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Superior Court of California
County of Los Angeles

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15 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
16 **COUNTY OF LOS ANGELES**

17 VANESSA GONZALEZ, individually, and
18 on behalf of all others similarly situated,

19 Plaintiff,

20 vs.

21 SEVEN FORTY ONE COMPANY, INC.,
22 MR. STAX, INC., and DOES 1 through
23 100, inclusive,

24 Defendants

Case No.: 20STCV30761

CLASS ACTION

*Assigned for All Purposes to Hon. Maren
Nelson, Department 17*

**PLAINTIFF VANESSA GONZALEZ'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT**

Complaint Filed: August 12, 2020
Motion for Preliminary
Approval Hearing Date: December 15, 2021

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1 **I. INTRODUCTION**

2 Plaintiff and proposed Class Representative Vanessa Gonzalez (collectively “Plaintiff”) seeks
3 preliminary approval of a \$190,000.00 Class and Representative Action Settlement (“Settlement”) with
4 Defendants Seven Forty One Company, Inc. and Mr. Stax, Inc. (“Defendants”) (collectively (“the
5 Parties”). Defendant Seven Forty One Company, Inc. (is an acknowledged employer of Plaintiff and most
6 of the Class Members) and Defendant Mr. Stax, Inc. (who Plaintiff alleges is an employer of Plaintiff and
7 the Class Members while Defendants vehemently deny this allegation and contend that Mr. Stax, Inc. did
8 not employ either Plaintiff or most of the Class Members). The Settlement was reached after conducting
9 limited formal discovery, extensive informal discovery and exchange of a volume of documents and
10 information, which included and was not limited to, Seven Forty One Company, Inc.’s production of a
11 sampling of information/data for the putative class members to allow Plaintiff to perform an analysis and
12 valuation of all claims. Prior to mediation the Parties exchanged information and documents to investigate
13 the veracity, strength, and scope of the claims, and to allow analysis and evaluation of the claims and
14 Defendants’ defenses thereto. The Class Representative has vigorously prosecuted this case, and
15 Defendants has vigorously contested it including Plaintiff’s allegation that Mr. Stax, Inc. was her
16 employer. In addition, the Parties participated in a full day of mediation before an experienced
17 employment mediator, Eve Wagner, which resulted in a settlement of the litigation. Moreover, the
18 Settlement is strongly supported by experienced counsel, who carefully considered the strength of the
19 claims and Defendants’ defenses, as well as the expense, complexity, risks, and likely duration of
20 continued litigation. In light of the Parties’ support for the Settlement, and because it satisfies all of the
21 criteria for preliminary approval under California law and will provide a substantial monetary recovery to
22 Class Members, preliminary approval of the Settlement is appropriate and should be granted.

23 **II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

24 **A. Factual Allegations**

25 This Settlement involves the wage and hour claims of approximately 147 Class Members for the
26 period from August 12, 2016 to January 14, 2021, who performed work at 880 S. Arroyo Pkwy, Pasadena,
27 CA 91105 and/or 25060 Avenue Stanford, Suite 200, Valencia, CA 91355. (Declaration of Scott Cole in

1 Support of Plaintiff's Motion for Preliminary Approval of Class and Representative Action Settlement
2 ("Cole Decl."), at ¶ 3, Exh. 1.; Joint Stipulation and Agreement for Class Action Settlement and Release
3 ("Settlement Agreement" "Stipulation" or "SA"), ¶ 6.1.)

4 On August 12, 2016, Plaintiff Vanessa Gonzalez filed this Action against Defendants, alleging that
5 Defendants have, with respect to Plaintiff and the Class Members, allegedly violated multiple provisions
6 of the California Labor Code and wage and hour laws, by failing to properly pay minimum and overtime
7 wages, provide compliant meal and rest periods and associated premiums, timely pay wages during
8 employment and upon termination of employment and to pay associated waiting-time penalties, provide
9 compliant wage statements, maintain requisite payroll records, and thereby, engaged in unfair business
10 practices in violation of California Business and Professions Code §§ 17200, *et seq.* (Cole Decl. ¶ 12.)
11 Plaintiff alleges that both Defendants employed her and the Class Members. (*Id.*) Defendants vehemently
12 deny this allegation and, instead, contend that only Seven Forty One Company, Inc. employed Plaintiff
13 and most of the Class Members and that Mr. Stax, Inc. did not employ either Plaintiff or most of the Class
14 Members. (*Id.*)

15 On October 29, 2020, Plaintiff filed her First Amended Class Action Complaint to add a cause of
16 action for civil penalties under PAGA arising from or relating to alleged violations of Labor Code §§ 200,
17 201, 202, 203, 204, 218, *et seq.*, 221, 223, 226, *et seq.*, 226.7, 510, 512, 558, 1174, 1174.5, 1194, *et seq.*,
18 1194.2, 1197, 1197.1, and 1198, and additional factual details regarding the claims and theories of the
19 case. (Cole Decl. ¶ 13; SA ¶¶ 2.1-2.2.)

