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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SOLANO

MARCOS SEGURA and MIGUEL SEGURA, individually, and on behalf of all others similarly situated, Plaintiffs, vs. E.B. STONE & SON, INC., a California corporation; and DOES 1 through 10, inclusive, Defendants.	Case No.: FCS056951 [Assigned for all purposes to the Honorable Tim P. Kam, Department 22] **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** [*Filed concurrently with the Declaration of Kane Moon, Declarations of Plaintiffs, Declaration of Mayra Gonzalez, [Proposed] Order, and [Proposed] Judgment*] FINAL APPROVAL HEARING Date: November 1, 2024 Time: 9:00 a.m. Department: 22 Action Filed: August 10, 2021 Trial Date: Not Set

TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that November 1, 2024, at 9:00 a.m., in Department 22 of this Court located at 600 Union Avenue, Fairfield, California 94533, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769 *et seq*., Plaintiffs Marcos Segura and Miguel Segura ("Plaintiffs") will move the Court for an Order granting final approval of the proposed class and PAGA action settlement ("Settlement") between Plaintiffs and Defendant E.B. Stone & Son, Inc. Plaintiffs will further move the Court for an Order:

1. Granting class certification of the Settlement Class, solely for settlement purposes pursuant to Code of Civil Procedure § 382;
2. Approving the settlement as fair and reasonable, and finding that Class Members were given notice of the settlement and advised of their right to participate in the settlement, object to the settlement, or exclude themselves from the settlement, in a reasonable manner;
3. Appointing counsel for Plaintiffs, Moon Law Group, PC, as Class Counsel;
4. Appointing Plaintiffs as the Class Representatives;
5. Approving payment of service payment to Plaintiffs in the amount of $7,500.00 each;
6. Approving payment of administrative expenses to the settlement administrator in the amount of $7,000.00;
7. Approving payment of $218,729.00 in attorneys' fees, which is 33.33% of the Gross Settlement Amount, and costs of $16,983.50 to Class Counsel for litigating this action;
8. Approving the net payment to the California Labor Workforce Development Agency in the amount of $37,500.00.
9. Directing that the clerk of the Court enter the Court's order as a final judgment; and,
10. Without affecting the finality of the final judgment, reserving continuing jurisdiction over the parties for the purposes of implementing, enforcing and/or administering the Settlement or enforcing the terms of the judgment.

The motion will be based upon this Notice, the attached Memorandum of Points and Authorities, the Declaration of Kane Moon in support thereof, the Declarations of Plaintiffs, the Declaration of Mayra Gonzalez of Phoenix Class Action Administration Solutions in support thereof, and the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: October 8, 2024

MOON LAW GROUP, PC

By: ______________________________

Kane Moon
Lilit Ter-Astvatsatryan
Holly Williams

Attorneys for Plaintiffs

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I. INTRODUCTION

Pursuant to California Rules of Court, Rules 3.769(d) and (e), Plaintiffs respectfully requests that this Court grant final approval of the proposed class action and Private Attorneys General Act ("PAGA") representative action settlement set forth in the JOINT STIPULATION OF SETTLEMENT OF CLASS ACTION AND PAGA ACTION SETTLEMENT AGREEMENT ("Settlement" or "Agreement") with Defendant E.B. Stone & Son, Inc. ("Defendant") (together with Plaintiffs, the "Parties").

A presumption of fairness exists as the Settlement was reached through arm's-length negotiations and sufficient investigation allowing Class Counsel and the Court to act intelligently. Class Counsel possesses vast experience in similar wage-and-hour litigation, and there were zero objections to the Settlement. Additionally, the Settlement will provide substantial monetary payments to 99 Class Members. Upon the Court's approval of the settlement, Participating Class Members will receive an average gross payment of $3,520.58, with the estimated highest gross payment being **$10,763.66**. (Declaration of Mayra Gonzalez of Phoenix Class Action Administration Solutions with Respect to Notice and Settlement Administration ("Gonzalez Decl."), ¶ 14.) The exclusion deadline expired on August 23, 2024, and there was zero (0) requests for exclusion and zero (0) notices of objection to the Settlement. (*Id.* at ¶¶ 8-9.) Based on the lack of any requests for exclusion and the lack of any notices of objection, the proposed Settlement reflects a fair, reasonable, adequate agreement that would be in the best interests of the Settlement Class Members.

Additionally, Plaintiffs' request of Class Counsel's attorneys' fees in the amount of $218,729.00, reimbursement of costs for actual litigation expenses incurred by Class Counsel in the amount of $16,983.50, a Service Payment in the amount of $7,500.00 to each Plaintiff, Settlement Administration costs of up to $7,000.00, and a net payment to the California Labor Workforce Development Agency ("LDWA") in the amount of $37,500.00 are also reasonable, and thus should be approved by this Court. Accordingly, Plaintiffs request that the Court grant final approval of the Settlement.

