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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO – NORTH COUNTY REGIONAL CENTER**

11 MARK TAYLOR and ANGELICA TRUJILLO,
12 individually and as private attorneys general on
behalf of the State of California

13 Plaintiff,

14 vs.

15
16 ACCENTCARE, INC., a Delaware corporation;
and DOES 1 through 10, inclusive,

17 Defendants
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Case No.: 37-2022-00004587-CU-OE-NC

Judge: Hon. Cynthia Freeland

Dept.: N-27

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

*[Filed with the Declaration of Kane Moon,
the Declaration of Mitchell J. Murray, the
Declaration of Plaintiff Taylor, the
Declaration of Plaintiff Trujillo, and
[Proposed] Preliminary Approval Order]*

PRELIMINARY APPROVAL HEARING:

Date: June 27, 2025

Time: 1:30 p.m.

Dept.: N-27

Complaint Filed: February 4, 2022

Trial: Not set

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12 Attorneys for Plaintiff ANGELICA TRUJILLO

1 **TO THE COURT, AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on June 27, 2025 at 1:30 p.m. in Department N-27 located at
3 325 South Melrose Drive, Vista, California 92081 pursuant to Code of Civil Procedure section 382
4 and California Rules of Court, rule 3.769 *et seq.*, Plaintiffs Angelica Trujillo and Mark Taylor
5 (“Plaintiffs”) will, and hereby do, move the Court for an order granting preliminary approval of the
6 proposed class action settlement between Plaintiff and Defendant AccentCare, Inc. (“Defendant”).

7 Plaintiffs will further move the Court for an order:

- 8 1. Granting preliminary approval of the Stipulation of Settlement;
- 9 2. Certifying a Class, for settlement purposes only;
- 10 3. Approving the Class Notice and plan for its distribution;
- 11 4. Appointing Plaintiffs as the Class Representatives, for settlement purposes only;
- 12 5. Appointing Malte L. Farnaes, Christina M. Lucio, and Mitchell J. Murray of Farnaes &
13 Lucio, APC and Kane Moon and Lilit Ter-Astvatsatryan of Moon Law Group, PC as
14 Class Counsel, for settlement purposes only;
- 15 6. Appointing Apex Class Action Administration as the Settlement Administrator; and
- 16 7. Scheduling a Final Approval Hearing no earlier than 130 days from the date of
17 preliminary approval.

18 The motion will be based upon this notice, the attached memorandum of points and
19 authorities, the supporting declarations and attachments thereto, the records and files in this action,
20 and any other further evidence or argument that the Court may properly receive at or before the
21 hearing.

22 Respectfully submitted,

23 Dated: May 16, 2025

MOON LAW GROUP, PC

24 By: _____

25 Kane Moon
26 Lilit Ter-Astvatsatryan

27 *Attorneys for Plaintiff Angelica Trujillo*

1 Dated: May 16, 2025

FARNAES & LUCIO, APC

2 By: _____

3 Malte L. Farnaes
4 Christina M. Lucio
5 Mitchell J. Murray

Attorneys for Plaintiff Mark Taylor

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I. INTRODUCTION

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

This is a wage and hour class action and representative action for alleged Labor Code violations and claims for civil penalties pursuant to the California Private Attorneys General Act, Labor Code sections 2698, *et seq.* (“PAGA”). (Declaration of Kane Moon in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement [“Moon Decl.”], ¶ 2.) Plaintiff seek to represent a class all current and former non-exempt employees who worked for Defendant in California at any time from April 1, 2022 until January 2, 2025 (the “Class Period”), for various labor code violations. (*Id.*) Defendant is in the business of coordinating in-home care services for the elderly and operatives from nine different locations in California. (*Id.*) Plaintiff Trujillo worked for Defendant as an office coordinator from approximately July 2019 to April 2021. (Declaration of Angelica Trujillo in Support of Approval of Class Action and PAGA

1 Settlement [“Trujillo Decl.”], ¶ 2.) Plaintiff Taylor worked for Defendant as a [position] from
2 approximately [duration]. (Declaration of Mark Taylor in Support of Approval of Class Action
3 and PAGA Settlement [“Taylor Decl.”], ¶ 2.) Throughout their employment Plaintiffs were
4 employed in an hourly paid, non-exempt position. Plaintiffs contend they and their coworkers
5 were subjected to the same unlawful labor practices, including failure to pay wages for all hours
6 worked. (Moon Decl., ¶ 2.)