20 **III. DEFENDANTS STRONGLY DENY PLAINTIFF'S CLAIMS**

21 Defendants deny and continue to deny each and all of the allegations, claims, and contentions
22 alleged by Plaintiff in the Action. (Cole Decl., ¶ 14; SA ¶ 2.7(a).) Defendants have expressly denied and
23 continues to deny all charges of wrongdoing or liability against it arising out of any of the conduct,
24 statements, acts or omissions alleged in the Action. (*Id.*) Seven Forty One Company, Inc. contends that it
25 complied in good faith with California and federal wage and hour laws and have dealt legally and fairly
26 with Plaintiff and Settlement Class Members. (*Id.*) Further Seven Forty One Company, Inc. contends that
27 it appropriately paid its employees at all times, that it always provided employees with the opportunity to

1 take timely and compliant meal and rest breaks, that it was compliant with all applicable wage-and-hour
2 laws, and all other laws, at all times, and that, if this matter were to be further litigated, it would have
3 strong defenses on the merits and as to class certification. (*Id.*) Additionally, Mr. Stax, Inc. denies that it
4 employed either Plaintiff or most of the Class Members for purposes of the claims alleged in the Action.
5 (Cole Decl., ¶ 35; SA ¶ 2.7(a).)

6 Further, Defendants deny that, for any purpose other than settling this Action, these claims are
7 appropriate for class or representative treatment. (Cole Decl., ¶ 15; SA ¶ 2.7 (b).) Nonetheless, Defendants
8 have concluded that further proceedings in the Action would be protracted and expensive and agree to the
9 Action being fully and finally settled in the manner and upon the terms and conditions set forth in the Joint
10 Stipulation and Agreement for Class Action Settlement and Release (“Stipulation”) in order to dispose of
11 burdensome and protracted litigation, to permit the operation of Defendants’ respective businesses without
12 further expensive litigation and the distraction and diversion of their personnel with respect to matters at
13 issue in the Action. (*Id.*) In entering into the Stipulation, Defendants have also taken into account the
14 uncertainty and risks inherent in any litigation, especially in complex cases such as the Action. (*Id.*)

15 Defendants do not waive, but rather expressly reserve, all rights to challenge all such claims and
16 allegations in the Action upon all procedural and factual grounds, including without limitation the ability
17 to challenge class treatment or representative adjudication on any grounds or to assert any and all defenses
18 or privileges if the Stipulation is deemed void or does not take effect. (Cole Decl., ¶ 3; SA ¶ 2.7 (c).)

19 **IV. INVESTIGATION AND MEDIATION**

20 Class Counsel has conducted a thorough investigation into the facts of the Action, including
21 limited formal discovery, extensive informal discovery and exchange of a volume of documents and
22 information, which included and was not limited to, Seven Forty One Company, Inc.’s production of a
23 sampling of information/data for the putative class members to allow Plaintiff to perform an analysis and
24 valuation of all claims. (Cole Decl., ¶ 18; SA ¶ 2.3). Prior to mediation the Parties exchanged information
25 and documents to investigate the veracity, strength, and scope of the claims, and to allow analysis and
26 evaluation of the claims and Defendants’ defenses thereto. (*Id.*) The Class Representative has vigorously
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1 prosecuted this case, and Defendants have vigorously contested it including Plaintiff's allegation that Mr.
2 Stax, Inc. was her employer. (*Id.*)

3 On March 5, 2021, the Parties participated in a mediation before experienced employment
4 mediator Eve Wagner. (Cole Decl., ¶ 22; SA ¶ 2.4). At mediation, the Parties exchanged information and
5 documents, and engaged in intensive discussions regarding their evaluations of the Litigation and various
6 aspects of the Litigation, including the risks and delays of further litigation, the risks to the Settling Parties
7 of proceeding with class certification, the law relating to the allegations, the evidence produced and
8 analyzed, and the possibility of appeals, among other things. (*Id.*) Following mediation, on April 7, 2021,
9 with the assistance of the mediator's evaluation, the Parties reached a settlement of the Action. (*Id.*) Based
10 on the information, data, and documents exchanged, and their own independent investigation and
11 evaluation, Class Counsel is of the opinion that the settlement with Defendants for the consideration and
12 on the terms set forth in the Stipulation is fair, reasonable, and adequate and is in the best interest of the
13 Class Members in light of all known facts and circumstances. (*Id.*) Further, the Class Representative has
14 carefully evaluated the terms of the Settlement, and, based upon that review, has determined that it is fair,
15 reasonable, and adequate. (*Id.*)

16 Based on the exchange of information and documents, the mediation session, and discussions
17 between counsel, Class Representative and Class Counsel have assessed the Parties' positions and
18 evaluated the value of the claims of the Class. (Cole Decl., ¶ 23; SA ¶ 2.5(a)). The information and
19 documents exchanged by the Parties and settlement discussions are sufficient to reliably assess the merits
20 of the Parties' respective positions and to compromise the issues on a fair and equitable basis. (*Id.*)

21 Plaintiff and Class Counsel believe that the claims, causes of action, allegations and contentions
22 asserted in the Action have merit. (Cole Decl., ¶ 24; SA ¶ 2.5(b)). However, Plaintiff and Class Counsel
23 recognize and acknowledge the expense and delay of continued lengthy proceedings necessary to
24 prosecute the Action against Defendants through trial and through appeals. (*Id.*) Class Counsel has taken
25 into account the uncertain outcome of the litigation, the risk of continued litigation in complex actions
26 such as this, as well as the difficulties and delays inherent in such litigation, and the potential difficulty of
27 obtaining certification of the Action as well as trying the claims of the Class Members. (*Id.*) Class Counsel