II. THE NOTICE PROCESS WAS SUCCESSFULLY COMPLETED AFTER PRELIMINARY APPROVAL

The Parties have fulfilled the class notice procedures set forth in the Settlement. The Settlement Administrator sent individual Notices to 99 Class Members on June 24, 2024. (Gonzalez Decl., ¶ 5.) Of the Notices that were mailed, 14 were returned, none included a forwarding address. (*Id.* at ¶ 6.) The Settlement Administrator used TransUnion TL Oxp, one of the most comprehensive address databases available for skip tracing. (*Id.*) Of the fourteen (14) Notices that were skip traced, seven (7) updated addresses were obtained and the Notice was promptly re-mailed to the Class Members via first class mail. (*Id.*) ***No Class Members requested to be excluded from the Settlement, and no Class Members objected in writing***. (*Id.* at ¶¶ 8-9.) The response deadline for the Class Members was August 23, 2024. (*Id.* at ¶¶ 8-10). The response was positive, and the Notice process was completed properly.

III. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Claims

1. Defendant is a fertilizer supplier based in Suisun, California. (Declaration of Kane Moon in Support of Plaintiff's Motion for Final Approval of Class and PAGA Action Settlement ("Moon Decl.") ¶ 3.) Defendant has employed Plaintiffs and other putative Class Members in California during the putative Class Period. (*Id.*) Plaintiff Marcos worked for Defendant from approximately March 2019 to March 2021. (*Id.*) Plaintiff Miguel worked for Defendant from approximately December 2019 to March 2021. (*Id.*) Throughout their employment, Plaintiffs were employed in an hourly paid, non-exempt position. (*Id.*) Plaintiffs contend they and their coworkers were subjected to the same unlawful labor practices, including failure to pay wages for all hours worked. (*Id.*)

Plaintiffs' claims are predicated on Defendant's failure to pay all wages, including overtime, failure to provide meal periods, failure to authorize and permit rest breaks, and failure to reimburse business expenses. (Moon Decl., ¶¶ 4, 5.) Plaintiffs also allege derivative claims based on alleged violations of Labor Code sections 226 and 203, and Business & Professions Code section 17200, *et seq*. (*Id.*) Lastly, Plaintiffs allege that the foregoing violations subject Defendant to civil penalties under PAGA. (*Id.*)

Because of Defendant's alleged violations of various provisions of the Labor Code, Plaintiffs filed this class and representative action which, in its amended form, alleges that Defendant systematically: (1) Failed to Pay Minimum Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failed to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failed to Provide Meal Periods [Cal. Lab. Code §§ 226.7 and 512]; (4) Failed to Authorize and Permit Rest Breaks [Cal. Lab. Code § 226.7]; (5) Failed to reimburse necessary business expenses [Cal. Lab. Code § 2802]; (6) Failed to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (7) Failed to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; (8) Engaged in Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, *et seq*.]; and (9) Violated Labor Code section 2698, *et seq*., or PAGA. (Moon Decl., ¶ 5.)

Defendant denies Plaintiffs' allegations and opposes the merits of this case. (Moon Decl., ¶ 6.) Defendant maintains that Plaintiffs and the putative Class Members have been paid proper wages, have been provided meal periods, or have been given the opportunity to take meal periods as mandated by California law, and have been provided rest periods, or have been permitted and authorized to take rest periods as mandated by California law, have been reimbursed for business-related expenses, have been paid timely wages upon termination of employment, and have been provided with accurate itemized wage statements. (*Id.*) Moreover, to the extent that Plaintiffs received wage statements that were allegedly inaccurate, Defendant asserted that Plaintiffs suffered no actual damage or harm as a result. (*See, e.g., Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013) No. C 12-05860 CRB, 2013 WL 622032, at *10 ["A plaintiff must adequately plead an injury arising from an employer's failure to provide full and accurate wage statements, and the omission of the required information alone is not sufficient."].) (Moon Decl., ¶ 6.)

With respect to Plaintiffs' claim for waiting time penalties, Defendant alleged that its good-faith belief that it paid all wages precluded the imposition of waiting time penalties since Plaintiffs could not prove that Defendant's alleged failure to pay all final wages at the time of separation was "willful." (*See, e.g., Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012) No. ED CV 11–298 GHK (DTBx), 2012 WL 9506073, *5.) (Moon Decl., ¶ 6.) For these reasons, Defendant claimed that it did not engage in any unfair business practices and denied liability under PAGA. (*Id*.) Defendant also maintained that Plaintiffs' claims were improper for class treatment. (*Id*.)

B. Discovery and Investigation

2. The Parties agreed to mediate the instant action and scheduled mediation with Kelly A. Knight, Esq. on October 19, 2023. (Moon Decl., ¶ 7.) The Parties agreed to move forward with informal discovery, in which they adhered to a protocol for exchanging documents and information. (*Id.*) Defendant produced a sample of time and payroll records for roughly 27.6% of employees in the Class Period, Plaintiffs' time and pay records and personnel file, Defendant's human resource documents, and information regarding the estimated number of current and former Class Members, workweeks, Aggrieved Employees, PAGA pay periods, and average hourly pay. (*Id.*) Class Counsel utilized all documents and information to facilitate an effective mediation. (*Id.*)

Class Counsel and its expert were also able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. (Moon Decl., ¶ 8.) Based on this evaluation, Class Counsel examined the law applicable to the claims and defenses asserted in the litigation. (*Id.*) This examination familiarized Class Counsel with the facts and legal issues raised in this case, which allowed them to act intelligently in investigating and negotiating the Settlement. (*Id.*)

C. Settlement Negotiations

On October 19, 2023, the Parties participated in private mediation with Kelly A. Knight, Esq., an experienced wage-and-hour class action mediator (Moon Decl., ¶ 9.) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses, the Parties reached a settlement, the material terms of which are encompassed within the Settlement. (Moon Decl., Ex. 1 [Stipulation of Settlement of Class Action and PAGA Claims and Release of Claims (Settlement)].)

