

FILED
LOS ANGELES SUPERIOR COURT

JAN 31 2023

SHERIFF R. CARTER, EXECUTIVE OFFICER/CLERK
By N. Navarro Deputy
NANCY NAVARRO

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

SERGIO LUA, an individual and Class
Representative on Behalf of Himself and All
Other Similarly Situated Non-Exempt
Current and Former Employees of
Defendants,

Plaintiff,

v.

VAHE ENTERPRISES, INC., a California
Corporation; SLAUSON FOODS, a
Company of Unknown Jurisdiction dba
SLAUSON FOOD & BEVERAGE
WHOLESALEERS; VAHE KARAPETIAN,
an individual; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 20STCV33227

~~[TENTATIVE]~~ ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: January 31, 2023
Time: 10:00 a.m.
Dept.: SSC-17

1 **I. BACKGROUND**

2 Plaintiff Sergio Lua sues his alleged former employers, Defendants Vahe
3 Enterprises, Inc. ("Vahe Enterprises"), Slauson Foods dba Slauson Food & Beverage
4 Wholesalers ("Slauson Foods"), and Vahe Karapetian ("Karapetian") (collectively,
5 "Defendants") for wage and hour violations. Defendant Karapetian owns Vahe
6 Enterprises and Slauson Foods. Vahe Enterprises engages in the business of
7 manufacturing and refurbishing specialized vehicles to be used in the mobile food and
8 beverage service industry, commonly known as "food trucks." Slauson Foods engages
9 in the business of leasing food truck parking and operations space to food truck
10 owners/operators, and also operates as a food and beverage wholesaler doing business
11 under the name Slauson Food & Beverage Wholesalers. Plaintiff seeks to represent a
12 class of Defendants' current and former non-exempt employees.

13 On August 28, 2020, Plaintiff filed the class action complaint against Defendants
14 alleging causes of action for: (1) Failure to Pay Overtime Wages (Labor Code § 510);
15 (2) Failure to Provide Meal Breaks (Labor Code § 226.7); (3) Failure to Provide Rest
16 Breaks (Labor Code § 226.7); (4) Failure to Maintain Required Records (Labor Code
17 §§ 226, 1174); (5) Waiting Time Penalties (Labor Code §§ 201-203); (6) Failure to Pay
18 All Hours Worked (Labor Code § 204); (7) Failure to Provide Accurate Wage
19 Statements (Labor Code § 226); and (8) Violation of Cal. Bus. & Prof. Code § 17200,
20 et seq.

21 On January 31, 2022, the parties participated in a full-day, private mediation
22 with mediator Carla D. Barboza, Esq., at the conclusion of which the parties reached an
23 agreement to settle. The parties subsequently finalized settlement terms in the long-
24 form Settlement Agreement, a copy of which was filed with the Court.
25

1 On August 1, 2022, the Court called the matter of Plaintiff's motion for
2 preliminary approval of settlement for hearing and discussed issues with counsel. On
3 the same date, the Court issued a "checklist" to the parties listing deficiencies with the
4 proposed settlement. In response, Plaintiff filed a renewed motion for preliminary
5 approval and a revised Settlement Agreement attached as Exhibit A to the Declaration
6 of Grant Joseph Savoy filed November 14, 2022 ("Savoy Decl."). All references below
7 are to that agreement.

8 On December 8, 2022, the Court issued another checklist to the parties and
9 called the matter for hearing, at which the Court and counsel discussed the issues set
10 forth in the checklist. The Court ordered Plaintiff to file additional briefing and set
11 another hearing for January 31, 2023. Plaintiff filed further briefing and Declarations
12 on January 24, 2023.

13 Now before the Court is Plaintiff's motion for preliminary approval of the
14 settlement. For the reasons set forth below, the Court preliminarily grants approval for
15 the settlement.

16 **II. THE TERMS OF THE SETTLEMENT**

17 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

18 "Class" shall mean all persons who are or were previously employed (1) in
19 California; (2) by Defendants; (3) as non-exempt employees; (4) at any point from
20 August 28, 2016 through August 1, 2022. (§1.4)

21 "Class Period" means the period from August 28, 2016 to August 1, 2022.
22 (§1.11)

23 "Participating Class Member" means a Class Member who does not submit a
24 valid and timely Request for Exclusion from the Settlement. (§1.26)
25