1 is mindful of the potential problems of proof under, and possible defenses to, the claims alleged in the
2 Action. (*Id.*) Class Counsel has also taken into account Defendant's potential defenses to Plaintiff's
3 allegations. (*Id.*) Class Counsel believes that the Settlement set forth in the Stipulation confers substantial
4 benefits upon Plaintiff and the Settlement Class Members and that an independent review of the
5 Stipulation by the Court in the approval process will confirm this conclusion. (*Id.*) Based on their own
6 independent investigation and evaluation, Class Counsel has determined that the Settlement set forth in
7 the Stipulation is in the best interests of Plaintiff and the Class Members. (*Id.*)

8 **V. THE SETTLEMENT TERMS**

9 **A. Settlement Class**

10 For settlement purposes only, the Parties agree to define the "Class" or "Class Members" means
11 non-exempt and/or hourly-paid, current and former employees, for work performed at 880 S. Arroyo
12 Pkwy, Pasadena, CA 91105 and/or 25060 Avenue Stanford, Suite 200, Valencia, CA 91355, at any time
13 during the period of August 12, 2016 up to and including August 23, 2021. (Cole Decl., ¶ 3; SA ¶ 1.4).

14 **B. Settlement Amounts**

15 The "Gross Settlement Amount" refers to a fund in the sum of One Hundred Ninety Thousand
16 Dollars and Zero Cents (\$190,000.00). This Gross Settlement Amount shall be used to pay all:

17 (a) Attorneys' Fees and Expenses, not to exceed \$66,500 in fees and not to exceed \$20,000 in
18 reasonable litigation costs and expenses actually incurred, to Class Counsel;

19 (b) Administration Expenses to the Settlement Administrator;

20 (c) Service Award to the Class Representative, not to exceed \$7,500;

21 (d) The amount of 75% of the PAGA Payment, in the amount of \$3,750, to the State of California
22 for the benefit of the LWDA ("LWDA Payment"); and

23 (e) Net Settlement Amount (which is inclusive of 25% of the PAGA Payment). (Cole Decl., ¶ 26;
24 SA ¶ 6.1).

25 The "Net Settlement Amount" or "Net Settlement Sum" means the net amount that Defendants
26 will pay to all Settlement Class Members as part of the Settlement, that shall be paid out of the Net
27 Settlement Amount. (Cole Decl., ¶ 27; SA ¶ 6.1).

“Administrative Costs” are all costs and expenses due the Settlement Administrator in connection with its administration of the Class Settlement, including, but not limited to, providing the Class Notice, locating Settlement Class Members, processing Requests for Exclusion and Objections, and calculating, administering and distributing Individual Settlement Payments to Settlement Class Members and related tax forms, shall be paid from the Gross Settlement Amount. (Cole Decl., ¶ 28; SA ¶ 4.5).

“Class Representative Enhancement Award” The Plaintiff requests a Class Representative Service Award of up to \$7,500.00. (Cole Decl., ¶ 29; SA ¶ 4.1).

Each Settlement Class Member shall be eligible to receive payment of the Individual Settlement Amount in an amount determined by the Settlement Administrator, which is a share of the Net Settlement Amount based on the pro rata number of Workweeks allocated to a Settlement Class Member as a proportion of all Workweeks allocated to all Settlement Class Members. (Cole Decl., ¶ 30; SA ¶¶ 4.2, 6.2).

C. Opt-Out and Exclusion Procedure

Class Members may elect to opt out of the Settlement and, thus, exclude themselves from the Settlement Class. (Cole Decl., ¶ 31; SA, at ¶¶ 1.33, 5.6). Class Members who wish to exercise this option must mail to the Settlement Administrator a written Request for Exclusion that is postmarked on or before the Response Deadline. (*Id.*) If a timely and valid Request for Exclusion is not received by the Settlement Administrator from a Class Member on or before the Response Deadline, which is no later than forty-five (45) calendar days after the Class Notice is mailed to the Class, then that Class Member will be deemed to have forever waived his or her right to seek exclusion from the Settlement and Settlement Class and shall be bound by the Settlement and Judgment. (*Id.*) The Class Notice will advise Class Members of the option to opt out of the Settlement and will contain instructions on how to do so. (*Id.*) Class Members who do validly request exclusion from the Settlement by submitting a valid and timely Request for Exclusion shall not be bound by the terms of the Settlement, shall not be allowed to object to the Settlement, and shall not be entitled to any benefits as a result of the Settlement. (*Id.*)

D. Non-Cashed Settlement Checks

Individual Settlement Payment checks shall be valid for a period of one hundred and eighty (180) calendar days after they are mailed, and thereafter, will be cancelled. (Cole Decl., ¶ 32; SA, at ¶ 6.5). Funds associated with cancelled checks will be donated to Bet Tzedek, an organization that provides legal aid to low-income individuals and families including related to employment issues. (*Id.*)

E. Scope of Release

Upon the Effective Date, each Settlement Class Member and Plaintiff, each release, discharge, and agree to hold harmless the Released Parties, and each of them, of and from any and all Released Claims. (SA, at ¶¶ 1.12, 9.1). The Effective Date shall be the date when all of the following events have occurred: (a) the Stipulation has been executed by all Parties and by Class Counsel and Defense Counsel; (b) the Court has given preliminary approval to the Settlement; (c) notice has been given to the Class Members providing them with an opportunity to Opt Out of the Settlement; (d) the Court has held a Final Approval Hearing and entered the Final Approval order and Judgment; and (e) the later of the following events: the expiration of the period for filing any appeal, writ, or other appellate proceeding challenging the Final Approval Order and Judgment has elapsed without any appeal, writ or other appellate proceeding having been filed; or the dismissal of any appeal, writ, or other appellate proceeding opposing the Settlement with no right to pursue further remedies or relief; or any appeal, writ, or the issuance of such other final appellate order upholding the Final Approval Order and Judgment with no right to pursue further remedies or relief. (*Id.*) In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Final Approval Order and Judgment is completely final and there is no further recourse by an appellant or objector who seeks to contest the Settlement. (*Id.*)

