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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

MAY 02 2023

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO

ANTHONY ROBLES and DAVID  
CHAVEZ, individually and on behalf of all  
others similarly situated,

Plaintiff,

vs.

PEPSICO BEVERAGE SALES, LLC;  
BOTTLING GROUP, LLC; CB  
MANUFACTURING COMPANY, INC.;  
and DOES 1 through 20, inclusive,

Defendants.

Case No. CIVSB2204715

*Assigned for all purposes to  
Hon. David Cohn  
Dept. S-26*

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

Date: June 12, 2023  
Time: 10:00 a.m.  
Dept: S-26

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13 situated current and former employees of Defendants  
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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff David Chavez and Plaintiff  
3 Anthony Robles (“Plaintiffs”) request that the Court grant preliminary approval of a class action  
4 settlement of wage and hour claims, including claims under the California Private Attorneys General  
5 Act of 2004, codified at Lab. Code § 2698, *et seq.* (“PAGA”), against Defendants PepsiCo Beverage  
6 Sales, LLC; Bottling Group, LLC; and CB Manufacturing Company, Inc.; and DOES 1 through 20,  
7 inclusive (“Defendants”) (collectively, Plaintiffs and Defendants referred to as, the “Parties”). The  
8 putative class consists of approximately 8,297 non-exempt employees who worked for Defendants in  
9 California (individually, “Class Member”; collectively, the “Class”) from January 1, 2020 through  
10 December 31, 2022 (the “Class Period”). The basic terms of the Joint Stipulation of Settlement  
11 (“Settlement Agreement” or “Settlement”)<sup>1</sup> provide for the following:

- 12 (1) A non-reversionary Gross Settlement Amount of \$1,250,000 allocated to  
13 approximately 8,297 Class Members on a pro rata basis according to the number  
14 of workweeks each Class Member worked during the Class Period;
- 15 (2) An award of up to one-third of the Gross Settlement Amount (currently  
16 \$416,666.67) and up to \$40,000 in reimbursement of costs to Plaintiffs’ Counsel  
17 for services rendered as counsel on this matter;
- 18 (3) Incentive Award of up to \$5,000.00 to each Plaintiff;
- 19 (4) Settlement Administration fees and costs of up to \$50,000.00; and
- 20 (5) Payment to the California Labor and Workforce Development Agency (“LWDA”)  
21 of \$35,000 for civil penalties pursuant to PAGA. Seventy-five percent (75%) of this  
22 payment will be paid to the California Labor and Workforce Development Agency  
23 (“LWDA Payment”), and twenty-five percent (25%) will be paid to the Net  
24 Settlement Amount for distribution to Class Members.

25 The Settlement satisfies the criteria for preliminary approval and falls well within the range of

26 <sup>1</sup> A true and correct copy of the fully-executed “Joint Stipulation of Settlement” is attached as **Exhibit**  
27 **A** to the Declaration of Namrata Kaur in Support of Plaintiffs’ Motion for Preliminary Approval of Class  
28 Action Settlement (“Kaur Decl.”), filed concurrently herewith. Unless otherwise defined herein, all  
capitalized terms in this Motion will be used as such terms are defined and used in the Settlement.

1 reasonableness given the risks and costs of continued litigation. The Settlement was reached through  
2 informed, arms-length bargaining at and after mediation between experienced attorneys. As such,  
3 Plaintiffs request that the Court grant preliminary approval of the Settlement, conditionally certify the  
4 Class for settlement purposes only, appoint Plaintiffs as the Class Representatives, appoint Plaintiffs’  
5 Counsel as Class Counsel, appoint Phoenix Class Action Administration Solutions as the Settlement  
6 Administrator, authorize the Settlement Administrator to send notice of the Settlement, and set a final  
7 approval hearing date.