1
2 **B. THE MONETARY TERMS OF SETTLEMENT**

3 The essential monetary terms are as follows:

- 4 • The Gross Settlement Amount (“GSA”) is **\$115,000** (¶1.21).
- 5 ○ Escalator Clause: Based on its records, Defendants estimates that, as of
- 6 the date of this Settlement Agreement, there are 94 Class Members and
- 7 6.122 Total Workweeks during the Class period. Should the actual
- 8 number of class members as of the date of August 1, 2022 be more than
- 9 15% higher than 94 Class Members, the Maximum Settlement shall
- 10 automatically increase proportionally for each percentage point over 15%.
- 11 (¶8)
- 12 • The Net Settlement Amount (“Net”) (**\$40,316.66**) is the GSA less:
- 13 ○ Up to **\$38,333.34** (33 1/3%) for attorney fees (¶3.2.2);
- 14 ○ Up to **\$20,000** for attorney costs (*Ibid.*);
- 15 ○ Up to **\$10,000** for a service award to the proposed class representative
- 16 (¶3.2.1); and
- 17 ○ Estimated **\$6,350** for settlement administration costs (¶3.2.3).
- 18 • Employer-side payroll taxes will be paid by Defendants separate from the GSA
- 19 (¶3.1).
- 20 • Assuming the Court approves all maximum requested deductions, approximately
- 21 \$40,316.66 will be available for distribution to participating class members.
- 22 Assuming full participation, the average settlement share will be approximately
- 23 \$428.90. ($\$40,316.66 \text{ Net} \div 94 \text{ class members} = \428.90).
- 24 • There is no Claim Requirement (¶3.1).
- 25 • The settlement is not reversionary (¶3.1).

- 1 • Individual Settlement Share Calculation: Each Participating Class Member's
2 Individual Class Payment will be calculated by (a) dividing the Net Settlement
3 Amount by the total number of Workweeks worked by all Participating Class
4 Members during the Class Period and (b) multiplying the result by each
5 Participating Class Member's Workweeks. (§3.2.4) Non-Participating Class
6 Members will not receive any Individual Class Payments. The Administrator
7 will retain amounts equal to their Individual Class Payments in the Net
8 Settlement Amount for distribution to Participating Class Members on a pro rata
9 basis. (§3.2.4.2)
- 10 • Tax Withholdings: 20% to wages; 30% to interest; 50% to penalties (§3.2.4.1).
- 11 • Funding of Settlement: Defendants shall fully fund the Gross Settlement
12 Amount, and also fund the amounts necessary to fully pay Defendants' share of
13 payroll taxes by transmitting the funds to the Administrator no later than 15
14 calendar days after the Effective Date. (§4.3)
- 15 • Distribution: Within 30 calendar days after Defendants fund the Gross
16 Settlement Amount, the Administrator will mail checks for all Individual Class
17 Payments, the Administration Expenses Payment, the Class Counsel Fees
18 Payment, the Class Counsel Litigation Expenses Payment, and the Class
19 Representative Service Payment. Disbursement of the Class Counsel Fees
20 Payment, the Class Counsel Litigation Expenses Payment and the Class
21 Representative Service Payment shall not precede disbursement of Individual
22 Class Payments. (§4.4)
- 23 • Uncashed Settlement Payment Checks: The face of each check shall prominently
24 state the date (not less than 180 days after the date of mailing) when the check
25 will be voided. (§4.4.1) For any Class Member whose Individual Class Payment

1 check is uncashed and cancelled after the void date, the Administrator shall
2 transmit the funds represented by such checks to the California Controller's
3 Unclaimed Property Fund in the name of the Class Member thereby leaving no
4 "unpaid residue" subject to the requirements of California Code of Civil
5 Procedure Section 384, subd. (b). (§4.4.3)

6 7 **C. TERMS OF RELEASES**

- 8 • Release of Claims: Effective on the date when Defendants fully fund the entire
9 Gross Settlement Amount and funds all employer payroll taxes owed on the
10 Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and
11 Class Counsel will release claims against all Released Parties as follows: (§5)
 - 12 ○ Release by Participating Class Members: All Participating Class
13 Members, on behalf of themselves and their respective former and present
14 representatives, agents, attorneys, heirs, administrators, successors, and
15 assigns, release Released Parties from (i) all claims that were alleged, or
16 reasonably could have been alleged, based on the Class Period facts stated
17 in the Operative Complaint. Participating Class Members do not release
18 any other claims, including claims for vested benefits, wrongful
19 termination, violation of the Fair Employment and Housing Act,
20 unemployment insurance, disability, social security, workers'
21 compensation, or claims based on facts occurring outside the Class
22 Period. (§5.2)
- 23 • "Released Parties" means: VAHE ENTERPRISES, INC. (also doing business as
24 "AA Cater Truck", "AA Leasing" and "HIVCO"); SLAUSON FOOD &
25 BEVERAGE WHOLESALEERS, INC. (also doing business as "Slauson Foods")