VI. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE

Settlement of a class action requires court approval to prevent fraud, collusion, or unfairness to the class. (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1800-01.) The purpose of the preliminary evaluation of class action settlements is to determine whether the proposed settlement is within the range of possible approval, and whether notice to the class of the settlement terms and conditions and the scheduling of a formal fairness hearing is worthwhile. (*Wershba v. Apple Computer, Inc.* (2001) 9 Cal. App. 4th 224, 234-35.) To determine whether a class settlement is fair, adequate, and reasonable, a court

1 must be provided with “basic information about the nature and magnitude of the claims in question and
2 the basis for concluding that the consideration being paid for the release of those claims represents a
3 reasonable compromise.” (*Clark v. American Residential Services LLC*, (2009) 175 Cal. App. 4th 785,
4 799.)

5 When deciding whether a class action settlement is fair, the trial court must exercise its discretion
6 through the application of several well-recognized factors. (*Clark, supra*, 175 Cal. App. 4th at 799.) The
7 list of factors is not exhaustive and “should be tailored to each case,” and includes “the strength of
8 plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of
9 maintaining class action status through trial, the amount offered in settlement, the extent of discovery
10 completed and the stage of the proceedings, the experience and views of counsel, the presence of a
11 governmental participant, and the reaction of the class members to the proposed settlement.” (*Kullar v.*
12 *Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 128 (quoting *Dunk*, 48 Cal. App. 4th at 1801.)) In
13 determining whether to approve a class action settlement, the most important factor the trial court should
14 consider is the strength of the case for plaintiff on the merits, balanced against the amount offered in
15 settlement. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 407-08;
16 *Kullar, supra* 168 Cal. App. 4th at 130.) Thus, at the preliminary approval stage, the trial court must
17 determine that the settlement was not the product of fraud, overreaching or collusion, and that the
18 settlement is fair, reasonable, and adequate. (*Nordstrom Com’n Cases* (2010) 186 Cal. App. 4th 576,
19 581.)

20 Here, the Settlement results is a substantial benefit to all Class Members and the Gross Settlement
21 Amount of \$190,000 is an excellent result given the highly disputed nature of the claims and warrants
22 preliminary approval. (Cole Decl. ¶ 32.) In reaching this settlement, Class Counsel carefully considered
23 the strength of the case versus the amount offered in settlement and the risk, expense, and complexity of
24 maintaining class certification through trial. (*Id.*) Class Counsel analyzed the strengths of the case versus
25 the amount offered in settlement; the risk, expense, and complexity and likely duration of further litigation
26 and maintaining class certification through trial; the present state of the law as it applies to wage-and-hour
27 class actions; and the burdens of proof necessary to establish liability against Defendants. (*Id.*)

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1 Based on the exchange of information and documents, the mediation session, and discussions
2 between counsel, Class Representative and Class Counsel have assessed the Parties' positions and
3 evaluated the value of the claims of the Class. (Cole Decl., ¶ 23; SA ¶ 2.4(a).) The information and
4 documents exchanged by the Parties and settlement discussions are sufficient to reliably assess the merits
5 of the Parties' respective positions and to compromise the issues on a fair and equitable basis. (*Id.*)

6 **ii. The Settlement is the Product of Informed Investigation And Discovery**

7 There is a presumption that a proposed settlement is fair and reasonable when there has been
8 sufficient investigation and discovery to permit counsel and the court to act intelligently, and counsel are
9 experienced in similar litigation. (*Dunk, supra*, 48 Cal. App. 4th at 1802.)

10 Class Counsel has conducted a thorough investigation into the facts of the Action, including
11 limited formal discovery, extensive informal discovery and exchange of a volume of documents and
12 information, which included and was not limited to, Seven Forty One Company, Inc.'s production of a
13 sampling of information/data for the putative class members to allow Plaintiff to perform an analysis and
14 valuation of all claims. (Cole Decl., ¶ 18; SA ¶ 2.3.) Prior to mediation the Parties exchanged information
15 and documents to investigate the veracity, strength, and scope of the claims, and to allow analysis and
16 evaluation of the claims and Defendants' defenses thereto. (*Id.*) The Class Representative has vigorously
17 prosecuted this case, and Defendants have vigorously contested it including Plaintiff's allegation that Mr.
18 Stax, Inc. was her employer. (*Id.*)

19 Class Counsel believes that the documents and information exchanged and analyzed in preparation
20 for mediation, as well as the Parties' discussions during mediation and subsequent negotiations, are
21 sufficient for the Parties to make an informed decision about a fair resolution of this action. (Cole Decl.,
22 ¶ 18.)

23 **iii. Class Counsel are Highly Experienced and Support Preliminary Approval**

24 Although the recommendations of counsel proposing the class settlement are not conclusive, the
25 Court can properly consider the recommendations, particularly if counsel have been involved in litigation
26 for some period of time, appear to be competent, have experience with this type of litigation, and
27 significant discovery has been completed. (*Newberg on Class Actions* § 13:53 (5th ed. 2011-2017.))