## 8 **II. SUMMARY OF THE LITIGATION**

9 On October 19, 2021, Plaintiff David Chavez filed a class action and representative complaint  
10 against Bottling Group, LLC in the Kern County Superior Court alleging he and class members were (1)  
11 not provided adequate meal periods , (2) not provided adequate rest periods, (3) not provided minimum  
12 and straight time wages, (4) not provided overtime compensation, (5) not reimbursed for necessary  
13 business expenditures, (6) not provided all wages due upon termination of employment (7) not provided  
14 accurate wage statements and failure to maintain required payroll records (8) violation of Business and  
15 Professions Code and (9) representative action for civil penalties pursuant to PAGA. Farzad Decl., ¶ 3.

16 On March 28, 2022, Plaintiff Anthony Robles filed a class action complaint against PepsiCo  
17 Beverage Sales, LLC in the San Bernardino County Superior Court alleging he and class members were  
18 (1) not paid minimum wages, (2) not provided overtime wages, (3) not provided meal periods, (4) not  
19 provided rest breaks, (5) not reimbursed for business expenses, (6) not provided accurate itemized wage  
20 statements, (7) not provided all wages due upon separation of employment, (8) not provided all wages due  
21 during employment and (9) violation of Business and Professions Code. Kaur Decl., ¶ 3. On November  
22 4, 2022 Plaintiff Anthony Robles filed a Joint stipulation for leave to file a First amended complaint to  
23 add a PAGA cause of action. Kaur Decl., ¶ 3.

24 The Parties agreed to global mediation early into litigation and Defendants agreed to informally  
25 produce information and data in preparation thereof. Defendants produced Plaintiffs’ and a sampling of  
26 class member’s pay records and time punch data and employee handbooks and other written policies. The  
27 Parties agreed to pause formal discovery and schedule mediation to determine whether a resolution was  
28 possible prior to class certification and trial in each action. Kaur Decl., ¶ 4.

1 On December 2, 2022, the Parties attended a mediation session with David A. Rotman, a respected  
2 mediator. *Id.* at ¶ 5. After a full day of negotiating, the Parties agreed to a settlement amount in the next  
3 few days and executed a Memorandum of Understanding with the material terms the parties had agreed  
4 to. *Id.* The Parties spent the next few months negotiating the terms of the Settlement, which was finalized  
5 in April of 2023. *Id.*

6 Pursuant to the Parties' settlement, Plaintiff Anthony Robles will amend his Complaint to add  
7 Bottling Group, LLC; CB Manufacturing Company, Inc; and PepsiCo, Inc. as Defendants, and to add  
8 Plaintiff David Chavez as a named Plaintiff and class representative, and to add claims under CA Labor  
9 Code Sections 218; 218.5; 558; 1197.1; 2699; and California Code of Regulations, Title 8, section 11010  
10 et seq. Kaur Decl., ¶ 6.

11 Plaintiffs submitted the Settlement to the LWDA pursuant to Lab. Code § 2699(1)(2). Kaur Decl.,  
12 at ¶ 7, Exhibit B (Confirmation of Submission of Settlement to LWDA).

### 13 **III. SUMMARY OF THE SETTLEMENT**

#### 14 **A. Terms of Settlement**

15 Plaintiffs and Defendants agreed to settle the class claims in exchange for a Gross Settlement  
16 Amount of \$1,250,000.00. Settlement Agreement, § X.E. The Gross Settlement Amount will be used to  
17 make payments for the following: (1) Individual Settlement Payments to Participating Class Members;  
18 (2) attorneys' fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3)  
19 reimbursement of Class Counsel's litigation costs of up to \$40,000; (4) an Incentive Award to each  
20 Plaintiff of up to \$5,000.00; (5) Settlement Administration fees and costs of \$50,000; and (6) a payment  
21 to the LWDA of \$35,000 pursuant to PAGA. *Id.* at § X.E. Class Members' Individual Settlement  
22 Payments will be distributed after final approval of the Settlement and Defendants fund the Gross  
23 Settlement Amount. *Id.* at § X.E.2. Class Members will receive their pro-rata share based on how many  
24 workweeks they worked during the Class Period as compared to all workweeks worked by all Class  
25 Members during the Class Period ("Workweek Totals"). Settlement Agreement at § X.E.2.(2). The  
26 Settlement Administrator will calculate the actual estimated recovery to include in the Class Notice and  
27 provide the estimated low and high range of possible recovery at final approval. Settlement Agreement  
28 at § X.F.8.