Based on the foregoing discovery and its own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, reasonable, and adequate. (Moon Decl., ¶ 22.) Furthermore, in light of all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, the defenses that could be asserted by Defendant both to certification and on the merits, the Settlement is in the best interests of the Class Members. (*Id*.) **Indeed, the $656,250.00 Settlement represents 92.17% of Defendant's maximum potential overall liability of $712,006.25.** (Moon Decl., ¶ 24.) Finally, and most importantly, this Court preliminary approved the Settlement on May 24, 2024. (*Id*.).

D. <u>Key Terms of the Settlement</u>

The Settlement is all-inclusive, and its key terms include:

1. "Action" means Marcos Segura., et al. v. E.B. Stone & Son, Inc., Solano Superior Court, Case No. FCS056951. (Settlement, ¶ 1.1.)
2. "Class Period" means the period from August 10, 2017, to January 1, 2024. (Settlement, ¶ 1.13.)
3. "Class" means all persons who worked for Defendant in California as hourly, nonexempt non-driver employees during the Class Period. (Settlement, ¶ 1.5.)
4. "Class Counsel" means Kane Moon, and Lilit Ter-Astvatsatryan of Moon Law Group, PC. (Settlement, ¶ 1.6.)
5. "PAGA Period" means the period from August 10, 2020, to January 1, 2024. (Settlement, ¶ 1.34.)
6. "Aggrieved Employee" means all persons who worked for Defendant in California as hourly, nonexempt non-driver employees during the PAGA Period. (Settlement, ¶ 1.4.)
7. "Gross Settlement Amount" means $656,250.00 which is the total amount that Defendant agrees to pay under the Settlement Agreement, subject to the terms in Paragraph 7 below. The Gross Settlement Amount shall be used to satisfy all of Defendant's liabilities arising from the settlement, including payment of all employee-side taxes on payments made to Participating Class Members, interest, Plaintiffs' attorneys' fees and costs, the incentive award for Plaintiffs, payments to all Participating Class Members, the payment to the California Labor and Workforce Development Agency ("LWDA"), and the payments to all Aggrieved Employees. Defendant will not pay more than the Gross Settlement Amount, plus employer-side

taxes on the wage payments made to Participating Class Members. The Gross Settlement amount is non-reversionary, and non-claims made. (Settlement, ¶ 1.23.)

8. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters its Order Granting Final Approval; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur. (Settlement, ¶ 1.19.)

9. "Net Settlement Amount" means the Gross Settlement Amount less the following payments approved by the Court: Class Counsel Fees Payment, Class Counsel Expenses Payment, Class Representative Service Payments, Administration Fees, Individual PAGA Payments, and LWDA PAGA Payments. The remainder is to be paid to Participating Class Members as Individual Class Payments. (Settlement, ¶ 1.28.)

10. "Class Counsel Fees Payment" means the amount allocated to Class Counsel for reimbursement of the reasonable attorneys' fees incurred to prosecute the Action. (Settlement, ¶ 1.7.) A Class Counsel Fees Payment of not more than thirty-three and one-third percent (33.33%) of the Gross Settlement Amount, which is currently estimated to be $218,729.00. (Settlement, ¶ 3.1.2.)

11. "Class Counsel Expenses Payment" means the amount allocated to Class Counsel for reimbursement of the reasonable attorneys' expenses incurred to prosecute the Action of not more than $20,000.00. (Settlement, ¶ 1.8.) Class Counsel's costs are approximately $16,983.50 at this time. (Moon Decl., 13, Ex. 4.)

12. "Administrator" means Phoenix, the neutral entity the Parties have agreed to appoint to administer the Settlement. (Settlement, ¶ 1.2.) An Administrator Expenses

Payment not to exceed $7,000.00, except for a showing of good cause and as approved by the Court. If the Court approves payment less than the amount requested, or to the extent the Administration Expense Payment is less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. (Settlement, ¶ 3.1.3.)

13. "Service Payment" A Class Representative Service Payment to the Class Representatives of not more than $7,500.00 for each Plaintiff, in addition to any Individual Class Payment and Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member and Aggrieved Employee. (Settlement, ¶ 3.1.1.)

14. "PAGA Allocation" PAGA Penalties in the amount of $50,000.00 to be paid from the Gross Settlement Amount, with 75% ($37,500.00) allocated to the LWDA PAGA Payment and 25% ($12,500.00) allocated to the Individual PAGA Payments. (Settlement, ¶ 3.1.5.)

15. "Individual Class Payment" An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (Settlement, ¶ 3.1.4.)

