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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

CHARLES HOWARD CLARK, an individual;

Plaintiff,

vs.

POWERSTONE PROPERTY MANAGEMENT,
INC., a California corporation; and DOES1
through 10, inclusive,

Defendants

Case No.: 30-2021-01212747-CU-OE-CXC

[Honorable Lon F. Hurwitz,
Department CX103]

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT**

*[Filed with Declaration of Kane Moon,
Declaration of Plaintiff Charles Howard
Clark, and [Proposed] Order]*

PRELIMINARY APPROVAL HEARING

Date: March 29, 2024

Time: 1:30 PM

Dept: CX103

Complaint Filed: July 29, 2021

Trial Date: Not Set

PLEASE TAKE NOTICE that on March 29, 2024, at 1:30 p.m., in Department CX103 of the Superior Court of the State of California, County of Orange, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701, pursuant to *California Code of Civil Procedure* section 382 and *California Rules of Court* rules 3.769, *et. seq.*, Plaintiff Charles Howard Clark (“Plaintiff”) will move the Court for an Order granting preliminary approval of the proposed Class Action and PAGA Settlement Agreement (“Settlement”) between Plaintiff and Defendant Powerstone Property Management, Inc. (“Defendant”). Plaintiff will further move the Court for an Order:

- The Motion is based on this Notice, the attached Memorandum of Points and Authorities, the Declaration of Kane Moon, the Declaration of Plaintiff Charles Howard Clark, the records and files in this Action, and any other evidence or argument that the Court may properly receive before or at the Hearing.

MOON LAW GROUP, PC

Kane Moon, Esq.
Lilit Ter-Astvatsatryan, Esq.
Edwin Kamarzarian, Esq.
Attorneys for Plaintiff, Charles Howard Clark

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Charles Howard Clark (“Plaintiff”) moves the Court for preliminary approval of
4 the Class Action and PAGA Settlement Agreement (“Settlement”) between Plaintiff and
5 Defendant Powerstone Property Management, Inc. (“Defendant”) (together with Plaintiff, the
6 “Parties”). The Settlement, which was reached after extensive discovery and investigation, and
7 an arm’s-length mediation, provides substantial monetary payments to approximately 260 Class
8 Members. The Settlement also meets the requisite criteria for settlement approval under
9 California law. Plaintiff further moves the Court for certification of the putative Class and
10 approval of the Class Notice.

11 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

12 **A. Plaintiff’s Claims**

13 Plaintiff’s First Amended Class and Representative Action Complaint alleges Defendant:
14 Failed to Pay Minimum Wages [*Labor Code* §§ 204, 1194, 1194.2, and 1197]; Failed to Pay
15 Overtime Compensation [*Labor Code* §§ 1194 and 1198]; Failed to Provide Meal Periods
16 [*Labor Code* §§ 226.7 and 512]; Failed to Authorize and Permit Rest Breaks [*Labor Code* §
17 226.7]; Failed to Indemnify Necessary Business Expenses [*Labor Code* § 2802]; Failed to
18 Timely Pay Final Wages at Termination [*Labor Code* §§ 201-203]; Failed to Provide Accurate
19 Itemized Wage Statements [*Labor Code* § 226]; Engaged in Unfair Business Practices [*Business*
20 *and Professions Code* §§ 17200, et. seq.]; and Owes Civil Penalties Under the California
21 Private Attorneys General Act of 2004 [*Labor Code* §§ 2698, et. seq.]. *Moon Decl.*, ¶ 3.

22 Plaintiff Charles Howard Clark worked for Defendant as a property manager and
23 administrative assistant from approximately September 2020 to October 2020. *Moon Decl.*, ¶ 4.

24 During his entire employment with Defendant, Plaintiff was classified as non-exempt; paid
25 on an hourly basis; and typically worked five days per workweek and eight or more hours per
26 workday. Further, Plaintiff was subjected to the same alleged unlawful labor practices as his
27 coworkers. *Moon Decl.*, ¶ 5.

28 **B. Defendant’s Defenses**

1 Defendant is a property management firm operating throughout California. Defendant
2 denies the allegations set out by Plaintiff and opposes the merits of this Action. *Moon Decl.*, ¶
3 6. First, Defendant asserts it did not require or authorize any off-the-clock work and complied
4 with all of its compensation obligations, including compensating Class Members for any
5 alleged off-the-clock work, and therefore, Plaintiff and other Class Members were paid all
6 wages owed. *Id.* Second, Defendant maintained that bonuses were discretionary, and thus,
7 Defendant complied with its duty to pay the regular rate of pay for overtime, meal/rest
8 premiums, or sick pay. *Id.* Third, Defendant asserts it complied with all of its meal period and
9 rest break obligations, and thus, Plaintiff and other Class Members were provided the
10 opportunity to take all code-compliant meal periods and rest breaks to which they were entitled.
11 *Id.*

12 Next, Defendant asserts it complied with all of its reimbursement obligations, and
13 therefore, Plaintiff and other Class Members were compensated for any and all business
14 expenses incurred. *Moon Decl.*, ¶ 7. Lastly, Defendant asserts it did not willfully fail to pay any
15 wages, and therefore, Plaintiff and other Class Members are not owed waiting time penalties for
16 wages untimely paid during employment or at termination. *Id.* See *Pedroza v. PetSmart, Inc.*
17 (C.D. Cal. June 14, 2012) No. ED CV 11–298 GHK (DTBx), 2012 WL 9506073, *5.