1 The Individual Settlement Payments to Class Members will be allocated for tax purposes as  
2 follows: 20% to wages; 80% to penalties and interest. Settlement Agreement, § X.E.2.c. From each  
3 Class Member's Gross Wage Portion, payroll deductions will be made for state and federal withholding  
4 taxes and any other applicable payroll deductions owed by the Class Member's employer as a result of  
5 the payment. Settlement agreement at § X.E.2.c. No portion of the Gross Settlement Amount will revert  
6 to Defendants. Funds from uncashed or undeliverable checks will be tendered by the Settlement  
7 Administrator to the State Controller Unclaimed Wages Fund in the name of the Class Member for whom  
8 the funds are designated. Settlement Agreement at § X.E.2.e.

9 **B. Proposed Opt-Out and Objection Process**

10 The Settlement Administrator will send Class Members the Notice of Class Action Settlement  
11 ("Class Notice") by first-class mail after checking for updated addresses through the National Change of  
12 Address database. Settlement Agreement, § X.F.4.c. The Class Notice provides information regarding  
13 the nature of the lawsuit, a summary of the substance of the settlement terms, the formula for calculating  
14 Individual Settlement Payments, the individual's estimated payout, a statement that Class Members who  
15 take no action will release their claims and receive settlement checks, instructions regarding how to  
16 dispute the calculations, instructions regarding how to request exclusion or object to the Settlement, the  
17 date for the final approval hearing, the amounts sought for attorneys' fees and costs, the Settlement  
18 Administration Costs, the Class Representatives' Incentive Awards, and the PAGA allocation. *See*  
19 Settlement Agreement, Exhibit 1 (Class Notice).

20 The Class Notice provides instructions for Class Members who choose to exclude themselves  
21 from the Settlement. *See* Settlement Agreement, Exhibit 1 (Class Notice). To opt out, Class Members  
22 are instructed to submit a Request for Exclusion to the Settlement Administrator by a specified date (45  
23 days after the date of mailing of the Class Notice). *See* Settlement Agreement, Ex. 1 (Class Notice). Class  
24 Members do not need to submit a claim form to participate in the Settlement. *Id.* Class Members are  
25 informed of how they can object to the Settlement, and the Class Notice informs Class Members of the  
26 date, time, and location of the final fairness and approval hearing so that they can appear in person. *See*  
27 Settlement Agreement, Ex. 1 (Class Notice). Accordingly, the content of the Class Notice complies with  
28 the requirements of Cal. R. Ct. 3.766(d).

1 If Class Notice packets are returned as undeliverable, the Settlement Administrator shall attempt to  
2 determine a correct address by using a single computer or other search using the social security number  
3 of the individual involved and shall forward the Notice to the correct address. Settlement Agreement, §  
4 X.F.4.c. The initial 45-day notice period and extension process ensures the notice program provides due  
5 process by giving Class Members enough time to determine whether they want to participate in the  
6 Settlement. This means of notice is reasonably calculated to apprise Class Members of the pendency of  
7 the action. *See* Cal. R. Ct. 3.766 (d)-(f).

### 8 **C. Proposed Release**

9 The release to be given by Class Members is limited to Defendants and each of their past or present  
10 officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants,  
11 auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest,  
12 subsidiaries, affiliates, parents and attorneys and each of their company-sponsored employee benefit  
13 plans and all of their respective officers, directors, employees, administrators, fiduciaries, trustees, and  
14 agents (the “Released Parties”). Settlement Agreement, § X.B. Under the proposed release, Class  
15 Members who do not exclude themselves from the Settlement will be deemed to have released or  
16 waived the following “Released Claims” against the Released Parties during the period of January 1,  
17 2020 through December 31, 2022:

18 any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses,  
19 attorneys’ fees, damages, or causes of action contingent or accrued for, alleged, or that could  
20 have been alleged, based on the facts, allegations and claims asserted in the Second Amended  
21 Complaint filed in the *Robles* Action under any theory of law, including without limitation  
22 to, all claims for alleged violations of the Labor Code and/or Wage Orders, which were  
23 alleged or that could have been alleged based upon the facts pleaded in the Actions,  
24 including, but not limited to, unpaid minimum wage, straight time, or overtime wages  
25 (including on an off-the-clock, rounding, calculation of regular rates or other theory), timing  
26 of payment, meal and rest period claims (including claims regarding how any meal or rest  
period penalties were calculated), unpaid expense reimbursements, record-keeping  
violations, sick time violations, vacation pay violations, and any and all associated penalties  
and damages (including but not limited to PAGA penalties, pay stub penalties, waiting time  
penalties, any other penalties arising under the California Labor Code, and liquidated  
damages) (“Released Claims”).

27 *Id* at § X.B.  
28

1 Only named Plaintiffs will agree to a general release of any and all claims, whether known or  
2 unknown, which exist or may exist on Plaintiffs' behalf as of the date of the Settlement, and a waiver of  
3 Civ. Code § 1542. Settlement Agreement, § X.C.

#### 4 **IV. LEGAL ARGUMENTS SUPPORTING PRELIMINARY APPROVAL**

##### 5 **A. Provisional Certification of the Class is Appropriate**

6 Class certification is appropriate when there exists (1) an ascertainable and sufficiently numerous  
7 class, (2) a well-defined community of interest among class members, and (3) when certification would  
8 be a fair and efficient means of adjudicating the action, rendering class litigation superior to alternative  
9 means. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1021 (2012).

##### 10 **1. The Proposed Class is Numerous and Ascertainable**

11 Whether a class is "ascertainable" is "determined by examining (1) the class definition, (2) the  
12 size of the class, and (3) the means available for identifying class members." *Reyes v. Bd. of Supervisors*,  
13 196 Cal. App. 3d 1263, 1271 (1987). Here, the Class consists of all current and former non-exempt  
14 employees who are and/or were employed by Defendants in California at any time from January 1, 2020  
15 through December 31, 2022. Settlement Agreement, § I.I. Defendants' records show the Class consists  
16 of approximately 8,297 individuals, making joinder of all Class Members impracticable. Kaur Decl., ¶  
17 8. Further, the Class is readily ascertainable from Defendants' business records because all Class  
18 Members are current or former employees of Defendants. *Id.*

##### 19 **2. A Well-Defined Community of Interest Exists Among Class Members**

20 "[T]he 'community of interest requirement embodies three factors: (1) predominant common  
21 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)  
22 class representatives who can adequately represent the class.'" *Fireside Bank v. Superior Court*, 40 Cal.  
23 4th 1069, 1089 (2007) (quoting *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 470 (1981)).

##### 24 **a. Common Questions Predominate**

25 To assess whether common questions predominate, courts focus on whether the theories of  
26 recovery advanced are likely to prove amenable to class treatment. *See Sav-On Drug Stores, Inc. v.*  
27 *Superior Court*, 34 Cal. 4th 319, 327 (2004). In other words, courts determine whether the elements  
28

1 necessary to establish liability are susceptible of common proof, even if the class members must  
2 individually prove their damages. *Brinker, supra*, 53 Cal. 4th at 1021-1022, 1024.

3 Plaintiffs allege that Defendants maintained uniform employment policies and/or practices that  
4 illegally deprived Class Members of lawful wages including minimum wages and overtime wages, meal  
5 periods, rest breaks, reimbursement of necessary business expenses, accurate itemized wage statements,  
6 and all wages due during employment and waiting time pay. Kaur Decl., ¶ 9. Plaintiffs' allegations present  
7 common legal and factual questions of, *inter alia*, whether Defendants applied the same scheduling,  
8 timekeeping, minimum and overtime pay, meal period, rest break, reimbursements, wages due during  
9 employment and final pay policies to all Class Members; whether these policies and practices resulted in  
10 Labor Code violations; whether Defendants' conduct was intentional; and whether Class Members are  
11 entitled to penalties. *Id.* These common questions could be resolved using Class Members' schedules,  
12 time punches, and payroll records, Defendants' corporate representative's testimony, written  
13 communications between Defendants and Class Members, and Class Member declarations. *Id.* Thus, the  
14 Court can and should exercise its discretion to grant conditional class certification for settlement purposes.