16. "Released Parties" means: Defendant, and each of their former, present, and future owners, parents, and subsidiaries, and all of their current, former, and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, predecessors, successors, assigns, accountants, insurers, reinsurers, and/or legal representatives. (Settlement, ¶ 1.42.)

17. "Date Release Becomes Active" Effective on the date when Defendant fully funds the entire Gross Settlement Amount and the Court enters an order granting Final Approval of this Settlement, Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties. (Settlement, ¶ 6.)

18. "Released Class Claims" means the Release of Claims by Participating Class

Members as described in Paragraph 6.2. (Settlement, ¶ 1.40.)

19. "Released PAGA Claims" means the Limited Release of Claims by Aggrieved Employees as described in Paragraph 6.3. (Settlement, ¶ 1.41.)

IV. <u>THE COURT SHOULD GRANT FINAL APPROVAL</u>

To prevent fraud, collusion, or unfairness to the class, the settlement of a class action requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached through arm's-length bargaining; (2) investigation is sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk*, 48 Cal.App.4th at p. 1800.)

In evaluating a settlement, the trial court considers the following factors: 1) the strength of plaintiff's case; 2) the risk, expense, complexity, and likely duration of further litigation; 3) the risk of maintaining class action status through trial; 4) the amount offered in settlement; 5) the extent of discovery completed and the stage of the proceedings; 6) the experience and views of counsel; 7) the presence of a governmental participant; and 8) the reaction of the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc*., (2008) 168 Cal.App.4th 116, 128.) In order to approve a class action settlement, the court must satisfy itself that the class settlement is within the "ballpark" of reasonableness. (*Id*. at p. 133.) The record need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not require "an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims", but instead, only an "understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."].)

As discussed below, Class Counsel has provided information exceeding the threshold required to provide this Court with materials and information necessary to determine that the proposed settlement is fair, adequate, and reasonable.

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A. The Settlement Is Fair, Reasonable, Adequate, and the Product of Investigation, Litigation, and Negotiation

1. The Settlement Is the Product of Discovery, Investigation, and Informed and Non-Collusive Arm's-Length Negotiations

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption here that the negotiations were conducted in good faith. (Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 11.51.) Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 ["The fact that a plaintiff might have received more if the case had been fully litigated is no reason not to approve the settlement."].)

The Settlement was reached following extensive negotiations with professional, neutral mediator Kelly Knight, Esq. (Moon Decl. ¶ 9.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to discuss and concede to the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses. (*Id.*)

Prior to reaching this Settlement, Class Counsel conducted informal discovery and investigation into the claims alleged by Plaintiffs, including, among other things, reviewing and analyzing pay and time data, manuals, and preparing a damage analysis. (Moon Decl., ¶ 7.) Significantly, Class Counsel's calculations are based on the analysis of a statistics expert retained by Class Counsel to analyze the records produced by Defendant. (Moon Decl., ¶ 8.) In conjunction with their extensive factual investigation, Class Counsel investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Thus, Plaintiffs and their counsel were able to act intelligently and effectively in negotiating the proposed settlement. (*Id.*)

Class Counsel also has considerable experience and have demonstrated competence with litigating wage and hour class actions. (Moon Decl., ¶¶ 41-57.) Again, this supports that the terms of the Settlement are based on objective evidence that has been considered and weighed against the risks, expenses, and time consumption to both sides of continued litigation of this action.

2. The Settlement Is Fair and Reasonable in Light of the Parties' Respective Legal Positions

A settlement is not judged against what might plaintiff recover had he prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 ["Compromise is inherent and necessary in the settlement process…even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation."])

The settlement obviates the significant risk that this Court may deny certification of all or some of Plaintiffs' claims. (Moon Decl., ¶ 27.) While Plaintiffs are confident in the merits of their claims, a legitimate controversy exists as to each cause of action. (Moon Decl., ¶ 22.) Plaintiffs also recognize that proving the amount of wages due to each Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id*.) Furthermore, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the Class Members. (Moon Decl., ¶ 27.)

The proposed settlement of $656,250.00 therefore represents a substantial recovery when compared to Plaintiffs' reasonably forecasted recovery. (Moon Decl., ¶ 24.) Because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id*.) When considering the risks of litigation, including the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement amount of $656,250.00 is within the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (Moon Decl., ¶ 28.) ***Indeed, each Class Member is eligible to receive an average net benefit of approximately $3,520.58.*** (Moon Decl., ¶ 29.)

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B. The Proposed Award of Attorneys' Fees and Costs Is Also Fair, Adequate, and Reasonable and Merits Final Approval

a) *Plaintiffs' Counsel Should be Awarded Fees Based on a Percentage of the Fund Recovered, Consistent with the Common Fund Method*

The request for attorneys' fees as a percentage of the settlement fund is supported by the "common fund theory," where "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." Serrano v. Priest, 20 Cal. 3d 25, 35 (1977). The lodestar may be cross-checked against the percentage-of-recovery. *See In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-58 (2009).

The purpose of the common fund approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). Thus, the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995); *see Quinn v. State of California*, 15 Cal. 3d 162, 167 (1975) ("[O]ne 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.").