1 and "Slauson Foods Carts"); VAHE KARAPETJAN; the Vahe Karapetian Trust
2 Dated July 2, 2004; and any of their respective predecessor, current and
3 successor officers, shareholders, owners, members, directors, Non-Class
4 Member employees, representatives, trustees, attorneys, insurers and agents, as
5 well as their respective assigns, subsidiaries, and affiliates. (§1.31)

- 6 • The named Plaintiff will also provide a general release and a waiver of the
7 protections of Cal. Civ. Code §1542. (§5.1)
- 8 • The releases are effective on the date when Defendants fully fund the entire
9 Gross Settlement Amount and funds all employer payroll taxes owed on the
10 Wage Portion of the Individual Class Payments, which will occur no later than
11 15 calendar days after the Effective Date. (§4.3)

12 13 **D. SETTLEMENT ADMINISTRATION**

- 14 • The proposed Settlement Administrator is Phoenix Class Action Administration
15 Solutions (§1.2), which has provided evidence that no counsel are affiliated with it
16 and that it has adequate procedures in place to safeguard the data and funds to be
17 entrusted to it. (See Declaration of Jodey Lawrence.)
- 18 • Settlement administration costs are estimated to be \$6,350. (Lawrence Decl. §17.)
- 19 • Notice: The manner of giving notice is described below.
- 20 • Opt Out/Objection Dates: "Response Deadline" means Forty-Five (45) days after
21 the Administrator mails Notice to Class Members, and shall be the last date on
22 which Class Members may: (a) fax, email, or mail Requests for Exclusion from
23 the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement.
24 Class Members to whom Notice Packets are resent after having been returned
25 undeliverable to the Administrator shall have an additional Fourteen (14) calendar

1 days beyond the Response Deadline has expired. (§1.33) The same deadline
2 applies to the submission of workweek disputes. (§7.6)

- 3 ○ If the number of valid Requests for Exclusion identified in the Exclusion
4 List exceeds 10% of the total of all Class Members, Defendants may, but
5 are not obligated to, elect to withdraw from the Settlement. (§9)
- 6 • Notice of Final Judgment will be posted on the Settlement Administrator's website
7 (§7.8.1).

8 9 **III. SETTLEMENT STANDARDS AND PROCEDURE**

10 California Rules of Court, rule 3.769(a) provides: "A settlement or compromise
11 of an entire class action, or of a cause of action in a class action, or as to a party,
12 requires the approval of the court after hearing." "Any party to a settlement agreement
13 may serve and file a written notice of motion for preliminary approval of the settlement.
14 The settlement agreement and proposed notice to class members must be filed with the
15 motion, and the proposed order must be lodged with the motion." See Cal. Rules of
16 Court, rule 3.769(c).

17 "In a class action lawsuit, the court undertakes the responsibility to assess
18 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
19 dismissal of a class action. The purpose of the requirement [of court review] is the
20 protection of those class members, including the named plaintiffs, whose rights may not
21 have been given due regard by the negotiating parties." *Consumer Advocacy Group,*
22 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
23 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
24 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
25 4 Cal. 5th 260 ("*Wershba*"), [Court needs to "scrutinize the proposed settlement

1 agreement to the extent necessary to reach a reasoned judgment that the agreement is
2 not the product of fraud or overreaching by, or collusion between, the negotiating
3 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
4 concerned.”] [internal quotation marks omitted].

5 “The burden is on the proponent of the settlement to show that it is fair and
6 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
7 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
8 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
9 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
10 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

11 Notwithstanding an initial presumption of fairness, “the court should not give
12 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
13 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
14 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
15 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
16 members, the court must independently and objectively analyze the evidence and
17 circumstances before it in order to determine whether the settlement is in the best
18 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
19 In that determination, the court should consider factors such as “the strength of
20 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
21 the risk of maintaining class action status through trial, the amount offered in
22 settlement, the extent of discovery completed and stage of the proceedings, the
23 experience and views of counsel, the presence of a governmental participant, and the
24 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
25 factors is not exclusive and the court is free to engage in a balancing and weighing of

1 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
2 245.