7 Plaintiffs’ claim for unpaid wages stems, in part, from Defendant’s alleged failure to
8 compensate Class Members for off-the-clock work, and from Defendant’s alleged failure to
9 incorporate the regular rate of pay when calculating overtime pay. (*Id.* at ¶ 3.) Moreover, Plaintiffs
10 bring claims against Defendant for meal and rest period violations, unreimbursed business
11 expenses, and derivative claims for waiting time penalties, wage statement violations, unfair
12 business practices, and civil penalties under PAGA. (*Id.*)

13 On February 4, 2022, Plaintiff Taylor filed a PAGA Complaint against Defendant in this
14 Court (the “*Taylor Action*”). (*Id.* at ¶ 4.) On September 21, 2021, Plaintiff Trujillo filed a First
15 Amended Class Action Complaint against AccentCare, Inc. in Contra Costa Superior Court, in the
16 matter titled *Angelica Trujillo v. AccentCare, Inc.*, Case No. C21-01927 (the “*Trujillo Action*”).
17 (*Id.*) On March 11, 2022 Plaintiff Trujillo dismissed that Class Action Complaint without
18 prejudice, and on March 14, 2022 filed a First Amended Representative Action Complaint. (*Id.*)

19 A copy of Plaintiffs’ complaints containing the case numbers assigned by the Court were
20 submitted to the California Labor and Workforce Development Agency (the “LWDA”) in
21 compliance with Labor Code section 2699, subd. (I)(1). (*Id.* at ¶ 5.) To date, the LWDA has not
22 indicated its intent to investigate the alleged violations or intervene in this Action. (*Id.*)

23 On March 25, 2025, Plaintiffs filed a First Amended Class and Representative Action
24 Complaint, including a cause of action for PAGA penalties, in this Court (the “Operative
25 Complaint”) to consolidate the *Taylor Action* and the *Trujillo Action*, asserting the same causes
26 of action in the *Taylor Action* and *Trujillo Action*, namely: (i) failure to pay minimum wages; (ii)
27 failure to pay overtime wages; (iii) failure to provide meal periods; (iv) failure to provide rest
28 periods; (v) failure to indemnify necessary business expenses; (vi) failure to pay final wages,

1 including paid time off, at termination of employment; (vii) failure to provide itemized wage
2 statements; (viii) unfair business practices; and (ix) PAGA civil penalties. (*Id.* at ¶ 6.)

3 On September 18, 2021, Plaintiff Trujillo, gave written notice to the LWDA of the alleged
4 Labor Code violations, with certified mail service on Defendant, and paid the required filing fee.
5 (*Id.* at ¶ 7, Exh. 2.) On November 22, 2021, Plaintiff Taylor, gave written notice to the LWDA of
6 the alleged Labor Code violations, with certified mail service on Defendant, and paid the required
7 filing fee. (Declaration of Mitchell J. Murray in Support of Plaintiffs’ Motion for Preliminary
8 Approval of Class Action and PAGA Settlement [“Murray Decl.”], ¶ XX.)

9 Defendant ardently opposes the merits of this case and denies Plaintiffs’ factual allegations.
10 Defendant asserts it complied with all of its compensation obligations, including compensating
11 Class Members for all off-the-clock work, and therefore, Plaintiffs and other Class Members were
12 paid all wages owed. (Moon Decl., ¶ 8.) Defendant also argues that Defendant did not fail to
13 incorporate any bonuses into Plaintiffs’ and Class Member’s regular rate for purposes of overtime
14 pay as such bonuses were discretionary. (*Id.*) Defendant maintains compliance with all its meal
15 and rest period obligations. (*Id.*) Defendant asserts it complied with all of its reimbursement
16 obligations, and therefore, Plaintiffs and other Class Members were compensated for any and all
17 necessary business expenses incurred. (*Id.*) To the extent Class Members received wage statements
18 that were allegedly inaccurate, Defendant asserts employees suffered no actual damage or harm
19 as a result. (*Id.*; *see, e.g., Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013, No. C 12–05860
20 CRB) 2013 WL 622032, at *10[“A plaintiff must adequately plead an injury arising from an
21 employer’s failure to provide full and accurate wage statements, and the omission of the required
22 information alone is not sufficient.”].) With respect to Plaintiffs’ claim for waiting time penalties,
23 Defendant alleges its good-faith belief that it paid all wages precludes the imposition of waiting
24 time penalties since Plaintiffs cannot prove Defendant’s alleged failure to pay all final wages at
25 the time of separation was “willful.” (Moon Decl., ¶ 8; *see, e.g., Pedroza v. PetSmart, Inc.* (C.D.
26 Cal. June 14, 2012, No. ED CV 11–298 GHK (DTBx)) 2012 WL 9506073, *5.) For these reasons,
27 among others, Defendant denies all of Plaintiffs’ claims and allegations, and further claims it did
28 not engage in any unfair business practices and denies liability under PAGA. (Moon Decl., ¶ 8.)