15 *b. Plaintiffs' Claims are Typical of the Class Claims*

16 The typicality requirement is satisfied when the legal theories and facts supporting Plaintiffs'  
17 claims are substantially similar to other class members. *See Classen v. Weller*, 145 Cal. App. 3d 27, 46  
18 (1983). Here, Plaintiffs allege that they and other Class Members were employed by Defendant and  
19 injured by Defendants' common wage and hour policies and practices, including Defendants'  
20 scheduling, timekeeping, minimum and overtime pay, meal period, rest break, reimbursements, wages  
21 due during employment and final pay policies. Kaur Decl., ¶ 10. Through thousands of documents and  
22 information exchanged in informal discovery, Plaintiffs confirmed that these common policies and  
23 practices similarly affected Plaintiffs and the Class. *Id.* Thus, Plaintiffs' claims arise from the same  
24 employment practices and are based on the same legal theories as those applicable to other Class  
25 Members, as further explained in Plaintiffs' exposure analysis below.

26 *c. Plaintiffs and Plaintiffs' Counsel Will Adequately Represent the Interests*  
27 *of the Proposed Class*  
28

1 Certification requires adequacy of both the proposed class representative(s) and proposed class  
2 counsel. With respect to the class representative, a plaintiff must adequately represent and protect the  
3 interests of other members of the class and demonstrate that his or her claim is not inconsistent with the  
4 claims of other members of the class. *See Capitol People First v. State Dep't of Developmental Servs.*,  
5 155 Cal. App. 4th 676, 696-697 (2007). Plaintiffs demonstrated an ability to advocate for the interests  
6 of the Class by initiating this litigation, gathering documents and information, being available on the  
7 day of mediation to answer questions, meeting with their attorneys on several occasions to understand  
8 the claims and theories of liability at issue, assisting attorneys in preparing for mediation, reviewing the  
9 proposed settlement agreement to understand its legal effect, and obtaining a fair settlement on behalf  
10 of Class Members who stand to recover a substantial amount under the Settlement. Kaur Decl., ¶ 11.

11 Likewise, Rastegar Law Group APC and Aegis Law Firm, PC have expended considerable time  
12 and effort on this case and will continue to do so through final approval. *See generally*, Farzad Rastegar  
13 Decl; Kaur Decl. Accordingly, Plaintiffs should be appointed Class Representatives, and Plaintiffs'  
14 Counsel should be appointed Class Counsel.

### 15 **3. A Class Action is Superior to a Multitude of Individual Lawsuits**

16 Class treatment is superior to other methods of adjudication when the probability is small that  
17 each class member will come forward to prove his or her claim and when the class approach would deter  
18 and redress the alleged wrongdoing. *See Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435, 446 (2000);  
19 *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1537-1538 (2008). Here, few of the other  
20 8,297 Class Members have shown any interest in bearing the expense and burden of litigating their own  
21 claims. Kaur Decl. ¶ 21. Thus, a class action is the superior method for seeking relief.

### 22 **B. The Settlement Meets the Standards for Preliminary Approval**

23 Preliminary approval is warranted if the settlement falls within a "reasonable range." *See North*  
24 *County Contractor's Ass'n., Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089-90 (1994);  
25 Conte & Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002). In reviewing the fairness of a  
26 class action settlement, due regard should be given to what is "otherwise a private consensual  
27 agreement between the parties." *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1389  
28 (2010). The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the

1 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,  
2 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.*

3 Reasonableness and fairness are presumed where (1) the settlement is reached through “arms-  
4 length bargaining”; (2) investigation and discovery are “sufficient to allow counsel and the court to act  
5 intelligently”; (3) counsel is “experienced in similar litigation”; and (4) the percentage of objectors “is  
6 small.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996). The Settlement satisfies the first  
7 three factors. Plaintiff will analyze the fourth factor at the final approval stage.