1 Class Counsel, Cole & Van Note, is a very specialized practice, devoted almost exclusively to the
2 prosecution of wage and hour class action matters such as this Action. (Cole Decl., ¶ 7.) Class Counsel
3 has prosecuted roughly 300 wage and hour class actions. (Cole Decl., ¶ 7; Exh. 3.)

4 **B. The Settlement Provides Substantial Monetary Relief to The Class**

5 **i. The Settlement Provides Fair, Reasonable, and Adequate Relief to The Class**
6 **Members in Light of the Significant Risks and Expense of Further Litigation**

7 In order to determine whether a class settlement is fair, adequate, and reasonable, courts must be
8 provided with “basic information about the nature and magnitude of the claims in question and the basis
9 for concluding that the consideration being paid for the release of those claims represents a reasonable
10 compromise.” (*Kullar, supra*, 168 Cal. App. 4th at 133; *Clark, supra*, 175 Cal. App. 4th at 799.) A
11 settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does
12 the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba, supra*,
13 91 Cal. App. 4th at 246, 250.)

14 Here, the Settlement results in a substantial benefit to all Class Members, and the Gross Settlement
15 Amount of \$190,000.00 is an excellent result by any measure and warrants preliminary approval. (Cole
16 Decl., ¶ 32.) In reaching this Settlement, Class Counsel carefully considered the strength of the case
17 versus the amount offered in settlement; the risk, expense, complexity, and likely duration of further
18 litigation and maintaining class certification through trial; the present state of the law as it applies to wage
19 and hour class actions; and the burdens of proof necessary to establish liability against Defendants. (*Id.*)

20 Plaintiff and Class Counsel recognize and acknowledge the expense and delay of continued
21 lengthy proceedings necessary to prosecute the Action against Defendants through trial and through
22 appeals. (Cole Decl., ¶ 24; SA ¶ 2.5.) Class Counsel has taken into account the uncertain outcome of the
23 litigation, the risk of continued litigation in complex actions such as this, as well as the difficulties and
24 delays inherent in such litigation, and the potential difficulty of obtaining certification of the Action as
25 well as trying the claims of the Class Members. (*Id.*) Class Counsel is mindful of the potential problems
26 of proof under, and possible defenses to, the claims alleged in the Action. (*Id.*) Class Counsel has also
27 taken into account Defendants’ potential defenses to Plaintiff’s allegations. (*Id.*) Class Counsel believes

1 that the Settlement set forth in the Stipulation confers substantial benefits upon Plaintiff and the Settlement
2 Class Members and that an independent review of the Stipulation by the Court in the approval process
3 will confirm this conclusion. (*Id.*) Based on their own independent investigation and evaluation, Class
4 Counsel has determined that the Settlement set forth in the Stipulation is in the best interests of Plaintiff
5 and the Class Members. (*Id.*)

6 Defendants deny and continue to deny each and all of the allegations, claims, and contentions
7 alleged by Plaintiff in the Action. (Cole Decl., ¶¶ 14-15; SA, at ¶ 2.7(a).) Defendants have expressly
8 denied and continues to deny all charges of wrongdoing or liability against them arising out of any of the
9 conduct, statements, acts or omissions alleged in the Action. (*Id.*) Seven Forty One Company, Inc.
10 contends that it complied in good faith with California and federal wage and hour laws and have dealt
11 legally and fairly with Plaintiff and Settlement Class Members. (*Id.*) Further Seven Forty One Company,
12 Inc. contends that it appropriately paid its employees at all times, that it always provided employees with
13 the opportunity to take timely and compliant meal and rest breaks, that it was compliant with all applicable
14 wage-and-hour laws, and all other laws, at all times, and that, if this matter were to be further litigated, it
15 would have strong defenses on the merits and as to class certification. (*Id.*) Additionally, Mr. Stax, Inc.
16 denies that it employed either Plaintiff or most of the Class Members for purposes of the claims alleged
17 in the Action. (*Id.*) Mr. Stax, Inc. contends that it complied in good faith with California and federal wage
18 and hour laws and have dealt legally and fairly with Plaintiff and Settlement Class Members. (*Id.*) Further
19 Mr. Stax, Inc. contends that it appropriately paid its employees at all times, that it always provided
20 employees with the opportunity to take timely and compliant meal and rest breaks, that it was compliant
21 with all applicable wage-and-hour laws, and all other laws, at all times, and that, if this matter were to be
22 further litigated, it would have strong defenses on the merits and as to class certification. (*Id.*)

23 **ii. The Amount Offered in Settlement Supports the Preliminary Approval of the**
24 **Settlement**

25 The Settlement results is a substantial benefit to all Class Members and the Gross Settlement
26 Amount of \$190,000 is an excellent result given the highly disputed nature of the claims and warrants
27 preliminary approval. (Cole Decl., ¶ 32.) In reaching this settlement, Class Counsel carefully considered

1 the strength of the case versus the amount offered in settlement and the risk, expense, and complexity of
2 maintaining class certification through trial. (*Id.*) Class Counsel analyzed the strengths of the case versus
3 the amount offered in settlement; the risk, expense, and complexity and likely duration of further litigation
4 and maintaining class certification through trial; the present state of the law as it applies to wage-and-hour
5 class actions; and the burdens of proof necessary to establish liability against Defendants. (*Id.*)