1 Defendant also maintains the claims are improper for class treatment, in part, due to the
2 individualized and testimony-intensive nature of the wage claims and the existence of arbitration
3 agreements with Plaintiffs and Class Members that could bar class certification or significantly
4 reduce Defendant's overall liability. (*Id.*)

5 **B. Discovery and Investigation**

6 The Parties agreed to mediate the instant action and participated in four private mediation
7 sessions with two highly regarded mediators over the course of more than two and a half years.
8 (Settlement, p. 1.) The fourth mediation session, which ultimately led to the Settlement, was held on
9 October 14, 2024, with Michael Ludwig, Esq., an experienced class and PAGA action mediator.
10 (Moon Decl., ¶ 9.) In preparation for the fourth mediation, the Parties agreed to a protocol for an
11 informal exchange of documents and information before mediation. (*Id.*) Prior to mediation,
12 Plaintiffs obtained from Defendant, through informal discovery, documents and data that were
13 necessary and helpful to evaluate the claims asserted in this action. Defendant produced a statistically
14 significant sample of time and pay records for the putative Class, Plaintiffs' personnel file, and
15 Defendant's written policies. (*Id.*) Defendant also provided information regarding the estimated
16 number of current and formerly employed Class Members, Aggrieved Employees, and workweeks
17 during the PAGA Period. (*Id.*)

18 In preparation for mediation, Plaintiffs' Counsel reviewed and analyzed all the information
19 Defendant provided, including the sample records and documents regarding Defendant's wage and
20 hour policies. Plaintiffs' Counsel retained a statistics expert to analyze the sample records and prepare
21 a damage analysis prior to the mediation. Plaintiffs' expert reviewed a statistically significant sample
22 of time and pay records of the Class, which allowed Plaintiffs' expert to prepare an analysis with a
23 reasonable degree of certainty. In conjunction with their extensive factual investigation, Plaintiffs'
24 Counsel also investigated the applicable law regarding the claims and defenses asserted in the
25 litigation. Accordingly, Plaintiffs' Counsel was able to evaluate the probability of class certification,
26 success on the merits, and Defendant's maximum and realistic monetary exposure for all claims.
27 Thus, Plaintiffs' and their Counsel's familiarity with the facts of the case and the legal issues raised
28 by the pleadings allowed them to act intelligently in negotiating the settlement.

1 **C. Settlement Negotiations**

2 On October 14, 2024, the Parties participated in a full day of private mediation before
3 Steven Rottman, Esq. (*Id.* at ¶ 11.) The negotiations were at arm’s length and, although conducted
4 in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to
5 explore the potential for a settlement of the dispute, but each side was also prepared to litigate
6 their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive
7 negotiations and discussions regarding the strengths and weaknesses of Plaintiffs’ claims and
8 Defendant’s defenses, a settlement was reached by the Parties. (*Id.*) The material terms of the
9 settlement are set out in the Stipulation of Settlement (*Id.*, Exh. 1 [the “Settlement”].)

10 Plaintiffs’ Counsel have conducted a thorough investigation into the facts of this case. (*Id.*
11 at ¶ 20.) Based on the foregoing document and information exchange and on their own independent
12 investigation and evaluation, Plaintiffs’ Counsel are of the opinion that the proposed Settlement
13 is fair, reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and
14 circumstances, the risk of significant delay, trial risk, appellate risk, and the defenses that
15 Defendant may assert both to certification and on the merits, the Settlement is in the best interest
16 of the Class. (*Id.*; *see also id.* at ¶¶ 20–34.) **Indeed, the \$1,750,000.00 gross settlement figure**
17 **represents roughly 54% of the total realistic recovery.** (*Id.* at ¶ 28.)

18 **D. Key Terms of the Proposed Settlement**

19 Under the Settlement, Defendant will pay a non-reversionary, all-inclusive amount of *no*
20 *less than* \$1,750,000.00 to resolve this action. (Settlement, ¶¶ 3, 3.C.) The key terms include:

21 1. Settlement Class, and Class Period: The proposed Class for purposes of the Settlement
22 contains approximately 8,646 members and is defined as all current and former non-exempt
23 employees who worked for AccentCare in California from April 1, 2022 until January 3, 2024 (the
24 “Class Period”). (*Id.* at ¶ 1.A; Moon Decl., ¶ 21.) The Class will exclude any Class Member who opts
25 out of the Settlement by sending the Administrator a valid and timely Request for Exclusion. (*Id.* at ¶
26 10.C.)