The California Supreme Court removed any lingering doubt about the use of the percentage of the fund method to award attorney's fees in California Courts:

> We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation (See pt. I, ante; Lealao, supra, 82 Cal.App.4th at pp. 48–49, 97 Cal.Rptr.2d 797; Rawlings v. Prudential–Bache Properties, Inc., supra, 9 F.3d at p. 516)—convince us the percentage method is a valuable tool that should not be denied our trial courts.

Laffitte v. Robert Half Intern. Inc., 1 Cal. 5th 480, 503 (2016). Thus, this Court may and, as strongly encouraged by the California Supreme Court, should award attorney's fees to Class Counsel based upon the percentage of the fund methodology.

Setting *Laffitte* aside, whether the once-again-confirmed percentage of the fund or the lodestar method is used, the outcome is roughly the same: "Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc*., 162 Cal. App. 4th 43, 47 n. 11 (2008). This is also consistent with Plaintiffs' Counsel's experience in these types of cases. Here, Class Counsel requests attorneys' fees of 33.33% of the Gross Settlement Amount ($218,729.00), and costs capped at $20,000.00, which include payments for mediation, expert fees, filing fees, legal research fees, and other standard expenses. (Moon Decl., ¶ 13.) Given the efforts and risks in this case, as well as the results achieved, these amounts are within the range of reasonableness and warrant final approval.

b) Class Counsel Is Entitled to Attorneys' Fees and Costs under the California Labor Code and California's Private Attorney General Statute

Class Counsel is entitled to recover fees under Labor Code § 1194, which provides, in part:

> [A]ny employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Lab. Code § 1194.

As this litigation culminated in a Settlement that provides for a recovery of unpaid wages, including unpaid minimum and overtimes wages, Plaintiffs are entitled to recover reasonable attorneys' fees and costs under the Labor Code.

Class Counsel is also entitled to a fee under California's private attorney general statute, Code of Civil Procedure § 1021.5. "The award of attorney's fees is proper under section 1021.5 if '(1) plaintiffs' action 'has resulted in the enforcement of an important right affecting the public interest,' (2) 'a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons' and (3) 'the necessity and financial burden of private enforcement are such as to make the award appropriate.'" *Press v. Lucky Stores*, 34 Cal. 3d 311, 317-318 (1983). The objective of the statute is "to encourage suits enforcing public policies by providing substantial attorneys' fees to successful litigants in such cases." *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 565 (2004).

The Action resulted in the enforcement of an important right affecting the public interest, as Plaintiffs sought to enforce Class Members' rights to recover statutory wages arising from Defendant's failure to pay all wages and failure to provide meal and rest breaks. *See Murphy v. Kenneth Cole Productions, Inc*., 40 Cal. 4th 1094, 1113 (2007) (noting that "health and safety concerns" are what motivated the Industrial Wage Commission to adopt mandatory meal and rest periods).

The Action also conferred a significant benefit on a class of persons who worked for Defendant during the Class Period and were, according to allegations, not properly compensated for all hours worked and were not provided meal and rest periods or compensation therefor.

Finally, the necessity and financial burden of private enforcement render an award appropriate. Without the incentive of an attorneys' fee award, Plaintiffs could not have afforded to hire counsel to pursue this case, as the cost of litigating this matter far outweighed Plaintiffs' potential recovery. *See Ryan v. California Interscholastic Federation*, 94 Cal. App. 4th 1033, 1044 (2001) ("As to the necessity and financial burden of private enforcement, an award is appropriate where the cost of the legal victory transcends the claimants' personal interest; in other words, where the burden of pursuing the litigation is out of proportion to the plaintiff's individual stake in the matter.").

c) A Lodestar Cross Check Confirms that Class Counsel's Requested Attorneys' Fees Are Reasonable

Plaintiff's fee application is also reasonable based on Class Counsel's lodestar. Under the lodestar method, the court considers a compilation of the time spent and a reasonable hourly compensation of each attorney to evaluate the reasonableness of the fee requested. *Ramos v. Countrywide Home Loans, Inc.*, 82 Cal. App. 4th 615, 622 (2000). The moving party meets its burden in this regard by submitting "declarations evidencing the reasonable hourly rate for their services and establishing the number of hours spent working on the case" as "California case law permits fee awards in the absence of detailed time sheets." *Wershba*, 91 Cal. App. 4th at 254-55; Dunk, 48 Cal. App. 4th at 1810; *Nightengale v. Hyundai Motors America*, 31 Cal. App. 4th 99, 103 (1994). The hours spent and the reasonable hourly compensation are computed to arrive at a "lodestar" figure which may then be augmented or diminished by the court taking into account various "multiplier" factors. *See Ramos*, 82 Cal. App. 4th at 622 (citing *Serrano*, 20 Cal. 3d at 48-49).

Here, Class Counsel's billed lodestar is estimated to exceed $155,895.00 which is based on approximately 238.6 billed hours (not including final estimated hours) at the attorneys' customary hourly rates. (Moon Decl., ¶ 52.) Application of a positive multiplier is appropriate, based on the contingent risk incurred by Class Counsel, the difficulty of the questions involved, the benefit conferred on the class as a result of the Settlement, and the skill displayed by Class Counsel. Thus, Class Counsel's request for $218,729.00 in attorneys' fees, which is 1.40 times the billed lodestar (not including final unbilled estimated hours) is reasonable under the lodestar method.