6 **iii. The Settlement Has No Obvious Deficiencies and Does Not Grant Improper**
7 **Preferential Treatment to Part of the Class or the Class Representatives**

8 Each Settlement Class Member shall be eligible to receive payment of the Individual Settlement
9 Amount, which is a share of the Net Settlement Amount based on the pro rata number of Workweeks
10 allocated to a Settlement Class Member as a proportion of all Workweeks allocated to all Settlement Class
11 Members. (Cole Decl., ¶ 30; SA, at ¶ 4.2). As such, all Class Members are therefore treated equitably and
12 fairly, and no Class Member is granted improper preferential treatment, as distribution of the Net
13 Settlement Amount takes into consideration the length of employment for each Class Member and the
14 number of violations suffered. (*Id.*)

15 **C. The Work Performed by Class Counsel Supports the Fees and Costs Requested**

16 The California Supreme Court has unanimously held “that when class action litigation establishes
17 a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards
18 class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing
19 an appropriate percentage of the fund created.” (*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.
20 5th 480, 503.) The Court further held that although trial courts have discretion to use a lodestar multiplier
21 cross-check or to forego a lodestar multiplier cross-check if some other means to evaluate the
22 reasonableness of a requested fee percentage exists, “the percentage method is a valuable tool that should
23 not be denied our trial court.” (*Laffitte, supra*, 1 Cal.5th at 503-06.) California courts have awarded
24 common fund fees calculated using a percentage-of-fund method that is not dependent on counsel’s
25 lodestar amount. (*In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal. App. 4th 495, 512; *Bell*
26 *v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 726; *Apple Computer, Inc. v. Superior Ct.* (2005) 126
27 Cal. App. 4th 1253, 1270.)

1 The settlement provides for an attorneys' fee award of 35% of the settlement amount, a typical
2 percentage in the resolution of common fund cases. (Cole Decl., ¶ 44.) Class Counsel has devoted
3 numerous hours to and faced significant risk¹ in the prosecution of this matter and, more importantly,
4 made an extraordinary fund available given the challenges faced here and the modest claim values—to a
5 large number of otherwise- underrepresented, low paid workers. (*Id.*)

6 The "common fund" method, or "percentage-of-the-benefit" analysis, calculates attorneys' fees
7 based on a percentage of the common benefit to the class. (*In re Consumer Privacy Cases*, 175 Cal.App.4th
8 545 (2009); *Serrano v. Priest*, 20 Cal.3d 25 (1977).) In cases where a common fund has been created—
9 i.e., where each class member will "receive a mathematically ascertainable payment"²—California state
10 courts,³ the Ninth Circuit⁴ and the United States Supreme Court⁵ agree that awarding attorneys' fees as a
11 percentage of the common fund is the proper method.⁶

12 As expressed by the Third Circuit's Task Force on the Selection of Class Counsel⁷, in Conte and
13 Newberg's treatise on class actions ("*Newberg*")⁸ and, *inter alia*, in *Blum v. Stenson*, 465 U.S. 886, 900
14 n.16 (1984), the rationale for this is commonsensical: in common fund cases, fees are not assessed against
15 the unsuccessful litigant (a.k.a. "fee shifting"), but rather, are taken from the fund or damage recovery

16
17 ¹ Class Counsel undertook this matter solely on a contingent basis, with no guarantee regarding the
potential duration of the litigation or even the ultimate reimbursement of fees or costs.

18 ² (*Vasquez*, 266 F.R.D. 482 at *491 (E.D. Cal. 2010).)

19 ³ See, fn. 10; (*Lealao v. Beneficial California*, 82 Cal.App.4th 19 (2000); *Serrano v. Priest*, 20 Cal.3d
25 (1977).)

20 ⁴ (*Staten v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003); *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th
Cir. 2000).)

21 ⁵ The United States Supreme Court has always computed common fund fee awards on a percentage of
the fund basis. (*Boeing Co. v. Van Gemert*, 444 U.S. 472, 100 S.Ct. 745 (1980); *Central Railroad &*
22 *Banking Co. of Georgia v. Pettus*, 113 U.S. 116, 5 S.Ct. 387 (1885); *Sprague v. Ticonic Nat'l Bank*, 307
U.S. 161, 59 S.Ct. 777 (1939).)

23 ⁶ A lodestar approach (enhanced by a multiplier) can be used as an alternative to the common fund
theory when "there is no way to gauge the net value of the settlement or any percentage thereof."
24 (*Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998).)

25 ⁷ See, (*Third Circuit Task Force on the Selection of Class Counsel* (Final Report, January 2002), available
at [https://www.ca3.uscourts.gov/sites/ca3/files/final%20report%20of%20third%20circuit%20task%20for](https://www.ca3.uscourts.gov/sites/ca3/files/final%20report%20of%20third%20circuit%20task%20for%20ce.pdf)
26 *ce.pdf* (recommending that all fee awards in common fund cases be awarded as a percentage of the fund,
but that a lodestar analysis continue to be the applicable method for determining statutory fee shifting
awards); *Report of the Third Circuit Task Force*, 108 F.R.D. 237, 255 (hardcopy not exhibited here due
to length of document).)

27 ⁸ *Newberg on Class Actions* (5th ed. 2017).

