at the hearing. How does counsel envision the translations working and what exactly will be translated?

F) Should the Court Grant Preliminary Appointment/Approval of the Settlement Administrator, Its Costs' Request, and Class Counsels' Requests for Attorney's Fees and Litigation Costs?

Plaintiffs ask the court to appoint Phoenix Class Action Administration Solutions as the third-party settlement/claims administrator, and asks the court to approve costs of up to \$10,000. Jodey Lawrence, President of Business Development of Phoenix, details the experience of the company, describes how it protects class data, details the procedures that will be followed, and explains the costs. Attached to Jodey Lawrence's declaration is a resume and an invoice, detailing the \$10,000 in expenses. The court wants counsel to explain what will be translated by Phoenix. The court will appoint Phoenix Class Action Administration Solutions as the third-party administrator, and approves costs of up to \$10,000. A final accounting should be submitted at the final approval hearing.

Plaintiffs also ask the court to appoint Bibiyan Law Group, P.C., as counsel, and specifically Vedang Patell, Keaton Mendoza, and David Bibiyan as attorneys. The court preliminarily appoints Bibiyan and the specific counsel as class/representative counsel.

In addition, plaintiff asks the court to award fees of \$199,500 in attorney's fees and up to \$30,000 in litigation costs. As noted above, plaintiffs are directed to provide a copy of the attorney-fee agreement before the final approval hearing.

The attorney fee amount of \$199,500 seems reasonable. (See, e.g., *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 578 [it is well settled that attorney fees under Code Civ. Proc., § 1021.5 may be awarded for class action suits benefiting a large number of people]; see also *Clark, supra*, 175 Cal.App.4th at p. 791.) The court has a duty to review and approve attorney's fees, even where the parties agree on the amount. (*Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Use of the percentage method in class action matters is permissible, and there is evidence the parties intended the attorney fees would be paid out of any common fund that had been created. That appears to be the case here. Although counsel does not offer any evidence to support the lodestar method, that is not dispositive. " 'Fee awards in class action average around one-third of the recovery' regardless of 'whether the percentage method or the lodestar method is used.'" (*Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 545.) The amount requested is standard in these matters and is preliminarily approved.

The court also preliminarily approves litigation costs of up to \$30,000, but will expect clear evidentiary support of the costs to be submitted at the final approval hearing.

G) Should the Court Preliminarily Grant an Enhancement for the Class Representatives?

Preliminarily, the court directs counsel to address whether, following any future consolidation of this case with Case No. 24CV01966, both plaintiffs (Francisco C. Quiroz and Joel Ochoa), will be class representatives and representatives of PAGA aggrieved employees.

The court will assume they will be similarly situated when analyzing their requests for the same enhancement. This assumption is critical to the court's analysis. If that is not the case, counsel should explain. If they are not going to be similarly situated, the court has grave doubts that both can receive the same enhancement amount.

With this said, and on the assumption they will be similarly situated, the court appoints Francisco Quiroz and Joel Ochoa as class and PAGA representatives.

As for the enhancement award of \$7,500 for each plaintiff (for a total of \$15,000), a more protracted analysis is required. It is established that a named plaintiff is eligible for a reasonable incentive payment to compensate him for the expense or risk he has incurred in conferring benefit on other members of the class. (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Relevant factors include actions the plaintiff has taken to protect the interests of the class, the degree to which the class had benefited from those actions, the amount of time and effort the plaintiff has expended, the risk to the class representative of commencing suit, the notoriety and personal difficulties encountered by the class representative, the duration of the litigation, and the personal benefit enjoyed by the class representative. (*Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 804.) The rationale in the end is to compensate class representatives for the expense or risk they have incurred in conferring a benefit on other members of the class. (*Id.* at p. 806.) Specificity, however, is required; further, there is no presumption of fairness in review of an incentive fee award. (*Id.* at p. 807; *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1395 [these "incentive awards" to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit].)

Each plaintiff has submitted a declaration in support of each enhancement request. Mr. Quiroz declares that during the litigation he was "actively involved in assisting my attorneys to support the wage and hour claims asserted," and he provided "first-hand knowledge and documentation" as to defendants' employment practices and wage and hour policies. He provided documentation; assisted in reviewing time and payroll records; his attorneys "called me to ask me questions over several times throughout the litigation," and he contacted attorneys to stay updated on the case. He was "also available for mediation," and helped consummate the settlement agreement. He has stayed in touch with counsel "to ensure that there was no undue delay in payment for other class members for whom I brought this Action." He estimates that he spend "at least 27 hours in connection with this matter. . . ." He knew that "[he] could face retaliation from Defendants and backlash from former coworkers who are loyal to Defendants. I have also had to provide a general release of claims to Defendants as part of the settlement." Mr. Ochoa's declaration reads the same as Mr. Quiroz's declaration, although Mr. Ochoa claims he has spent at least 24 hours in connection with the lawsuit.