18 In addition, Defendant asserts it complied with all wage statement requirements, and
19 thus, Plaintiff and other Class Members suffered no actual damage or harm from inaccurate
20 wage statements. See *Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013) No. C 12-05860
21 CRB, 2013 WL 622032, at *10 (“A plaintiff must adequately plead an injury arising from an
22 employer’s failure to provide full and accurate wage statements, and the omission of the
23 required information alone is not sufficient.”); *Moon Decl.*, ¶ 8. Therefore, Defendant denies
24 derivative liability on these bases, asserting it did not engage in unfair business practices and
25 does not owe civil penalties under PAGA. And finally, Defendant asserts Plaintiff’s claims are
26 individualized, and thus, improper for class treatment. *Id.*

1 **C. Discovery and Analysis**

2 The Parties mediated the Action with experienced, neutral mediator, Hon. Carl West (Ret.),
3 on May 5, 2023. *Moon Decl.*, ¶ 9. In preparation for mediation, the Parties agreed to a meaningful,
4 informal exchange of data and documents. *Id.* The data and documents included, but was not
5 limited to, the time and corresponding payroll records of a fifty percent sample of the putative
6 Class; the employee handbooks in effect during the Class Period; the total number of putative
7 Class Members and Aggrieved Employees; and the total number of workweeks and pay periods
8 worked by the putative Class Members and Aggrieved Employees. *Id.* The data and documents
9 enabled Class Counsel and its expert to evaluate the alleged claims in light of relevant case and
10 statutory law. In turn, this allowed Class Counsel to estimate the probability of class certification,
11 Plaintiff’s success on the merits, and Defendant’s maximum monetary exposure for all claims and
12 penalties. *Id.*

13 **D. Settlement Negotiations**

14 The Parties mediated the Action with professional, neutral mediator, Hon. Carl West (Ret.),
15 on May 5, 2023. *Moon Decl.*, ¶ 10. The Parties went into the mediation willing to settle the dispute
16 but also prepared to litigate their respective positions through trial and appeal if a settlement was
17 not reached. *Id.* Mediation was therefore adversarial and conducted at arm’s length. The Parties
18 also went into the mediation willing to discuss and concede to the strengths and weaknesses of
19 Plaintiff’s claims and Defendant’s defenses. *Id.* Mediation was resultingly successful, and a
20 settlement was reached. *Id.*

21 The material terms of the Settlement are set out in the Joint Stipulation of Class and PAGA
22 Action Settlement. A true and correct copy of the Settlement is attached to the *Declaration of*
23 *Kane Moon* as **Exhibit 1**. Class Counsel submitted the Settlement and the Motion for Preliminary
24 Approval to the Labor and Workforce Development Agency (“LWDA”) on February 29, 2023. A
25 true and correct copy of the submission confirmation email is attached the *Declaration of Kane*
26 *Moon* as **Exhibit 2**. Class Counsel provided the LWDA with an original notice of the alleged
27 Labor Code violations before pursuing the alleged PAGA cause of action on August 22, 2021. A
28 true and correct copy of the notice is attached to the *Declaration of Kane Moon* as **Exhibit 3**. In

1 addition to the key terms below, Defendant has elected to cut-off the Class Period pursuant to the
2 Escalator Clause (Settlement at ¶8). Thus, the Class Period will be the period from July 26, 2017,
3 to July 1, 2023, and the PAGA Period will be July 23, 2020, to July 1, 2023.

4 **E. Key Terms of the Settlement**

- 5 1. “Administrator” means ILYM Group, Inc., the neutral entity the Parties
6 have appointed to administer the Settlement. *Settlement*, ¶ 1.2.
- 7 2. “Administration Expenses Payment” means the amount the
8 Administrator will be paid from the Gross Settlement Amount to
9 reimburse its reasonable fees and expenses in accordance with the
10 Administrator’s “not to exceed” bid submitted to the Court in connection
11 with Preliminary Approval of the Settlement. *Settlement*, ¶ 1.3. The
12 Administration Expenses Payment is not to exceed \$20,000.00. A true
13 and correct copy of the Administrator bid is attached to the *Declaration*
14 *of Kane Moon* as **Exhibit 5**.
- 15 3. “Aggrieved Employee” means any person employed by Defendant in
16 California and classified as a non-exempt employee who worked for
17 Defendant during the PAGA Period (July 23, 2020, to July 1, 2023).
18 *Settlement*, ¶¶ 1.4, 1.31, 8 (Escalator Clause).
- 19 4. “Class” means all persons employed by Defendant in California and
20 classified as nonexempt who worked for Defendant during the Class
21 Period. *Settlement*, ¶ 1.5.
- 22 5. “Class Counsel” means Kane Moon and Brett Gunther of Moon Law
23 Group, PC [Brett Gunther is no longer an associate at Moon Law Group].
24 *Settlement*, ¶ 1.6.

- 1 6. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses
2 Payment” mean the amounts allocated to Class Counsel for
3 reimbursement of reasonable attorneys’ fees and expenses, respectively,
4 incurred to prosecute the Action., ¶ 1.7. The Class Counsel Fees
5 Payment is not to exceed \$90,000.00, or one third of the Gross
6 Settlement Amount. *Settlement*, ¶ 3.2.2. “Class Counsel Litigation
7 Expenses Payment” mean the amount allocated to Class Counsel for
8 reimbursement of reasonable expenses incurred to prosecute the Action.
9 *Settlement*, ¶ 1.7. The Class Counsel Litigation Expenses Payment is not
10 to exceed \$20,000.00. *Settlement*, ¶ 3.2.2. A true and correct copy of
11 Class Counsel’s current litigation expenses are attached to the
12 *Declaration of Kane Moon* as **Exhibit 4**.
- 13 7. “Class Member” or “Settlement Class Member” means a member of the
14 Class, as either a Participating Class Member or Non-Participating Class
15 Member (including a Non- Participating Class Member who qualifies as an
16 Aggrieved Employee). *Settlement*, ¶ 1.9, 1.29.
- 17 8. “Class Notice” means the “Notice of Class Action Settlement”, to be
18 mailed to Class Members in English with a Spanish translation in the
19 form, without material variation, attached as Exhibit A and incorporated
20 by reference into the Settlement Agreement. *Settlement*, ¶ 1.11.
- 21 9. “Class Representative” means Charles Clark, the named Plaintiff in the
22 Action. *Settlement*, ¶ 1.13.
- 23 10. “Class Representative Service Payment” means the up to \$7,500
24 payment to the Class Representative for initiating the Action and
25 providing services in support of the Action. *Settlement*, ¶ 1.14.
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- 1 11. “Effective Date” means the date by when both of the following have
2 occurred: (a) the Court has approved the Settlement; (b) the Court has
3 issued the Final Order and entered Judgment in accordance with terms
4 described herein *Settlement*, ¶ 1.18.
- 5 12. “Gross Settlement Amount” means Two Hundred and Seventy Thousand
6 Dollars and Zero Cents (\$270,000.00) which is the total amount
7 Defendant agrees to pay under this Settlement. *Settlement*, ¶ 1.22. In no
8 event shall Defendant be obligated to pay more than the Gross
9 Settlement Amount except as provided in Paragraphs 4.3 and 8
10 (employers’ share of payroll taxes and escalator provision). The Gross
11 Settlement Amount will be used to pay (i) Individual Class Payments,
12 (ii) Individual PAGA Payments, (iii) the LWDA PAGA Payment, (iv)
13 Class Counsel Fees, (v) the Class Counsel Litigation Expenses, (vi)
14 Class Representative Service Payment, (vii) and the Administration
15 Expense Payment. *Id.*
- 16 13. “Individual Class Payments” means the Participating Class Member’s
17 pro rata share of the Net Settlement Amount calculated according to the
18 number of Workweeks worked during the Class Period.. *Settlement*, ¶
19 1.23.
- 20 14. “Individual PAGA Payments” means the Aggrieved Employee’s pro rata
21 share of 25% of the PAGA Penalties calculated according to the number
22 of Workweeks worked during the PAGA Period. *Settlement*, ¶ 1.24.
- 23 15. “LWDA” means the California Labor and Workforce Development
24 Agency. *Settlement*, ¶ 1.26.
- 25 16. “LWDA PAGA Payment” means the allocation of seventy-five percent
26 of the PAGA Settlement Payment, to be paid to the LWDA, pursuant to
27 Labor Code section 2699, subdivision (i). *Settlement*, ¶ 1.27.
- 28