(1) Class Counsel's Hours Are Reasonable

In determining whether the number of hours expended on the litigation was reasonable, the Court must determine that "the time spent was reasonably necessary and that [] counsel made 'a good faith effort to exclude from the fee request hours that are excessive, redundant, or otherwise unnecessary." *Jordan v. Multnomah County*, 815 F.2d 1258, 1263 n.8 (9th Cir. 1987). The Court "should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) (noting that "[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee.").

Here, Class Counsel expended a prudent amount of time litigating the case to achieve the excellent result on behalf of the Class Members.

(2) Class Counsel's Hourly Rates Are Reasonable

The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). "[I]n assessing a reasonable hourly rate, the trial court is allowed to consider the attorneys' skill as reflected in the quality of work, as well as the attorneys' reputation and status." *MBNA American Bank, N.A. v. Gorman*, 147 Cal. App. 4th 1, 3 (2006). The trial court may also "find hourly rates reasonable based on evidence of other courts approving similar rates." *Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010).

Class Counsel are experienced litigators who specialize in employment law, with a substantial wage and hour class action practice. (Moon Decl. ¶¶ 41-57.) A number of courts have approved Class Counsel's hourly rates. (*Id.*) Given the skill and experience of Class Counsel, and the excellent result achieved, Class Counsel's hourly rates are reasonable.

(3) Application of a Positive Multiplier Would Be Appropriate

The lodestar amount may be increased by applying a multiplier. *See Serrano*, 20 Cal. 3d at 49. In California, "[m]ultipliers can range from two to four or even higher" and are routinely applied in the range requested by Class Counsel. *Wershba*, 91 Cal. App. 4th at 254; *see also Chavez*, 162 Cal. App. 4th at 66 (upholding 2.5 multiplier); *Glendora Community Redevelopment Agency v. Demeter*, 155 Cal. App. 3d 465 (1984) (affirming a fee award that included a 12.0 multiplier). Some of the factors a trial court considers when determining whether to apply a multiplier are: "(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award." *See Ketchum v. Moses,* 24 Cal. 4th 1122, 1132 (2001) (citations omitted). The ultimate goal is "to entice competent counsel to undertake difficult public interest cases." *San Bernardino Valley Audubon Soc. v. County of San Bernardino,* 155 Cal. App. 3d 738, 755 (1985). Fee awards that are too small "chill the private enforcement essential to the vindication of many rights…." *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 53 (2000).

In *Ketchum*, the California Supreme Court held that fee enhancement in contingency cases is necessary to (1) fully compensate counsel for the "loan" of legal services in light of the inherent high risk of "default" posed by losing the case, and (2) encourage competent counsel to take on fee award cases. *Ketchum*, 24 Cal. 4th at 1132-1133. As the court noted, "A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases." *Id*. at 1133 (citations omitted). Application of a positive multiplier is appropriate, based on the contingent risk incurred by Class Counsel, the difficulty of the questions involved, the substantial benefit conferred on the class as a result of the Settlement, and the skill displayed by Class Counsel. Here, a modest multiplier of 1.40 is required to align the final estimated lodestar with the requested fee. Class Counsel will have been litigating this case for over a year and a half before receiving any reimbursement, expending time and resources which could have been directed elsewhere. Class Counsel agreed to litigate on a contingent basis, and in the process assumed considerable risk given the uncertain outcome.

Class Counsel's efficiency and skill in bringing the case to an early resolution should not be used to justify refusal to award the requested fees. As the court explained in *Lealao*:

> [T]he promptness of settlement cannot be used to justify the refusal to apply a multiplier to reflect the size of the class recovery without exacerbating the disincentive to settle promptly inherent in the lodestar methodology. Considering that our Supreme Court has placed an extraordinarily high value on settlement … it would seem counsel should be rewarded, not punished, for helping to achieve that goal….

Lealao, 82 Cal. App. 4th at 52 (citations omitted).

Given the contingent risk incurred by Class Counsel, the issues involved, the substantial benefit conferred on the Class Members and State as a result of the Settlement, and the skill displayed by Class Counsel, application of a modest positive multiplier would be appropriate. Thus, Plaintiff respectfully requests that the Court award Class Counsel the requested fees of $218,729.00 under the common fund theory with a lodestar cross-check or, alternatively, based on Class Counsel's lodestar with application of a modest multiplier based upon the agreed-upon cap on fees.

d) Class Counsel's Costs Are Reasonable

The Settlement provides for reimbursement of costs not to exceed $20,000.00. To date, Moon Law Group, PC has already incurred actual costs in the amount of $16,983.50. These costs were reasonably incurred in prosecuting the Action on behalf of the Class Members and should be approved by the Court. Accordingly, Class Counsel respectfully requests the Court approve costs in the amount of $16,983.50.