In order to determine whether the \$15,000 enhancement (\$7,500 for each plaintiff, assuming they are both similarly situated after consolidation), the court starts with some basic math. Based on the numbers provided, the average payout to the class (based on 535 putative class members and the net settlement amount of \$288,500) will be \$533.64. \$7,500 represents an approximate multiplier of 14.05 over the average payout. While perhaps a little on the high side, this amount seems to fall within the outer ballpark of reasonableness. (See, e.g., *Clark v. American Residential Services, LLC*, *supra*, 175 Cal.App.4th at p. 806, fn. 14, citing *Alberto v. GMRI, Inc.* (2008) 252 F.R.D. 652, 669 [given a proposed \$5,000 incentive award and an average \$24.17 recovery (multiplier of just over 20), when there was no evidence demonstrating the quality of plaintiff's representative service; plaintiff should be prepared to present evidence of the named plaintiff's "substantial efforts" as class representative to justify the discrepancy between the award and those of the unnamed plaintiffs"]; see also *Staton v. Boeing Co.* (9th Cir, 2003) 327 F.3d 938, 975 [condemning a class enhancement of \$30,000 when average payout was \$1,000, a multiplier of 30]; compare with *Munoz*, *supra*, 186 Cal.App.4th at p. 412 [noting there that class representatives would receive more than twice as much as the average payment to class members, in contrast to the multipliers of 30 and 44 in *Stanton* and *Clark*, respectively]; see also *Pauley v. CF Entertainment* (C.D. Cal., July 23, 2020, No. 2:13-CV-08011-RGK-CW) 2020 WL 5809953, at *3 [plaintiffs request of \$10,000 each in class representative awards, is over 35 times greater than the average recovery per unnamed class member, and provide little justification for this].) Plaintiffs attempt to justify the amount by declaring they spent 27 and 24 hours involved in the litigation, respectively. This is not particularly helpful, as it suggests \$277 and \$312 an hour, respectively, which seems very high.

The court will preliminarily approve the two enhancement awards, but on the conditions that counsel confirm that each named plaintiff will be similarly situated for purposes of the consolidated lawsuit; and at the final approval hearing each plaintiff provide a more robust declaration justifying the \$7,500 enhancement award. If the court is not convinced that an adequate evidentiary showing is made at the final approval hearing, the court will reduce each enhancement to \$5,000 (for a total of \$10,000). Counsel is placed on notice.

In Summary:

- Plaintiffs are directed to file a Notice of Settlement as required by CRC 3.1385 (at least before final approval);
- Counsel is directed to provide the attorney-fee agreements or their substance as required by CRC 3.796(b) (at least before final approval).
- Counsel is directed to confirm that there are 535 putative class members **and** 535 aggrieved employees at issue in this settlement.
- Counsel should explain any conflict in the gross settlement amounts as discussed in the settlement agreement (see fn., 2, *ante*).
- Counsel should inform the court how and when it plans to proceed with consolidation of this case with Case No. 24CV01966. The court directs

counsel to confirm that in that consolidation both plaintiffs will be similarly situated for purposes of class and PAGA representations. If they are not similarly situated, the court will not award same enhancement amount to each.

- Counsel should confirm that it will comply with section 2699, subdivision (s)(3), which requires that a copy of the superior court's judgment as to civil penalties "shall be submitted to the [LWDA] within 10 days after entry of judgment."
- The court directs counsel to address the translation of all notice documents in both Spanish and English, and how that will be accomplished. While Phoenix is billing for \$1,000 for translation, counsel should explain what that actually entails.
- If the above explanations are satisfactory, the court will preliminarily approve the gross settlement of \$570,000 as fair, adequate, reasonable, and preliminarily certify the class of 535 as appropriate for class action treatment, as it has a well-defined community of interest, meaning there are predominant common questions of law and fact, and that plaintiffs as class representatives can adequately represent the class. The court will approve the representative PAGA settlement of \$30,000, although (again) counsel at the hearing should confirm that the number of aggrieved employees are also 535 (the same number as the putative class). The court will approve the Notice to be sent to the putative class and aggrieved employees, and finds generally that the procedures and releases are adequately explained (assuming the court's concerns about any Spanish translation are adequately addressed).
- The court will preliminarily approve the appointment of Phoenix Class Action Administration Solutions as the third party settlement administrator, and authorizes up to \$10,000 in costs. The court will want a final accounting at the final approval hearing.
- The court preliminarily approves the appointment of Bibiyan Law Group, P.C., and attorneys Vedant Patel, Leaton Mendoz, and David Babiyan as counsel. The court preliminarily approves an award of attorney fees of \$199,500 along with a maximum of \$30,000 in litigation costs (assuming sufficient documentation is offered at the final approval hearing to justify the final amount).
- The court preliminarily approves the appointment of plaintiff Francico and Quiroz and Joel Ochoa as class and PAGA representatives. The court preliminarily approves an enhancement of \$7,500 for each plaintiff, but on the condition that counsel assures the court that both will be similarly situated following consolidation; and that each provides a more robust justification for the amount requested at the final approval hearing. Counsel is placed on notice – if insufficient evidence is provided at the final approval hearing, the court will reduce the enhancements to \$5,000 for each.
- If the court is satisfied with counsel's explanations at the hearing, the court will sign the proposed order submitted on June 30, 2026.