- 1 17. “Net Settlement Amount” means the Gross Settlement Amount, less the
2 following payments in the amounts approved by the Court: (i)
3 Individual PAGA Payments, (ii) the LWDA PAGA Payment, (iii) Class
4 Representative Service Payments, (iv) Class Counsel Fees Payment, (v)
5 Class Counsel Litigation Expenses Payment, and (vi) the Administration
6 Expenses Payment. The remainder is to be paid to Participating Class
7 Members as Individual Class Payments. *Settlement*, ¶ 1.28.
- 8 18. “PAGA Penalties” means the total amount of PAGA civil penalties to be
9 paid from the Gross Settlement Amount, allocated 25% to the Aggrieved
10 Employees (\$5,000) and the 75% to LWDA (\$15,000) in settlement of
11 PAGA claims. *Settlement*, ¶ 1.34.
- 12 19. “Released Class Claims” means all claims that were alleged, or
13 reasonably could have been alleged, based on the Class Period facts
14 stated in the Operative Complaint. *Settlement*, ¶¶ 1.39, 5.2.
- 15 20. “Released PAGA Claims” all claims for PAGA penalties that were
16 alleged, or reasonably could have been alleged, based on the PAGA
17 Period facts stated in the Operative Complaint and/or the Plaintiff’s
18 PAGA Notice. *Settlement*, ¶¶ 1.40, 5.3.
- 19 21. “Released Parties” means: Defendant and any parent, subsidiary,
20 affiliate, predecessor or successor entity, and all agents, employees,
21 contracting parties, joint employers, officers, directors and attorneys
22 thereof. *Settlement*, ¶ 1.41.
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- 1 22. "Response Deadline" means sixty (60) calendar days after the
2 Administrator mails Notice to Class Members and shall be the last date
3 on which Class Members may: (a) fax, email, or mail Requests for
4 Exclusion from the Settlement, or (b) fax, email, or mail his or her
5 Objection to the Settlement. Class Members to whom Notice Packets are
6 resent after having been returned undeliverable to the Administrator shall
7 have an additional 14 calendar days beyond the Response Deadline has
8 expired. *Settlement*, ¶ 1.43.
- 9 23. "Class Period" means the period from July 26, 2017 to the date the Court
10 preliminarily approves of the Settlement. *Settlement*, ¶ 1.12
- 11 24. "PAGA Period" means the period from July 23, 2020, to the date the
12 Court preliminarily approves of the *Settlement*. ¶ 1.31
- 13 25. Escalator Clause – if the actual number of Workweeks is one hundred
14 and twenty percent (120%) of the 19,000 Workweek estimate provided,
15 Defendant may choose: 1) the Total Settlement Amount to be paid will
16 increase by 2%; or 2) the Class Period will end on the date in which it
17 encompasses 22,420 (118% of 19,000) Workweeks. *Settlement*. ¶ 8

19 **III. THE SETTLEMENT MERITS PRELIMINARY APPROVAL**

20 **A. The Circumstances Of The Settlement Support Approval**

21 The circumstances of the Settlement support preliminary approval for the following
22 reasons: First, the law favors the settlement of lawsuits, particularly in class actions and other
23 complex cases. Here, the Settlement resolves a class and representative action. *See e.g., Neary*
24 *v. Regents of Univ. of California* (1992) 3 Cal.4th 272, 277-81.

25 Second, the law favors a discretionary finding that a settlement is fair and reasonable
26 where the settlement terms indicate fairness and reasonableness on balance and in light of the
27 following relevant factors: (1) the strength of the plaintiff's case; (2) the risk, expense,
28 complexity, and likely duration of further litigation; (3) the risk of maintaining class action

1 status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed
2 and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a
3 governmental participant; and (8) the reaction of the class members to the proposed settlement.
4 *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-1801; *Kullar v. Foot Locker*
5 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The law also favors a discretionary finding that a
6 settlement is fair and reasonable where the settlement is within the ballpark of fairness and
7 reasonableness, and not depending on whether it contains an explicit statement of the maximum
8 theoretical recovery. *Id.* at 133; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)
9 186 Cal.App.4th 399, 408-409 (holding that *Kullar* requires only an “understanding of the
10 amount that is in controversy and the realistic range of outcomes of the litigation.”)

11 Here, the settlement terms indicate fairness and reasonableness on balance and in light
12 of the above relevant factors: Plaintiff has strong claims supported by the time and
13 corresponding payroll records of the putative Class; the risk, expense, complexity, and likely
14 duration of further litigation is high; the amount offered in settlement was a founded
15 compromise reached with the facilitation of a highly experienced mediator; the amount of
16 discovery completed was exhaustive; Class and Defense Counsel are highly experienced in
17 employment law and class action litigation; and the Parties jointly reached the Settlement with
18 the understanding that it is within the ballpark of fairness and reasonableness.