C. <u>**The Proposed Service Payment to Plaintiffs is Fair, Adequate, and Reasonable and Warrants Final Approval.**</u>

Named plaintiffs in class action lawsuits "are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." *Munoz* v. *BCI Coca-Cola Bottling Co. of Los Angeles, supra,* 86 Cal.App.4th at p. 412. Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. *See Rodriguez v. W. Publ'g Corp*. (9th Cir. 2009) 563 F.3d 948, 958-59.

Service payments are particularly important to plaintiffs in wage and hour cases because they promote the important public policies underlying the wage and hour laws. This strong policy is codified in California Labor Code section 90.5, which provides, "it is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions…."). Nonetheless, the California Supreme Court has noted that "retaliation against employees for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes designed to protect employees. *Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61. In this context, class representatives should be rewarded for assuming the risk of retaliation for the sake of class members. *See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.

When compared with the amounts awarded in typical class action cases, the amount requested here is particularly reasonable. Indeed, a 2006 study examining the average incentive award given to class action plaintiffs from 1993 to 2002 found that the "average award per class representative was $15,992 and the median award per class representative was $4,357." (Theodore Eisenberg & Jeffrey P. Miller, "Incentive Awards to Class Action Plaintiffs: An Empirical Study", 53 UCLA L. Rev. 1303, 1308 (2006).) That same study found that named plaintiffs in employment discrimination class actions received an average award of $69,850 and a median award of $31,081, while named plaintiffs in other employment class actions received an average award of $12,121 and a median award of $13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards in employment cases reflected the "courts" wish to make representative plaintiffs whole by compensating them for the high costs of their service to the class, including risks of stigmatization or retaliation on the job." (*Id.* at p. 1308.)

Under the Settlement, subject to the Court's approval, Defendant agreed to pay a Service Payment to Class Representatives in the amount of $7,500.00 to each Plaintiff. (Settlement, ¶ 3.1.1.) Class Counsel represents that Plaintiffs devoted a great deal of time and work assisting Class Counsel in the case and communicated with Class Counsel very frequently for litigation and to prepare for mediation. (Moon Decl., ¶¶ 31-34.) This amount is reasonable particularly in light of the substantial benefits Plaintiffs generated for all Class Members. This amount is also reasonable because unlike Settlement Class Members, Plaintiffs are entering into a Code of Civil Procedure Section 1542 waiver in exchange for the award. (*Id.*) Finally, the highest amount that a Class Member will receive is around $10,763.66. (Gonzalez Decl., ¶ 14.) Awarding $7,500.00 to Plaintiff is just about two-thirds the amount that a Settlement Class Member is entitled to.

D. <u>The PAGA Allocation is Reasonable</u>

The PAGA allocation is reasonable because the settlement of the underlying wage and hour claims is robust and serves the deterrent purpose of the PAGA statute. *O'Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) ("By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA."); *see also Viceral v. Mistras Group*, 2016 WL 5907869 *9 (N.D. Cal. 2016) ("Applying O'Connor's sliding scale approach, settlement of the PAGA claim may be substantially reduced below its standalone settlement value without sacrificing its statutory purposes because the non PAGA settlement is relatively substantial.")

In addition, there is no evidence that a court or a commissioner had informed Defendant that its conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008);

Willis v. Xerox Bus. Servs., LLC, 2013 WL 6053831, *7-8 (E.D. Cal. 2013) ("Under California law, courts have held that employers are not subject to heightened penalties for subsequent violations until and unless a court or commissioner notified the employer that it is in violation of the Labor Code.")

V. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

A. Legal Standard

The proposed Final Settlement Class is well suited for class certification. All of the claims derive from a core set of alleged violations of California's wage and hour laws and regulations. For the reasons set forth more fully below, for purpose of settlement the Class satisfies the prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides: "[w]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all." Code Civ. Proc., § 382. There are two requirements to Section 382: "(1) There must be an ascertainable class; and (2) there must be a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." (*Daar v. Yellow Cab Co*. (1967) 67 Cal. 2d 695, 704 [citations omitted].) To clarify these requirements, the California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the community-of-interest requirement itself embodies three factors: "(1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Richmond v. Dart Indus., Inc*. (1981) 29 Cal. 3d 462, 470.

California law and policy favor the fullest and most flexible use of the class action device. *Id.* at p. 469-73. Indeed, "Courts long have acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system" particularly where the rights of consumers are at issue. *Linder v. Thrifty Oil Co*. (2000) 23 Cal. 4th 429, 434. Any doubt as to the appropriateness of class treatment should be resolved in favor of certification. *Richmond v. Dart Indus., Inc., supra,* 29 Cal.3d at pp. 473-75.

B. <u>Plaintiffs Maintain That the Criteria for Class Certification Is Satisfied</u>

1. The Class Is Ascertainable and Numerous

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. Here, the proposed class that Plaintiff seeks to represent is ascertainable because (1) the class definition is sufficiently precise, (2) consists of 99 Class Members, and (3) Class Members can be readily identified by looking at Defendant's records.