(a.k.a. “fee spreading”). In contrast to the calculation of a statutory fee, payable by the Defendant depending on the extent of success achieved, a common fund is itself the measure of success and represents the benchmark from which a fee will be awarded. 5 *Newberg* § 15.53 at 183. Consequently, the analysis in a common fund case focuses not on the plaintiffs’ position as “prevailing parties,” but on a showing that the fund conferring a benefit on the class which resulted from their efforts. *Id.*, § 2.06 at 40.⁹

Here, Class Counsel harnessed evidence from all available resources, conducted formal and informal significant discovery and, thereupon, used its skills and experience to negotiate an outstanding result for numerous class members. (Cole Decl., ¶ 44.) A common fund doctrine award of fees for that work performed¹⁰, risks assumed and results achieved is appropriate. (*Id.*)

D. The Service Awards to the Class Representatives are Routinely Awarded

Courts routinely approve service awards to compensate named plaintiffs for the services they provide and the risks they incur during the course of the class litigation. (*Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 726 (upholding “service payments” to plaintiffs for their efforts in bringing a class case); *Manual for Complex Litigation (Fourth)* § 21.62 n. 971 (2004) (noting that service awards are warranted).) In approving service awards, courts frequently approve awards as high as \$10,000 or more. *In re Cellphone Termination Cases*, (2010) 186 Cal. App. 4th 1380, 1393-95 (upholding \$10,000 service award to each of four class representatives).). The factors the courts use in determining the amount of an award include: (1) a comparison between the service awards and the range of monetary recovery available

⁹ The common fund doctrine is “based on the commonsense notion that the ‘one who expends attorneys’ fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs.’” (*Consumer Cause, Inc. v. Mrs. Gooch’s Natural Food Markets, Inc.*, 127 Cal.App.4th 387, 397 (2005) (internal citation omitted); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) [“a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole,” and class members who benefit from a lawsuit “without contributing to its cost are unjustly enriched at the successful litigant’s expense.”].)

¹⁰ Attorney fee awards in common funds cases are intended to compensate class counsel for work performed both before and after the date of judgment. In nearly every class action, the efforts during litigation and in pursuing approval of the settlement are only part of the overall work picture. Post judgment, class counsel is required to stay in close contact with the claims administrator to ensure payment of the settlement proceeds, to communicate with class members, their CPAs, even other attorneys regarding the tax treatment of settlement proceeds, and report compliance with the terms of the Court’s final approval order thereto.

1 to the class; (2) time and effort put into the litigation; (3) whether the litigation will further the public
2 policy underlying the statutory scheme; and (4) risks of retaliation. (*See Clark, supra*, 175 Cal. App. 4th
3 at 804–07.)

4 Here, Plaintiff Vanessa Gonzalez requests a Service Award not to exceed \$7,500.00. (Cole Decl.,
5 ¶ 34.)

6 **VII. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

7 Provisional certification is appropriate at the preliminary approval stage where, as here, the Court
8 has not yet certified the class and the requirements for certification are met.¹¹ (*Newberg on Class Actions*
9 §§ 13:16-13:18 (5th Ed. 2011-2017); *Dunk, supra*, 48 Cal. App. 4th at 1806; *Vasquez v. Superior Court*
10 (1971) 4 Cal.3d 800, 809-811.)

11 **A. There is an Ascertainable and Sufficiently Numerous Class**

12 Whether a class is ascertainable is determined by examining the class definition, the size of the
13 class, and the means available for identifying the class members. (*See Vasquez, supra*, 4 Cal.3d at 810-
14 811.) Here, documents and information exchanged during the litigation reflect a class size of
15 approximately 147 Class Members and 17,294.43 Workweeks for the period of August 12, 2016 to
16 January 14, 2021. (Cole Decl., ¶ 35.) The class definition is precise, objective, and presently ascertainable,
17 and it makes abundantly clear who is a Class Member. (*Id.*) In addition, Class Members can be identified
18 easily by way of Defendant’s records. Seven Forty One Company, Inc. maintained records containing
19 relevant information about Plaintiff and Class Members. (*Id.*) Additionally, Mr. Stax, Inc. denies that it
20 employed either Plaintiff or most of the Class Members for purposes of the claims alleged in the Action.
21 (Cole Decl., ¶ 34.)

22 **B. There is a Well-Defined Community of Interest**

23 A community of interest is established by the preponderance of common issues of law and fact.
24 “The community of interest requirement involves three factors: (1) predominant common questions of law
25

26 ¹¹ Defendants do not oppose certification for settlement purposes only and deny that the class would
27 satisfy certification requirements if the issue were to be fully litigated.

1 or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives
2 who can adequately represent the class.” (*Linder v. Thrifty Oil Co* (2000) 23 Cal.4th 429, 435.)

3 **i. Common Issues of Law and Fact Predominate**

4 The predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant
5 adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal. App. 3d 605;
6 *Lazar v. Hertz Corp.* (1983) 143 Cal. App. 3d 128.) Here, common issues of facts and law predominate
7 as to each of the claims alleged by Plaintiff on behalf of the Class, because the issue of the legality of
8 Defendant’s policies and practices is an issue that predominates the claims of all Class Members. (Cole
9 Decl., ¶ 36.)