19 Last, a presumption of fairness and reasonableness is triggered where the following factors
20 are present: (1) the investigation was sufficient to allow Class Counsel and the Court to act
21 intelligently; (2) the settlement was reached through arm’s-length bargaining; (3) class counsel is
22 experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk, supra*, 48
23 Cal.App.4th at p. 1800. Here, the above factors are present, and therefore, the presumption is
24 triggered. The factors will be addressed in turn:

25 **1. The Investigation Was Sufficient To Allow Class Counsel And The**
26 **Court To Act Intelligently**

27 The investigation was sufficient to allow Class Counsel and the Court to act intelligently
28 for two main reasons: First, the investigation was comprised of an exhaustive data analysis. The

1 data analysis involved Class Counsel and its expert examining a statistically significant sample of
2 the time and corresponding payroll records of the Class. The time and corresponding payroll
3 records of the Class, in addition to other documents produced by Defendant, enabled Class
4 Counsel to determine the following information: the total number of shifts worked by all Class
5 Members; the average rate of pay of all Class Members; the average regular rate of pay of all
6 Class Members; the total amount of minimum, overtime and premium wages paid to all Class
7 Members; the total amount of reimbursements made to all Class Members; the total number of
8 off-the-clock and rounded hours worked by all Class Members; the total number of meal periods
9 and rest breaks that were missed, interrupted, or not taken by all Class Members; the total amount
10 of minimum, overtime and premium wages owed to all Class Members; the total amount of
11 reimbursements owed to all Class Members; the dates on which all Class Members were paid,
12 including the dates on which all terminated Class Members were paid their final paychecks; and
13 the accuracy and completeness of the wage statements issued to all Class Members. This
14 information enabled Class Counsel to approximate the maximum potential liability of Defendant
15 for all claims, in the event Plaintiff prevailed on all claims at trial, including all claims for unpaid
16 minimum, overtime and premium wages, unreimbursed expenses, and statutory and civil
17 penalties. At mediation, Class Counsel used the maximum potential liability as the upper limit of a
18 fair and reasonable settlement.

19 Second, the investigation was comprised of a comprehensive evaluation of all factors
20 reasonably affecting full recovery of the maximum potential liability, including the evidence
21 supporting Plaintiff's claims; the evidence supporting Defendant's defenses; the risks, expenses
22 and length of further litigation, including the class certification process and appeal process; the
23 present state of the law as it applies to wage-and-hour class actions, particularly in light of
24 *Brinker*; the present value of the settlement versus the long wait necessitated by any potential
25 judgment in the Class' favor; and the burdens of proof necessary to establish liability against
26 Defendant. This evaluation resulted in Class Counsel reasonably reducing Defendant's maximum
27 potential liability, such that each claim was lowered in proportion to the presumed effect of any
28 applicable mitigating factors. For example, the estimated risk-inclusive exposure for the unpaid

wages claim due to off-the-clock work is \$46,869.01, which reflects a two-thirds discount; for the meal period claim is \$12,197.05, which reflects a two-thirds discount; for the rest break claim is \$82,904.79, which reflects a 90% discount; for the unreimbursed expenses claim is \$20,151.00, which reflects a 90% discount; and for all derivative statutory and civil penalty claims is \$115,692.00 which reflects a 90% discount. The total projected reasonable recovery was therefore \$281,766.05. *Moon Decl.*, ¶¶ 18-26. In the Settlement, the Parties stipulate to a Gross Settlement Amount of \$270,000.00, which is 95% of the total projected reasonable recovery. *Moon Decl.*, ¶ 26. From the Gross Settlement Amount, Class Counsel has determined that each Class Member is eligible to receive an average net benefit of \$477.50. *Id.*

These facts support the assertion that the investigation was sufficient to allow Class Counsel and the Court to act intelligently, as they demonstrate the Gross Settlement Amount (1) was reached in view of an upper limit, which was calculated by Class Counsel and its expert according to data produced by Defendant; and (2) reflects a comprehensive comprise, which takes into account all relevant risks and uncertainties. *See, e.g., Vical v. Mistras Grp., Inc.* (N.D. Cal. 2016) No. 15-cv-02198-EMC, 2016 WL 5907869 (approving wage-and-hour class action settlement amounting to 8.1% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement which represented “roughly one-sixth of the potential recovery.”)

2. The Settlement Was Reached Through Arm’s-Length Negotiations

The Settlement was undoubtedly reached through adversarial, non-collusive, and arms-length negotiations between the Parties. The nature of these negotiations led the Parties to present their arguments in a vigorous, yet forthright manner, acknowledge the strengths of all opposing arguments, and reach a fair, balanced agreement in light thereof. For example, Defendant asserted various defenses that posed a significant risk to Plaintiff obtaining class certification, proving Defendant’s liability, and proving Class Members’ damages; and thus, Plaintiff agreed to a settlement that reflected a significant discount in liability for the Class claims. *Moon Decl.*, ¶¶ 18-26.

In fact, Defendant ultimately has to pay less under the Settlement than it would have had to pay if Plaintiff had achieved a judgment after trial, as the certification probabilities assigned in

1 this case far exceed the rate of certification in contested motions in California, based upon data
2 available through the California Courts website. *See*, Findings of the Study of California Class
3 Action Litigation, 2000-2006, available at [http://www.courts.ca.gov/documents/class-action-lit-](http://www.courts.ca.gov/documents/class-action-lit-study.pdf)
4 [study.pdf](http://www.courts.ca.gov/documents/class-action-lit-study.pdf) (finding that only 21.4% of all class actions were certified either as part of a settlement
5 or as part of a contested certification motion).

6 The Ninth Circuit has noted: “the very essence of a settlement is compromise, ‘a yielding
7 of absolutes and an abandoning of highest hopes.’” *Officers for Justice v. Civil Service*
8 *Commission of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 624. It has
9 further noted that settlement “is not to be judged against a hypothetical or speculative measure of
10 what might have been achieved by the negotiators.” *Id.* at p. 625. A court’s “intrusion upon what
11 is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be
12 limited to the extent necessary to reach a reasoned judgment that the agreement is not the product
13 of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement,
14 taken as a whole, is fair, reasonable, and adequate to all concerned.” *Id.* Here, the Settlement was
15 reached through compromise and reliable, independent negotiations, which, in practice,
16 amounted to arms-length bargaining.