Plaintiffs maintain that there is an easily ascertainable class, defined by objective and precise criteria. Because Class Members are identified using specific criteria in the regular business records of Defendant, i.e., job position, the class is ascertainable. *Wilner v. Sunset Life Ins. Co*. (2000) 78 Cal.App.4th 952, 959-60 (defining class membership by ownership of product as the subject of the lawsuit is sufficient to make the class ascertainable).

"The requirement of 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; *see also, Collins v. Rocha* (1972) 7 Cal.3d 232 (upholding a 35 member class.) Therefore, Plaintiffs contend that numerosity is plainly satisfied.

2. There are Many Common Issues of Law and Fact Which Predominate

To satisfy the community of interest requirement, Parties must show: (1) common questions of law and fact that predominate over individual issues; (2) class representatives must have claims or defenses typical of the class; and (3) class representatives must adequately represent the class. (*Dunk*, 48 Cal.App.4th at p. 1806.) This inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation. *See, e.g., Clothesrigger, Inc. v. GTE Corp*. (1987) 191 Cal.App.3d 605. Plaintiffs' claims satisfy all three requirements.

In this case, the employment practices at issue are: whether Defendant had legally compliant policies and practices to pay employees all wages owed; whether Defendant had legally compliant policies and practices to provide employees with meal periods; whether Defendant had legally compliant policies and practices authorizing and permitting its employees to take rest periods; whether final payment of wages was untimely and excluded unpaid wages, including meal period premium wages, and rest period premium wages; whether all wages were paid to employees at the time of termination of the employment relationship; and whether the wage statements were consequently non-compliant. Plaintiffs contend that the factual and legal issues are the same for all identified Class Members, including themselves. Further, all Class Members suffered from and seek redress for the same alleged injuries. Considering that Class Members would need to prove the same issues of law and fact to prevail and their legal remedies would be indistinguishable, it would be preferable to resolve all claims through a settlement agreement than to force each Class Member to litigate their own individual claims. Thus, the Court should grant conditional class certification for settlement because common questions of law and fact predominate over any individual questions within the Class Members.

3. Plaintiffs' Claims Are Typical of the Claims of the Class Members

The typicality requirement does not focus on the individual characteristics or circumstances of the representative plaintiff compared to those of the remainder of the class, but rather upon the typicality of the proposed representative's claims as they relate to the defendant's conduct and activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["[t]he only requirements are that common questions of law and fact predominate and that the class representative be similarly situated" vis-à-vis the class.].) A representative plaintiff's claims are typical of the class if they arise from the same event, practice or course of conduct, and if the claims rest on the same legal theories. (*Id*.) That is precisely the case here. Plaintiffs are former employees of Defendant; as such, they allege that they were subject to the same policies and practices as other similarly situated employees.

4. **Plaintiffs and Their Counsel Meet the Adequacy Requirement**

The adequacy of representation requirements is met by fulfilling two conditions: First, a named plaintiff must be represented by counsel qualified to conduct the pending litigation. Second, a named plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451.)

Here, both conditions are met. Plaintiffs retained counsel with extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Moon Decl., ¶¶ 34-47.) With their combined experience, Class Counsel unquestionably are "qualified, experienced and generally able to conduct the proposed litigation." (*Miller v. Woods, supra,* 148 Cal.App.3d at p. 875.) In addition, Plaintiffs have no conflicts, and Plaintiffs, with their counsel of record, have litigated this case and diligently reviewed the settlement terms, showing their dedication. Plaintiffs' willingness to serve as a representative demonstrates his serious commitment to bringing about the best possible results for the Class Members. (*McGhee*, *supra*, 60 Cal.App.3d at p. 451.)

5. **A Class Action is Superior to a Multiplicity of Litigation**

Finally, in making its class certification decision, the Court must determine that a class action would be superior to alternative means for the fair and efficient adjudication of the litigation. By consolidating many potential individual actions into a single proceeding, this Court's use of the class action device enables it to manage this litigation in a manner that serves the economics of time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly situated employees with small but nevertheless meritorious claims for damages would, as a practical matter, have no means of redress because of the time, effort and expense required to prosecute individual actions. (*Gentry v. Super. Ct.*, *supra*, 42 Cal.4th at pp. 457-462; *Leyva v. Medline Ind.* (9th Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the superiority concerns are essentially non-existent.

VI. <u>THE SETTLEMENT SATISFIES CODE OF CIVIL PROCEDURE SECTION 384</u>

In pertinent part, Code of Civil Procedure section 384 requires the court to amend judgment, and

> "[...] to direct the defendant to pay the sum of the unpaid residue or unclaimed or abandoned class member funds, plus any interest that has accrued thereon, to non-profit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to non-profit organizations providing civil legal services to the indigent."

Here, the Settlement Agreement provides that: "For any Class Member whose Individual Class Payment check is uncashed and cancelled after the void date, the administrator shall transmit the funds represented by such checks to Legal Aid at Work, in accordance with the Code of Civil Procedure §384(b) ("Cy Pres Recipient"). The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient. (Settlement, ¶ 5.2.3).

VII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion for Final Approval, adopt the [Proposed] Order Granting Final Approval submitted herewith, and enter Judgement accordingly.

Respectfully submitted,

Dated: October 8, 2024

MOON LAW GROUP, PC

By: ______________________________

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