8 **1. The Settlement is Entitled to a Presumption of Fairness**

9 *a. The Settlement is the Result of Arm’s-Length Negotiations*

10 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless  
11 evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are  
12 conducted in good faith. Here, the Settlement was the product of extensive investigation and a full day  
13 mediation session with a respected mediator after exchange of informal discovery. Kaur Decl. ¶¶ 4-5.  
14 The negotiations were adversarial, conducted at arm’s length and tempered by the efforts of both sides  
15 to serve the interests of their clients. *Id.* at ¶ 6. The amount of Plaintiffs’ requested Incentive Award was  
16 not negotiated until after the Parties agreed to the Gross Settlement Amount and many other terms. *Id.*  
17 at ¶ 21.

18 *b. Plaintiffs’ Counsel Conducted Sufficient Investigation and Discovery*

19 Plaintiffs’ Counsel thoroughly investigated the class claims, applicable law, and potential  
20 defenses. *See generally*, Kaur Decl. Plaintiffs’ Counsel assessed the value of the class claims using  
21 Defendants’ data and documents produced through informal discovery. Kaur Decl., ¶¶ 12. Plaintiffs’  
22 counsel personally reviewed thousands of documents produced by Defendants, including Defendants’  
23 policies and timekeeping records and compared them to wage statements to identify potential violations.  
24 *Id.* Accordingly, Plaintiffs’ Counsel fully understood the strengths and weaknesses of the claims before  
25 the Parties reached a settlement. *Id.*

26 *c. Plaintiffs’ Counsel is Experienced in Similar Litigation*

27 Plaintiff is represented by Rastegar Law Group, APC and Aegis Law Firm, PC (“Class Counsel”).  
28 Class Counsel prosecute wage and hour class actions on behalf of employees and others who have had

1 their rights violated. Kaur Decl. ¶¶ 23-35. The attorneys working on this case have been appointed class  
2 counsel in many cases, through both contested motions and settlement approval motions. *Id.* Thus,  
3 Plaintiffs' Counsel has extensive experience in similar litigation and should be appointed as Class  
4 Counsel.

5 **2. The Settlement is Reasonable Given the Strengths of Plaintiffs' Claims and**  
6 **the Risks and Expense of Litigation**

7 Courts have discretion to approve class settlements by assessing several factors, including the  
8 "strength of plaintiffs' case, risk, expense, complexity and likely duration of further litigation and risk  
9 of maintaining the class action through trial." *Munoz v. BCI Coca-Cola Bottling Co. of L.A.*, 186 Cal.  
10 App. 4th 399, 407 (2010); *see Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129 (2008).

11 While Plaintiffs and their counsel believed and continue to believe this is a strong case for  
12 certification, the significant risks and expenses associated with class certification and liability  
13 proceedings were taken into account. Kaur Decl., ¶ 12. To determine if the amount offered at mediation  
14 was reasonable, Plaintiffs' Counsel weighed that figure against many risk factors. If Plaintiffs continued  
15 to prosecute the claims rather than accept a settlement, Plaintiffs would have faced deadlines to file a  
16 motion for class certification, had to have engaged in more formal written discovery and taken  
17 depositions, expended time and resources to resolve disputes, prepared and filed potential dispositive  
18 motions and/or discovery motions, and engaged in extensive trial preparation. An adverse ruling at any  
19 one of these stages could have prevented the Class from obtaining any recovery. *Id.* at ¶¶ 13-14.

20 *a. Exposure Analysis*

21 A settlement does not have to provide 100% of the damages sought to be considered a fair and  
22 reasonable settlement. *See Rebney v. Wells Fargo Bank*, 220 Cal. App. 3d 1117, 1139 (1991). Rather,  
23 compromise is expected:

24 Compromise is inherent and necessary in the settlement process . . . even if "the relief afforded  
25 by the proposed settlement is substantially narrower than it would be if the suits were to be  
26 successfully litigated," this is no bar to a class settlement because "the public interest may indeed  
be served by a voluntary settlement in which each side gives ground in the interest of avoiding  
litigation."