17 **3. Class Counsel Are Not Only Experienced In Similar Litigation, But**
18 **Have Substantial Class Action Experience**

19 Class Counsel have substantial class action experience in both state and federal court and
20 with respect to all facets of class action litigation, including discovery, law and motions, trial,
21 appeals, arbitration, and mediation. *Moon Decl.* ¶¶ 30-41. In particular, Class Counsel have
22 litigated numerous wage and hour class actions on behalf of plaintiffs and have been lead counsel
23 or otherwise exercised significant case handling responsibilities in numerous cases, resulting in
24 millions of dollars in class action settlements. *Id.* Class Counsel are therefore qualified to
25 evaluate the strength of Plaintiff’s claims, the strength of Defendant’s defenses against
26 certification and on the merits, and the fairness of the Settlement.

27 Further, their opinion that preliminary approval of the Settlement is in the best interest of
28 the Class in light of the significant risks of litigation is entitled to great weight. *See Kullar,*

1 *supra*, 168 Cal.App.4th at p. 129 (“The court undoubtedly should give considerable weight to the
2 competency and integrity of counsel and the involvement of a neutral mediator in assuring itself
3 that a settlement agreement represents an arm’s length transaction entered without self-dealing or
4 other potential misconduct.”)

5 **4. The Percentage Of Objectors Is Likely To Be Small**

6 The percentage of objectors to the Settlement is likely to be small. Further, in light of the
7 thorough investigation and experience of Class Counsel, and arm’s-length negotiations, which
8 support the Settlement, a positive reaction by Class Members in support of the Settlement is
9 likely. *See, e.g., In re Lifelock, Inc. Marketing and Sales Practices Litigation* (D. Ariz. 2010)
10 2010 WL 3715138, *6 (relatively few objections and requests for exclusion support approval);
11 *Kullar, supra*, 168 Cal.App.4th at p. 128 (among the factors to be considered in evaluating a
12 class action settlement include “the reaction of the class members to the proposed settlement.”)

13 The foregoing indicates that the Settlement is comprised of all factors which trigger a
14 presumption of fairness and reasonableness. In addition, it indicates that other discretionary
15 factors which the court considers in making a finding of fairness and reasonableness are also
16 present. On these bases, the Settlement merits preliminary approval.

17 **B. The Terms Of The Settlement Are Fair And Reasonable**

18 The terms of the Settlement, including the Class Counsel Fees Payment, Class Counsel
19 Litigation Expenses Payment, and Class Representative Service Payments, are fair and reasonable.
20 The Settlement provides that the Class Counsel Fees Payment is not to exceed one-third of the
21 Gross Settlement Amount, or \$90,000.00; the Class Counsel Litigation Expenses Payment is not to
22 exceed \$20,000.00; and the Class Representative Service Payment is not to exceed \$7,500.00.

23 **1. The Class Counsel Fees Payment Is Fair And Reasonable**

24 The Class Counsel Fees Payment is fair and reasonable because the fees (1) were
25 calculated using the common fund doctrine and are in line with leading treatises on awards
26 calculated using the common fund doctrine, (2) comport with the fee-shifting provision set out
27 under Labor Code sections 2698, *et seq.*; and (3) reflect Class Counsel’s significant experience,
28 reputation, and ability in class action settlements. “In general, questions [about] whether a

1 settlement [is] fair and reasonable, whether certification of the class [is] proper, and whether the
2 attorneys' fee award [is] proper are matters addressed to the trial court's broad discretion."

3 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235].

4 a) **The Class Counsel Fees Payment Was Calculated Using The**
5 **Common Fund Doctrine And Is In Line With Leading Treatises**
6 **On Awards Calculated Using The Common Fund Doctrine**

7 (i) *The Common Fund Doctrine Is Applicable In The Context Of*
8 *Class Action Settlements*

9 The common fund doctrine provides that, when a number of persons are entitled in
10 common to a specific fund, and an action brought by a plaintiff for the benefit of all results in
11 the creation or preservation of that fund, the plaintiff may be awarded attorneys' fees and costs
12 out of the fund. *Progressive West Ins. Co. v. Superior Court* (2005) 135 Cal.App.4th 263, 273.
13 The common fund doctrine is therefore applicable in the context of class action settlements, as
14 class action settlements produce a specific fund to which a number of persons are entitled in
15 common and are the product of an action brought by a plaintiff for the benefit of a class. See
16 *Petrovic v. Amoco Oil Co.* (8th Cir. 1999) 200 F.3d 1140, 1153.

17 (ii) *The Common Fund Doctrine Is Favorable In The Context Of*
18 *Class Action Settlements*

19 The common fund doctrine was recognized in *Quinn v. State of California* (1995) 15
20 Cal.3d 162 as favorable in the context of class action settlements. In *Quinn*, the California
21 Supreme Court specified that the common fund doctrine offsets those who "expend attorneys'
22 fees in winning a suit which creates a fund from which others derive benefits" by requiring
23 "those passive beneficiaries to bear a fair share of the litigation costs." *Id.* at 167. In *Quinn*,
24 the California Supreme Court further detailed that the common fund doctrine promotes
25 "...fairness to the successful litigant, who might otherwise receive no benefit because his
26 recovery might be consumed by the expenses; correlative prevention of an unfair advantage to
27 the others who are entitled to share in the fund and who should bear their share of the burden
28 of its recovery; and encouragement of the attorney for the successful litigant, who will be

1 more willing to undertake and diligently prosecute proper litigation for the protection or
2 recovery of the fund if he is assured that he will be properly...compensated should his efforts
3 be successful.” *Id.*

4 Even before *Quinn*, California Courts routinely used the common fund doctrine to
5 determine the award of attorneys’ fees. *See, e.g., In re Pacific Enterprises Securities City and*
6 *County of San Francisco Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79; see also *City and*
7 *County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110 (recognizing that the common
8 fund doctrine has been applied “consistently in California when an action brought by one
9 party creates a fund in which other persons are entitled to share.”); *Vincent v. Hughes Air*
10 *West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769 (finding the common fund doctrine attempts to
11 “spread litigation costs proportionally among all the beneficiaries so that the active
12 beneficiary does not bear the entire burden alone.”)