3 At the same time, “[a] settlement need not obtain 100 percent of the damages
4 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
5 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
6 substantially narrower than it would be if the suits were to be successfully litigated,’
7 this is no bar to a class settlement because ‘the public interest may indeed be served by
8 a voluntary settlement in which each side gives ground in the interest of avoiding
9 litigation.’” *Id.* at 250.

10 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

11 **A. THERE IS A PRESUMPTION OF FAIRNESS**

12
13 The settlement is entitled to a presumption of fairness for the following reasons:

14 **1. The settlement was reached through arm’s-length bargaining**

15
16 On January 31, 2022, the parties participated in a full-day, private mediation
17 with mediator Carla D. Barboza, Esq., at the conclusion of which the parties reached a
18 preliminary agreement and entered into a Memorandum of Understanding. The parties
19 subsequently finalized settlement terms in the original long-form Settlement
20 Agreement. On or about November 14, 2022, after the Court held the initial
21 Preliminary Approval Hearing and issued its August 1 Minute Order and Checklist, the
22 Parties entered into the new Settlement Agreement. (Savoy Decl. ¶¶9-10.)
23

24 //

2. The investigation and discovery were sufficient

Plaintiff's counsel represents that in anticipation of the mediation, Defendants produced documents relating to its policies, practices, and procedures regarding its wage and hour practices, paying nonexempt employees for all hours worked, meal and rest period policies, meal premiums paid, and payroll and operational policies. As part of Defendants' production, Class Counsel represents it also reviewed time records, payroll records, and information relating to the size and scope of the Class, as well as data permitting Class Counsel to understand the number of workweeks and pay periods in the Class Period. (*Id.* at ¶9.) Counsel represents that Defendants produced approximately 85% of all class records for analysis and review. (*Id.* at ¶29.) Counsel provided all of the payroll, timekeeping, and class data to their expert statistician for damages analysis. (*Id.* at ¶14.) Counsel also received information from current and former employee witnesses of Defendants in regard to damages. (*Id.* at ¶34.)

This is sufficient to value the case for settlement purposes.

3. Counsel is experienced in similar litigation

Class Counsel represent that they are experienced in class action litigation, including wage and hour class actions. (*Id.* at ¶48.)

4. Percentage of the class objecting

This cannot be determined until the final fairness hearing. Weil & Brown et al., Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing.”].

1
2 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
3 **FAIR, ADEQUATE, AND REASONABLE**

4 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
5 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
6 does when it approves a settlement as in good faith under Code of Civil Procedure
7 section 877.6, the court must at least satisfy itself that the class settlement is within the
8 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
9 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
10 consider and weigh the nature of the claim, the possible defenses, the situation of the
11 parties, and *the exercise of business judgment* in determining whether the proposed
12 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
13 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

14
15 **1. Amount Offered in Settlement**

16 The most important factor is the strength of the case for plaintiffs on the merits,
17 balanced against the amount offered in settlement.” (*Id.* at 130.)

18 Class Counsel estimated Defendants’ maximum exposure at \$1,901,702.25 and
19 realistic exposure at \$475,425.56, based on the following analysis:

Violation	Maximum Exposure	Realistic Exposure
Meal Period Violations	\$611,446.50	All claims discounted by 50% based on likelihood of obtaining certification; and another 50% on
Rest Period Violations	\$611,446.50	
Unpaid Overtime	\$135,449.25	
Waiting Time Penalties	\$120,360.00	
Wage Statement Penalties	\$376,000.00	

Failure to Maintain Records	\$47,000.00	likelihood of prevailing at trial.
Total	\$1,901,702.25	\$475,425.56

(Savoy Decl. ¶¶14-20; Supp. Decl. of Savoy ¶4.)

Class Counsel obtained a gross settlement valued at \$115,000. This is approximately 6% of Defendants' maximum exposure and 24.2% of Defendants' realistic exposure.

2. The Risks of Future Litigation

The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members. Even if a class is certified, there is always a risk of decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 ["Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate."].) Further, the settlement was negotiated and endorsed by Class Counsel who, as indicated above, are experienced in class action litigation. Based upon their investigation and analysis, the attorneys representing Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and adequate. (Savoy Decl. ¶20.)