10 **ii. Plaintiff’s Claims are Typical of the Claims of the Class**

11 The typicality requirement does not focus on the individual characteristics or circumstances of the
12 representative plaintiff compared to those of the remainder of the class, but rather upon the typicality of
13 the proposed representative’s claims as they relate to the defendant’s conduct and activities. (*Classen v.*
14 *Weller*, (1983) 145 Cal. App. 3d 27, 46-47.) Here, Plaintiff’s claims are typical of the Class. At all times
15 during their employment with Seven Forty One Company, Inc, Plaintiff performed the same or similar
16 duties as other Class Members and contend that they were non-exempt employees, just like other Class
17 Members. (Cole Decl., ¶ 37.) Plaintiff were subject to the same handbooks and policies and procedures
18 during the Class Period, which they contend were similarly applicable to all other Class Members. (*Id.*)

19 Additionally, Mr. Stax, Inc. denies that it employed either Plaintiff or most of the Class Members
20 for purposes of the claims alleged in the Action. (Cole Decl., ¶ 34.)

21 **iii. The Adequacy Requirement is Met**

22 The adequacy or representation requirement is met by fulfilling two conditions: first, a named
23 plaintiff must be represented by counsel qualified to conduct the pending litigation; second, a named
24 plaintiff’s interests cannot be antagonistic to those of the class. (*McGhee v. Crocker-Citizens Nat. Bank*
25 (1976) 60 Cal. App. 3d 442, 450.) Here, both adequacy requirements are met. First, Plaintiff retained
26 counsel with extensive experience in prosecuting complex wage and hour class actions who have worked
27 diligently to obtain this Settlement for the Class. (Cole Decl., ¶ 39.) Second, Plaintiff has no conflict of

1 interest with the Class and has, along with Class Counsel, worked toward a positive resolution of this case,
2 demonstrating her interest in prosecuting this action and dedication to obtaining the best possible recovery
3 for the Class. (*Id.*) In addition, Plaintiff's interest is co-extensive with those of the Class, and Plaintiff
4 seeks relief identical to that sought by every other Class Member. (*Id.*)

5 **VIII. THE PROPOSED CLASS NOTICE IS APPROPRIATE**

6 In order to protect the rights of absent class members, California Rule of Court 3.769(f) requires
7 that Class Members be provided with notice of the final approval hearing and an explanation of the
8 proposed settlement and objection procedures. Procedural due process does not guarantee any particular
9 procedure, but requires only notice reasonably calculated to apprise interested parties of the pendency of
10 the action affecting their interests and an opportunity to present their objections. (*Ryan v. Cal.*
11 *Interscholastic Fed'n – San Diego Section* (2001) 94 Cal. App. 4th 1048, 1072.) Notice that meets this
12 standard and is neutrally worded satisfies due process. (*Phillips Petroleum Co. v. Shutts* (1985).472 U.S.
13 797, 812).

14 **A. The Notice is Accurate, Informative, and Satisfies Due Process**

15 There is no statutory or due process requirement that all class members in a case receive actual
16 notice, and as the Court of Appeals has explained, “[t]he notice given should have a reasonable chance of
17 reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50 Cal.App.3d
18 960, 973–74.) The Judicial Council of California’s Deskbook on the Management of Complex Civil
19 Litigation (Matthew Bender 2007), § 3.74, notes that individual notice by mail is preferred when possible
20 and dissemination of a combined certification/settlement notice is a common and accepted practice. (*In*
21 *re Vitamin Cases* (2003) 107 Cal. App. 4th 820, 828-29.) Here, the proposed notice plan, calling for first-
22 class mailed notice to all Class Members, as well as in-depth skip tracing at the outset, is consistent with
23 class notice practices approved by state and federal courts, and under the circumstances here, Class
24 Counsel believes it to be the best notice practicable and the method most likely to reach the greatest
25 number of Class Members. (Cole Decl., ¶ 40; SA ¶ 5.2.)

26 The proposed Class Notice provides all the information a reasonable person would need to make
27 a fully informed decision about the Settlement. (Cole Decl., ¶ 41.) The Class Notice summarizes the

lawsuit and the terms and conditions of the Settlement in plain language in an informative and coherent manner. (*Id.*) The Class Notice also fully informs Class Members of the terms of the Settlement, of its effect on their rights, of their options as Class Members (*i.e.*, to object, opt out, and/or do nothing), and of the consequences of exercising those options. (*Id.*) The Class Notice also outlines the procedure and deadlines for opting out of the Settlement, for submitting objections to the Settlement, and how to receive an Individual Settlement Payment. (*Id.*)

The Class Notice also states the amounts to be paid out of the Gross Settlement Amount, including the Individual Settlement Payments, the Settlement Administration Fees, the Class Representative Service Award, Class Counsel's fees and costs. (*Id.*) The Class Notice states the date, time, and location of the Final Approval Hearing, and explains how Class Members can obtain additional information. (Cole Decl., ¶ 42.)

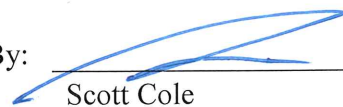
Furthermore, the Class Notice also makes clear that the Settlement does not constitute an admission of liability by Defendants, that the Court has not ruled on the merits of the action, and that the final settlement approval decision has yet to be made. (Cole Decl., ¶ 43.)

IX. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that this Court enter an Order: (1) preliminarily approving the Class and Representative Action Settlement; (2) provisionally certifying the settlement class; (3) approving the class notice and notice plan; (4) appointing Class Representatives and Class Counsel; (5) appointing the Settlement Administrator; and (6) scheduling a Final Approval Hearing.

DATED: Sept. 3, 2021

COLE & VAN NOTE

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