13 The common fund doctrine is also recognized as favorable in the context of class
14 action settlements when compared to the alternative lodestar approach, which often involves
15 wading through voluminous and, oftentimes, indecipherable time records. Commenting on the
16 lodestar approach, Chief Judge Marilyn Hall Patel wrote in *In re Activision Securities*
17 *Litigation* (N.D. Cal. 1989) 723 F.Supp.1373: “This court is compelled to ask, ‘Is this process
18 necessary?’ Under a cost-benefit analysis, the answer would be a resounding, ‘No!’ Not only
19 do the *Lindy Kerr-Johnson* analyses consume an undue amount of court time with little
20 resulting advantage to anyone, but in fact, it may be to the detriment of the Class Members.”
21 In contrast to the loadstar approach, the common fund doctrine aligns with the interests of
22 Class Counsel and encourages efficient resolution of the litigation by providing an incentive
23 for early, yet reasonable, settlement; and reduces the demands on judicial resources. *Id.* at pp.
24 1378-79.

25 (iii) *The Class Counsel Fees Payment Is In Line With Leading*
26 *Treatises On Awards Calculated Using the Common Fund*
27 *Doctrine*

28 The Class Counsel Fees Payment is in line with leading treatises, which concur that

1 “[n]o general rule can be articulated on what is a reasonable percentage of a common fund.
2 Usually, 50% of the fund is the upper limit on a reasonable fee award from a common fund in
3 order to assure that the fees do not consume a disproportionate part of the recovery obtained
4 for the class, although somewhat larger percentages are not unprecedented. *See* Conte &
5 Newberg, Newberg on Class Actions (3rd Ed.) § 14.03. Thus, fees that are fifty percent of the
6 fund are typically considered the upper limit, with thirty to forty percent commonly awarded
7 in cases where the settlement is relatively small. *Id.*; *see also Van Vranken v. Atlantic*
8 *Richfield Company* (N.D. Cal. 1995) 901 F.Supp. 294 (stating that cases where 30-50 percent
9 was awarded involved “smaller” settlement funds of under \$10 million.)

10 Here, the Class Counsel Fees Payment equals one-third of the Gross Settlement
11 Amount, or \$90,000.00, which is in line with the prevailing guidelines established in
12 California case law and academic literature and is consistent with prior awards approved in
13 California. *See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 (“Empirical studies
14 show that, regardless of whether the percentage method or the lodestar method is used, fee
15 awards in class actions average around one-third of the recovery.”)

16 **b) The Class Counsel Fees Payment Comports With The Fee-**
17 **Shifting Provision Set Out Under Labor Code Sections 2698, Et**
18 **Seq.**

19 The instant matter arose, in part, under *Labor Code* sections 2698, *et seq.* *Labor Code*
20 section 2699(g) states: “any employee who prevails in any action shall be entitled to an award
21 of reasonable attorneys’ fees and costs.” *Labor Code* § 2699(g). This fee-shifting provision
22 reflects the understanding that counsel must accept significant risk of substantial expenses and
23 consumption of time and other resources in litigating a PAGA action, and thus, that it is
24 reasonable for counsel to recover reasonable fees and costs if successful in litigating the same.
25 It is notable that the reasonableness of an award is unaffected when the fees are larger than the
26 total recovery for the PAGA members at the conclusion of the case because once counsel
27 undertake the litigation, they are committed to pursuing the case to its conclusion, placing the
28 fiduciary duty to the Aggrieved Employees ahead of all other concerns.

1 Here, the prosecution of the action involved significant financial risk to Class Counsel,
2 as they undertook this matter solely on a contingency basis, with no guarantee of recovery.
3 *Moon Decl.*, ¶¶ 42-46. The Class Counsel Fees Payment therefore comports with the fee-
4 shifting provision set out under *Labor Code* sections 2699, *et. seq.*

5 c) **The Class Counsel Fees Payment Reflects Class Counsel's**
6 **Significant Experience, Reputation, and Ability In Class Action**
7 **Settlements**

8 Here, the experience, reputation, and ability of Class Counsel support the Class
9 Counsel Fees Payment, as fees are generally awarded with regard to and commensurate with
10 the experience, reputation, and skill of counsel, and Class Counsel have significant and
11 specific experience in litigating class and representative actions on behalf of employees. *See*
12 *Moon Decl.* Moreover, Class Counsel have been involved as lead or co-counsel in a multitude
13 of class and representative actions resulting in beneficial results to class members in
14 California. *Id.* This experience has familiarized Class Counsel with this rapidly evolving area
15 of law, such that they possess significant expertise in this narrow field. *Id.*

16 2. **The Class Counsel Litigation Expenses Payment Is Fair And**
17 **Reasonable**

18 The Class Counsel Litigation Expenses Payment is fair and reasonable because class
19 counsel are generally entitled to recover any out-of-pocket litigation costs they reasonably incur in
20 investigating, prosecuting and settling a class and representative action, and the requested
21 Litigation Expenses reflect such costs. *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 974.
22 Here, Class Counsel has reasonably and actually incurred \$12,368.80 in litigation costs at this time,
23 and the Parties have agreed to reimbursement of up to \$20,000.00 under the Settlement. *Moon*
24 *Decl.*, Ex. 4.

25 3. **The Class Representative Service Payments Are Fair And Reasonable**

26 The Class Representative Service Payments are fair and reasonable, as named plaintiffs in
27 class action lawsuits “are eligible for reasonable incentive payments to compensate them for the
28 expense or risk they have incurred in conferring a benefit on other members of the class,” and the

1 Service Payments here compensate the named Plaintiff for the benefit he conferred on the Class.
2 *Munoz, supra*, 86 Cal.App.4th at 412; *Clark v. Am. Residential Servs. LLC* (2009) 175
3 Cal.App.4th 785, 806; *See In re Cont'l Ill. Sec. Litig.* (7th Cir. 1992) 962 F.2d 566, 571 (“Since
4 without a named plaintiff there can be no class action, such compensation as may be necessary to
5 induce him to participate in the suit could be thought the equivalent of the lawyers’ nonlegal but
6 essential case-specific expenses, such as long-distance phone calls, which are reimbursable”).)

7 Courts routinely grant approval of class action settlement agreements containing
8 enhancements for the class representatives, which are necessary to provide incentive to represent
9 the class, and are appropriate given the benefit the class representatives help to bring about for
10 the class. *See Rodriguez v. W. Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 958-59. “[C]riteria
11 courts may consider in determining whether to make an incentive award include: 1) the risk to
12 the class representative in commencing suit, both financial and otherwise; 2) the notoriety and
13 personal difficulties encountered by the class representative; 3) the amount of time and effort
14 spent by the class representative; 4) the duration of the litigation; and 5) the personal benefit (or
15 lack thereof) enjoyed by the class representative as a result of the litigation. *In re Cellphone Fee*
16 *Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-95 (holding the trial court did not abuse
17 its discretion in awarding enhancements of \$10,000.00 to each of the four named plaintiffs.)