27 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001) (citation omitted). Here, Plaintiffs  
28 contend that their claims are based on Defendants' common, class-wide policies and procedures, and

1 that liability could be determined on a class-wide basis without dependence on individual assessments  
2 of liability. Kaur Decl., ¶ 11. Although the amount of Defendants’ potential exposure – if proven – is  
3 substantial, the legitimate and serious risks of succeeding at class certification and trial compelled a  
4 serious consideration of the benefit of a settlement. *Id.* at ¶¶ 12-20.

5 Minimum Wage and Overtime Claims: Plaintiffs’ minimum wage and overtime claims were  
6 premised on the theories that Defendants failed to pay class members for travel time beyond their normal  
7 commute. Plaintiffs calculated that these claims were worth approximately \$455,462. However,  
8 Defendants argued that they reimbursed class members for mileage when their commute was more than  
9 usual. Thus, Plaintiffs discounted this claim for the risk that the damages could at least be reduced, and  
10 that the claim would be difficult to certify with compliant policies. Kaur Decl., ¶ 15.

11 Meal Period Claims: Plaintiffs’ meal period claim was potentially worth about \$13.4 million, in  
12 light of the alleged violations they believed were supported in the records. However, Defendants argued  
13 that they maintained compliant written policies and employees received timely meal breaks. Thus,  
14 Plaintiffs discounted this claim for the risk that the damages could at least be reduced, and that the claim  
15 would be difficult to certify with a compliant policy. Kaur Decl., ¶ 16.

16 Rest Break Claim: Plaintiffs alleged that Class Members were unable to take rest breaks or their  
17 rest breaks were interrupted. Plaintiffs calculated the damages could reach up to \$12.1 million.  
18 However, Defendants argued that Class Members actually took the required rest breaks at regular  
19 intervals. As such, this claim would have relied on anecdotal Class Member testimony, making it a  
20 riskier claim at the class certification and liability stages. Kaur Decl., ¶ 17.

21 Derivative Waiting Time and Wage Statement Penalties: Plaintiffs’ Counsel also considered the  
22 arguable presence of various penalties, and weighed the potential recoveries against probable defenses.  
23 Specifically, Defendants would argue that Plaintiffs could not prove the “willful” prong needed to obtain  
24 waiting time penalties under Labor Code § 203. Additionally, Defendants would argue that Plaintiffs could  
25 not show that Class Members suffered an “injury” as a result of wage statement violations, as required by  
26 Labor Code § 226, or that the wage statements incorrectly reflected the wages paid and owed. Moreover,  
27 Plaintiffs would not recover any of these derivative penalties if they failed to prove the underlying claims.  
28 Thus, although these penalty claims could have reached \$10.2 million for waiting time penalties and \$11.1



1 million for wage statement penalties if Plaintiffs prevailed on every claim, they were heavily discounted.  
2 Kaur Decl. ¶ 18.

3 PAGA Claim: The PAGA claim presented even higher hurdles. Although Plaintiffs' Counsel  
4 found Defendants' exposure could potentially reach approximately \$25 million under Lab. Code §  
5 2699(f), assuming the initial penalty rate of \$100 for each pay period, Plaintiffs would have to prove a  
6 violation in every pay period. Most importantly, the Court would have discretion to reduce the PAGA  
7 award based on whether the amount of the award would be "unjust, arbitrary and oppressive, or  
8 confiscatory." Lab. Code § 2699(e)(2). In theory, the Court could reduce the award by 99% in its  
9 discretion. Plaintiffs were doubtful they could recover a large sum of PAGA penalties, especially if a  
10 large class judgment was entered for the same violations. Accordingly, Plaintiffs could not place a high  
11 value on the PAGA penalties, and therefore allocated \$35,000 of the Gross Settlement Amount to settle  
12 these claims. Kaur Decl. ¶ 19.