3. The Releases Are Limited

The Court has reviewed the Releases to be given by the absent class members and the named plaintiff. The releases, described above, are tailored to the pleadings and

1 release only those claims in the pleadings. There is no general release by the absent
2 class. The named plaintiff's general release is appropriate given that he was represented
3 by counsel in its negotiation.
4

5 **4. Conclusion**

6 Class Counsel estimated Defendants' maximum exposure at \$1,901,702.25 and
7 realistic exposure at \$475,425.56. Class Counsel obtained a gross settlement valued at
8 \$115,000. This is approximately 6% of Defendants' maximum exposure and 24.2% of
9 Defendants' realistic exposure, which, given the uncertain outcomes, including the
10 potential that the class might not be certified, that liability is a contested issue, and that
11 the full amount of penalties would not necessarily be assessed even if the class is certified
12 and liability found, the settlement is within the "ballpark of reasonableness."
13

14 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

15 A detailed analysis of the elements required for class certification is not required,
16 but it is advisable to review each element when a class is being conditionally certified.

17 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
18 advocating class treatment must demonstrate the existence of an ascertainable and
19 sufficiently numerous class, a well-defined community of interest, and substantial
20 benefits from certification that render proceeding as a class superior to the alternatives."
21 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

22 **1. The Proposed Class is Numerous**

23 There are approximately 94 putative Class Members. (Savoy Decl. ¶7.)
24 Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund*
25 *Cases* (2018) 25 Cal.App.5th 369, 393: stating that the "requirement that there be many

1 *parties to a class action is liberally construed,”* and citing examples wherein classes of
2 as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v.*
3 *Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

4 **2. The Proposed Class Is Ascertainable**

5 “A class is ascertainable, as would support certification under statute
6 governing class actions generally, when it is defined in terms of objective
7 characteristics and common transactional facts that make the ultimate identification
8 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
9 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

10 The class is defined above. Class Members are ascertainable through
11 Defendants’ records. (Savoy Decl. ¶29.)

12 **3. There Is A Community of Interest**

13 “The community of interest requirement involves three factors: ‘(1) predominant
14 common questions of law or fact; (2) class representatives with claims or defenses typical
15 of the class; and (3) class representatives who can adequately represent the class.’”
16 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

17 As to predominant questions of law or fact, Plaintiff alleges that Defendants Vahe
18 Enterprises and Slauson Foods were both owned and operated by Defendant Vahe
19 Karapetian, share side-by-side addresses and lots, and share the same written policies and
20 procedures applicable to the causes of action set forth in the operative complaint in the
21 Action. (Plaintiff’s Supp. Brief ISO Prelim at 2:14-3:1.) Plaintiff alleges that Defendants
22 failed to provide timely, uninterrupted meal and rest periods to all Class Members as a
23 regular practice. Plaintiff alleges that Defendants failed to properly compensate Class
24 Members for all hours worked, including overtime hours worked. Plaintiff further asserts
25 that Defendants failed to adequately compensate its former employees for all wages owed

1 at the time of their separation from employment. Plaintiff alleges that Defendants'
2 policies and practices were uniform as to all Class Members, and that all class members
3 were subjected to the same workplace experiences as him. (Renewed MPA at 22:6-13.)

4 As to typicality, Plaintiff alleges that his claims are similar to those of the other
5 Class Members. Plaintiff represents that he was jointly employed by all Defendants, as
6 he worked as an active non-exempt employee of both Vahe and Slauson and received
7 payroll checks from both Vahe and Slauson throughout the duration of his employment.
8 (Declaration of Sergio Lua filed January 24, 2023, ¶3.) He further represents that he was
9 subjected to identical wage and hour policies under both Defendant entities, as well as the
10 class members, whether they were employed on the Vahe Assembly and Manufacturing
11 side, the Vahe non-Assembly side, or the Slauson Foods side. (*Id.* at ¶¶6, 11.)

12 As to adequacy, Plaintiff represents that he has participated in the litigation and is
13 aware of the risks and duties of serving as class representative. (Declaration of Sergio
14 Lua filed November 14, 2022, ¶¶4-8.) As previously stated, Class Counsel have
15 experience in class action litigation.

16 17 **4. Substantial Benefits Exist**

18 Given the relatively small size of the individual claims, a class action is superior to
19 separate actions by the class members.

20 21 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS** 22 **OF DUE PROCESS**

23 The purpose of notice is to provide due process to absent class members. A practical
24 approach is required, in which the circumstances of the case determine what forms of
25 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California

Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the stake of the individual class members; (4) the cost of notifying class members; (5) the resources of the parties; (6) the possible prejudice to class members who do not receive notice; and (7) the res judicata effect on class members.