18 Incentive awards are particularly important to plaintiffs in wage and hour cases because
19 they promote the important public policies underlying the wage and hour laws. This strong policy
20 is codified in *Labor Code* section 90.5. Nonetheless, the California Supreme Court has
21 recognized that “retaliation against employees for asserting statutory rights under the *Labor Code*
22 is widespread,” despite anti-retaliation statutes designed to protect employees. *Gentry v. Super.*
23 *Ct.* (2007) 42 Cal.4th 443, 460-61. In this context, class representatives should be rewarded for
24 assuming the risk of retaliation for the sake of Class Members. *See Frank v. Eastman Kodak Co.*
25 (W.D.N.Y. 2005) 228 F.R.D. 174, 187.

26 Here, subject to the Court’s approval, Defendant agreed to \$7,500.00 to Plaintiff Charles
27 Howard Clark. Class Counsel represent that Plaintiff devoted a great deal of time and work
28 assisting counsel in the case and communicated with Class Counsel frequently for litigation and

1 to prepare for mediation. *Moon Decl.*, ¶¶ 48-51. This amount is particularly reasonable in light of
2 the substantial benefits Plaintiff generated for all Class Members. *Moon Decl.*, ¶ 26,27. Indeed,
3 when compared with the amounts awarded in typical class action cases, the amount requested
4 here is particularly reasonable. A 2006 study examining the average incentive award given to
5 class action plaintiffs from 1993 to 2002 found that the “average award per class
6 representative was \$15,992 and the median award per class representative was \$4,357.”
7 Theodore Eisenberg & Jeffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An*
8 *Empirical Study* (2006) 53 UCLA L. Rev. 1303, 1308. That same study found that named
9 plaintiffs in employment discrimination class actions received an average award of \$69,850
10 and a median award of \$31,081, while named plaintiffs in other employment class actions
11 received an average award of \$12,121 and a median award of \$13,059. *Id.* at p. 1334. The
12 authors of the study found that higher awards in employment cases reflected the “courts’ wish
13 to make representative plaintiffs whole by compensating them for the high costs of their
14 service to the class, including risks of stigmatization or retaliation on the job.” *Id.* at p. 1308.

15 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

16 **A. Legal Standard**

17 For the reasons set forth below, and for purposes of settlement, the Class satisfies the
18 prerequisites for certification under the *California Code of Civil Procedure* section 382. Section
19 382 provides: “when the question is one of a common or general interest, of many persons, or
20 when the parties are numerous, and it is impracticable to bring them all before the court, one or
21 more may sue or defend for the benefit of all.” Code Civ. Proc., § 382.

22 There are two requirements to section 382: “(1) There must be an ascertainable class; and
23 (2) there must be a well-defined community of interest in the questions of law and fact involved
24 affecting the parties to be represented.” *Daar v. Yellow Cab Co.* (1967) 67 Cal. 2d 695, 704. The
25 California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the
26 community-of-interest requirement embodies three factors: “(1) predominant questions of law or
27 fact; (2) class representatives with claims or defenses typical of the class; and (3) class
28

representatives who can adequately represent the class.” *Richmond v. Dart Indus., Inc.*, (1981) 29 Cal. 3d 462, 470.

B. The Criteria For Class Certification Are Satisfied

When determining whether a class is ascertainable, California courts focus on the following three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying Class Members. *See Miller v. Woods* (1983) 148 Cal. App. 3d 862, 873.

1. The Class Is Ascertainable and Identifiable

Here, the Class is ascertainable because its definition, which is precise and comprised of objective criteria, renders Class Members identifiable and certain. The objective criteria includes the nature of the position held by the class member, i.e., non-exempt; the time period during which the class member held the position; the state in which the class member worked, i.e., in California; and the employer of the class member, i.e., Defendant. In cases where a class is defined by such precise, objective terms, Courts have found the class to be ascertainable and identifiable. *See e.g., Wilner v. Sunset Life Ins. Co.*, (2000) 78 Cal.App.4th 952, 959-60.

2. The Class Is Numerous

Here, the Class is numerous because the class consists of an estimated 260 Class Members. “The requirement of *California Code of Civil Procedure* section 382 that there be ‘many’ parties to a class action suit is indefinite and has been construed liberally.” *Rose v. City of Hayward*, (1981) 126 Cal.App.3d 926, 934. “Where a question is of common interest to ‘many’ persons, an action may be maintained as a class action even where the parties are numerous, and it is in fact practicable to join them all.” *Id.* “No set number is required as a matter of law for the maintenance of a class action.” *Id.* “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a trust in an action for removal of the trustees.” *Id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574; *Collins v. Rocha* (1972) 7 Cal.3d 232 (upholding a 35-member class.)

3. There Is A Well-Defined Community Of Interest

There is a well-defined community of interest where (1) there are common questions of law and fact that predominate over individual issues; (2) the class representative has claims or defenses typical of the class; and (3) the class representative adequately represents the class.

1 *Dunk, supra*, 48 Cal. App. 4th at 1806. This showing indicates whether a proposed class is
2 sufficiently cohesive to warrant adjudication by representation. *See, e.g., Clothesrigger, Inc. v.*
3 *GTE Corp.* (1987) 191 Cal.App.3d 605.

4 Here, there are common questions of law and fact that predominate over individual issues.
5 The questions of law and fact center around whether Defendant had legally compliant policies
6 and practices to pay employees all wages owed; whether Defendant had legally compliant
7 policies and practices to provide employees with meal periods; whether Defendant had legally
8 compliant policies and practices authorizing and permitting its employees to take rest breaks;
9 whether Defendant had legally compliant policies and practices to ensure reimbursement of all
10 necessary business expenses incurred; whether Defendant timely paid final wages to employees;
11 and whether Defendant had legally compliant wage statements. The Operative Complaint
12 establishes that all Class Members would need to answer these same questions of law and fact in
13 order to prevail on their injuries; that all Class Members have suffered from and seek redress for
14 the same injuries; and that their legal remedies would be identical in the event they prevailed.