### 13 **C. The Requested Incentive Award for Plaintiffs**

14 Plaintiffs seek an Incentive Award of up to \$5,000 each for accepting the responsibilities of  
15 representing the interests of the Class and assuming risks and potential costs that were not borne by any  
16 other Class Members. Settlement Agreement, § X.E.(b). A named plaintiff is eligible for payment that  
17 reasonably compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent  
18 class members. *See Cellphone Termination Fee Cases, supra*, 186 Cal. App. 4th at 1393; *Bell v. Farmers*  
19 *Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004).

20 Here, Plaintiffs had the option to pursue their claims individually, but instead chose to pursue this  
21 class action, delaying individual recovery until approval of a class action settlement. Kaur Decl., ¶ 20.  
22 Throughout the case, Plaintiffs assisted counsel in gathering the evidence necessary to prosecute the  
23 class claims, maintained regular contact with counsel, were available on the day of mediation and  
24 reviewed the Settlement to make sure it was fair to the Class. *Id.* No action would likely have been taken  
25 by Class Members individually, and no compensation would have been recovered for them, but for  
26 Plaintiffs' services on behalf of the Class. *Id.*

27 By actively pursuing this action, Plaintiffs furthered the California public policy goal of enforcing  
28 the State's wage and hour laws. *See Sav-On Drug Stores, Inc., supra*, 34 Cal. 4th at 340. The requested

1 Incentive Award for Plaintiffs' service as the class representatives and for a general release of all  
2 employment claims is reasonable and should be preliminarily approved. At the final approval stage,  
3 Plaintiffs will further support the request for their Incentive Awards by declarations addressing the  
4 factors for the awards. Kaur Decl., ¶ 22.

5 **D. The Requested Attorneys' Fees and Costs**

6 The purpose of an attorneys' fee award in class action litigation is to compensate counsel who  
7 invested in a case despite the risk of non-payment and achieved a substantial positive result for the class.  
8 Attorneys' fees are awarded as a matter of equity. California courts routinely award attorneys' fees  
9 equaling one-third or more of the potential value of the common fund. *See Chavez v. Netflix, Inc.*, 162  
10 Cal. App. 4th 43, 66, n.11 (2008) ("Empirical studies show that, regardless of whether the percentage  
11 method or the lodestar method is used, fee awards in class actions average around one-third of the  
12 recovery").

13 Plaintiffs seek appointment of Rastegar Law Group APC and Aegis Law Firm, PC as Class  
14 Counsel. The attorneys performed significant work and expended litigation costs in prosecuting the  
15 matter with no guarantee of any payment. Kaur Decl., ¶ 36. Plaintiffs' Counsel seek preliminary  
16 approval for \$416,666.67 in attorneys' fees, which is up to one-third of the Gross Settlement Amount,  
17 and up to \$40,000 in reimbursement of litigation costs. Given the work performed in this matter, the  
18 extensive information exchange, and substantial recovery obtained on behalf of Plaintiffs and the Class,  
19 Plaintiffs' Counsel achieved a settlement through efficient and diligent work. *See generally*, Kaur Decl.  
20 At final approval, Plaintiffs' Counsel will fully brief the merits of its request for the award of attorneys'  
21 fees and litigation costs. *Id.* at ¶ 37.

22 **V. CONCLUSION**

23 The Parties have negotiated a fair and reasonable Settlement of the class claims in light of the  
24 risks present in this case. Plaintiffs have appropriately presented the materials and information necessary  
25 for preliminarily approval, and therefore, respectfully requests that the Court preliminarily approve the  
26 Settlement and schedule a date to conduct the final approval hearing.

1 Dated: May 1, 2023

**RASTEGAR LAW GROUP APC**

2  
3 By: \_\_\_\_\_/s/ Farzad Rastegar\_\_\_\_\_  
4 Farzad Rastegar  
5 Douglas W. Perlman  
6 Attorneys for Plaintiff David Chavez

7 Dated: May 1, 2023

**AEGIS LAW FIRM, PC**

8  
9 By: Namrata Kaur  
10 Namrata Kaur  
11 Attorneys for Plaintiff Anthony Robles  
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