1. Method of class notice

Not later than 21 calendar days after the Court grants Preliminary Approval of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (¶4.2) Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice, with Spanish translation. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database (¶7.4.2)

Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time. (¶7.4.3)

The deadlines for Class Members' written objections, Challenges to Workweeks, and Requests for Exclusion will be extended an additional 15 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-

1 mailed. The Administrator will inform the Class Member of the extended deadline with
2 the re-mailed Class Notice. (§7.4.4)

3 **2. Content of class notice.**

4 A copy of the proposed class notice is attached to the Settlement Agreement.
5 The notice includes information such as: a summary of the litigation; the nature of the
6 settlement; the terms of the settlement agreement; the maximum deductions to be made
7 from the gross settlement amount (i.e., attorney fees and costs, the enhancement award,
8 and claims administration costs); the procedures and deadlines for participating in,
9 opting out of, or objecting to, the settlement; the consequences of participating in,
10 opting out of, or objecting to, the settlement; and the date, time, and place of the final
11 approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be given in both
12 English and Spanish (§1.10).

13 **3. Settlement Administration Costs**

14 Settlement administration costs are estimated at **\$6,350**, including the cost of
15 notice (§3.2.3). Prior to the time of the final fairness hearing, the settlement
16 administrator must submit a declaration attesting to the total costs incurred and
17 anticipated to be incurred to finalize the settlement for approval by the Court.

18 19 **E. ATTORNEY FEES AND COSTS**

20 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
21 implied, that has been entered into with respect to the payment of attorney fees or the
22 submission of an application for the approval of attorney fees must be set forth in full in
23 any application for approval of the dismissal or settlement of an action that has been
24 certified as a class action.”

1 Ultimately, the award of attorney fees is made by the court at the fairness
2 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
3 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
4 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
5 1132-1136. In common fund cases, the court may use the percentage method. If
6 sufficient information is provided a cross-check against the lodestar may be conducted.
7 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
8 agreement by the parties to the contrary, “the court ha[s] an independent right and
9 responsibility to review the attorney fee provision of the settlement agreement and
10 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
11 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

12 The question of class counsel’s entitlement to **\$38,333.34** (33 1/3%) in attorney
13 fees will be addressed at the final fairness hearing when class counsel brings a noticed
14 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
15 the court with current market tested hourly rate information and billing information so
16 that it can properly apply the lodestar method and must indicate what multiplier (if
17 applicable) is being sought.

18 Class counsel should also be prepared to justify the costs sought (capped at
19 **\$20,000**) by detailing how they were incurred.

20 21 **F. SERVICE AWARD**

22 The Settlement Agreement provides for a service award of up to **\$10,000** for the
23 class representative (§3.2.1). Trial courts should not sanction enhancement awards of
24 thousands of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours
25 expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the

1 form of quantification of time and effort expended on the litigation, and in the form of
2 reasoned explanation of financial or other risks incurred by the named plaintiffs, is
3 required in order for the trial court to conclude that an enhancement was ‘necessary to
4 induce [the named plaintiff] to participate in the suit’” *Clark v. American*
5 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in
6 original.

7 The Court will decide the issue of the enhancement award at the time of final
8 approval.

9
10 **V. CONCLUSION AND ORDER**

11 The Court hereby:

12 (1) Grants preliminary approval of the settlement as fair, adequate, and
13 reasonable;

14 (2) Grants conditional class certification;

15 (3) Appoints Sergio Lua as Class Representative;

16 (4) Appoints Solouki | Savoy, LLP as Class Counsel;

17 (5) Appoints Phoenix Class Action Administration Solutions as Settlement
18 Administrator;

19 (6) Approves the proposed notice plan; and

20 (7) Approves the proposed schedule of settlement proceedings as follows:

- 21 • Preliminary approval hearing: January 31, 2023
- 22 • Deadline for Defendant to provide class list to settlement administrator:
23 February 21, 2023 (within 21 calendar days from preliminary approval)
- 24 • Deadline for settlement administrator to mail notices: March 7, 2023 (within 14
25 days after receiving the Class Data)

- Deadline for class members to opt out: April 21, 2023 (45 calendar days from the initial mailing of the Notice Packets)
- Deadline for class members to object: April 21, 2023 (45 calendar days from the initial mailing of the Notice Packets)
- Deadline for class counsel to file motion for final approval:
~~October 15~~ 5/26, 2023 (16 court days prior to final fairness hearing)
- Final fairness hearing: 6/21, 2023, at 9:00 a.m.

Dated: 01/31/2023

Maren E. Nelson

MAREN E. NELSON

Judge of the Superior Court