15 Here also, the Class Representatives have claims typical of the Class. A class
16 representative has claims typical of the class when his or her claims arise from the same event,
17 practice or course of conduct, and if the claims rest on the same legal theories. *Classen v. Weller*
18 (1983) 145 Cal.App.3d 27, 47 (“The only requirements are that common questions of law and
19 fact predominate and that the class representative be similarly situated” vis-à-vis the class.”) This
20 is precisely the case here. Like all other Class Members, Plaintiff is a former non-exempt
21 employees of Defendant; Plaintiff worked for Defendant in California; Plaintiff typically worked
22 five days per workweek and eight hours per workday; and Plaintiff was subject to the
23 employment policies and practices of Defendant, which are the basis of his claims and legal
24 theories in support thereof. The Class Members are also all non-exempt employees of Defendant,
25 who worked for Defendant in California, who worked the same average workday and workweek
26 as Plaintiff and who were also subject to the same policies and practices as Plaintiff, which are
27 also the basis of their claims and alleged legal theories. The Class Representatives therefore have
28 identical claims to those of the Class.

1 Here, last, the Class Representative adequately represent the Class. The class
2 representative adequately represents the class where he or she is represented by counsel qualified
3 to conduct the pending litigation; and his or her interests are not antagonistic to those of the
4 class. *McGhee v. Bank of America*, (1976) 60 Cal.App.3d 442, 451. Plaintiff retained counsel
5 with extensive experience in prosecuting complex class actions, including similar class actions
6 that previously settled. *Moon Decl.*, ¶¶ 30-41. With their combined experience, Class Counsel are
7 unquestionably “qualified, experienced and generally able to conduct the proposed litigation.”
8 *Miller v. Woods* (1983) 148 Cal.App.3d 862, 875. In addition, Plaintiff has no conflict of interest
9 with any Class Members, and Plaintiff has, with counsel, litigated this case and diligently
10 reviewed the Settlement terms, showing their dedication. Plaintiff’s willingness to serve as
11 representatives demonstrates their serious commitment to bringing about the best results possible
12 for the Class. *McGhee, supra*, 60 Cal.App.3d at p. 451.

13 4. **A Class Action Is Superior To A Multiplicity Of Litigation**

14 If a Court finds all other requirements for class certification are satisfied, the Court must
15 finally determine that a class action is superior to alternative means for the fair and efficient
16 adjudication of the litigation. By consolidating many potential individual actions into a single
17 proceeding, this Court’s use of the class action device enables it to manage this litigation in a
18 manner that serves the economics of time, effort and expense for the litigants and the judicial
19 system. Absent class treatment, similarly situated employees with small but nevertheless
20 meritorious claims for damages would, as a practical matter, have no means of redress because of
21 the time, effort and expense required to prosecute individual actions. *Gentry v. Super. Ct.*, (2007)
22 42 Cal. 4th 443, 457-62; *Leyva v. Medline Ind.*, (9th Cir. 2013) 716 F.3d 510, 515. Moreover, in
23 the context of settlement, the superiority concerns are essentially non-existent.

24 V. **THE CLASS NOTICE MERITS PRELIMINARY APPROVAL**

25 A. **The Class Notice Satisfies State Law**

26 Notice requirements are set forth in the *California Rules of Court* rules 3.766 (e) and (f).
27 California law vests the Court with broad discretion to fix an appropriate notice program. *Cartt v.*
28 *Super Ct.* (1975) 50 Cal.App.3d 960, 973-74. There is no statutory or Due Process requirement

1 that all Class Members receive actual notice, but in this matter, the Class Members will receive
2 direct mailed notice. As the Court of Appeals has explained, “[t]he notice given should have a
3 reasonable chance of reaching a substantial percentage of the Class Members” *Id.* at p. 974.
4 Here, the Class Notice will be provided by direct mailing, the best possible form of notice under
5 the circumstances.

6 **B. The Class Notice is Accurate and Informative**

7 The Class Notice, in the form attached to the Settlement as Exhibit A, should be approved
8 for dissemination to the Class Members and Aggrieved Employees. The Notice informs the Class
9 Members of the terms of the Settlement; of their rights to be excluded from the Settlement; and
10 of their rights to object to the Settlement and be heard at the Final Approval Hearing.
11 Accordingly, the proposed Class Notice meets all requirements of *California Rules of Court* rule
12 3.769(f).

13 The proposed Class Notice also fulfills the requirement of neutrality in class notices.
14 Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 8.39. It summarizes the proceedings
15 to date and the terms and conditions of the Settlement in an informative and coherent manner;
16 makes clear that the Settlement does not constitute an admission of liability by the Defendant,
17 who denies all liability; and recognizes that this Court has not ruled on the merits of the
18 Action. It also states that the final settlement approval decision has not yet been made.
19 Accordingly, the proposed Class Notice complies with the standards of fairness, completeness,
20 and neutrality required of a combined settlement-certification class notice.

21 **VI. CONCLUSION**

22 For the foregoing reasons, Plaintiff respectfully request the Court to grant preliminary
23 approval of the Settlement and set a Final Approval Hearing.

24
25 Dated: March 6, 2024

MOON LAW GROUP, PC

26
27 By: Edwin Zamagarian
28 Kane Moon, Esq.

Lili Ter-Astvatsatryan, Esq.
Edwin Kamarzarian, Esq.
*Attorneys for Plaintiff, Charles Howard
Clark*

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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not
4 a party to the within action; my business address is 1055 W. Seventh St., Suite 1880, Los Angeles,
California 90017. On **March 6, 2024**, I served the foregoing document described as:

5 **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
6 **AND PAGA SETTLEMENT AGREEMENT**

7 X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s) addressed as
follows:

8 JAMES RUMM
9 **KENNEDY, McCARTHY & RUMM, LLP**
9210 Irvine Center Drive,
Irvine, CA 92618
10 (949) 705-6611 (Main)
11 (949) 889-2341 (Direct)
jrumm@KMRLawyers.com

12 Attorneys for Defendant PowerStone Property Management, Inc

13 [✓] **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to
14 accept electronic service, I caused the documents to be sent to the persons at the electronic
service addresses listed above via e-mail. I did not receive an error message.

15 I declare under penalty of perjury under the laws of the State of California that the foregoing is
16 true and correct.

17 Executed this, **March 6, 2024** at Los Angeles, California.

18 Jason Khozam
19 Type or Print Name

20 
21 Signature