27 2. Aggrieved Employees and PAGA Period: The Class contains an estimated 2,261
28 Aggrieved Employees, defined as all current and former non-exempt employees who worked for

1 AccentCare in California from December 1, 2020 to January 3, 2025 (the “PAGA Period”). (*Id.* at ¶
2 1.B, Moon Decl., ¶ 21.) Aggrieved Employees collectively worked an estimated 62,308 PAGA Pay
3 Periods. (Moon Decl., ¶ 321)

4 3. Escalator Clause: AccentCare represents that Class Members worked approximately
5 202,943 workweeks during the Class Period, excluding weeks during which no work and/or only
6 orientation was performed. (Settlement, ¶ 4.) If the actual number of workweeks worked by Class
7 Members during the Class Period exceeds this estimate by more than 10% (*i.e.*, more than 223,237
8 workweeks), then AccentCare shall increase the Gross Settlement Amount on a proportional basis
9 equal to the number of workweeks exceeding 223,237. (*Id.*)

10 4. Net Settlement Amount: The Settlement Administrator shall first deduct from the Gross
11 Settlement Amount the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class
12 Counsel’s costs and expenses, Plaintiffs Class Representative Enhancement Payment, the amount set
13 aside as PAGA civil penalties, and the Settlement Administrator’s fees and expenses for
14 administration. (*Id.* at ¶ 5.A.) The remaining amount shall be known as the “Net Settlement Amount.”
15 (*Id.*)

16 5. Attorneys’ Fees and Costs: The Settlement provides up to 33.33% of the Gross
17 Settlement Amount for reasonable attorneys’ fees, plus reimbursement for actual litigation costs not
18 to exceed \$55,000.00, payable from the Gross Settlement Amount. (*Id.* at ¶ 3.C.5.) As this time,
19 Moon Law Group, PC has incurred \$30,135.94 in litigation costs, and Farnaes & Lucio, APC has
20 incurred \$XX in litigation costs. (Moon Decl., ¶ 19, Exh. 4; Murray Decl., ¶ XX.) Pursuant to a joint
21 prosecution and fee-sharing agreement between the two law firms representing Plaintiffs, and as
22 consented to in a signed writing by Plaintiffs (the “JPA”), the firms will split the award for attorneys’
23 fees with 60% to my office and 40% to Farnaes & Lucio, APC, regardless of the amount awarded or
24 whether the award is based on a common fund or lodestar analysis. (Moon Decl., ¶ 60.) As to costs,
25 the JPA states that the two firms will be reimbursed in full to the extent possible for their respective
26 costs actually incurred. (*Id.*)

27 6. Administrator and Costs: The Parties have agreed to engage Apex Class Action
28 Administration as the “Settlement Administrator” to administer this Settlement. (*Id.* at ¶ 3.A.) The

1 Gross Settlement Amount includes all costs of the Settlement Administrator and settlement
2 administration, which are anticipated to be no greater than \$45,000.00. (*Id.* at ¶ 3.C.2; Moon Decl.,
3 Exh. 5.)

4 7. Settlement Awards: Settlement Awards to Class Members will be calculated depending
5 on whether Class Members were paid on a pay-per-visit basis (“PPV Settlement Class Members”) or
6 on an hourly basis (“Hourly Settlement Class Members”). (*Id.* at ¶ 5.B.) Settlement Awards to PPV
7 Settlement Class Members will be calculated by multiplying 50% of the Net Settlement Amount by
8 a fraction, the numerator of which is the participating PPV Settlement Class Member’s number of
9 workweeks, and the denominator of which is the total number of workweeks worked by all
10 participating PPV Settlement Class Members. (*Id.* at ¶ 5.B.i.) Settlement Awards to Hourly
11 Settlement Class Members will be calculated by multiplying 50% of the Net Settlement Amount by
12 a fraction, the numerator of which is the participating Hourly Settlement Class Member’s number of
13 workweeks, and the denominator of which is the total number of workweeks worked by all
14 participating Hourly Settlement Class Members. (*Id.* at ¶ 5.b.ii)

15 8. Payments to Aggrieved Employees: Aggrieved Employees shall receive a portion of the
16 PAGA Amount proportionate to the number of workweeks that he or she worked for AccentCare as
17 a non-exempt employee in California during the PAGA Period. (*Id.* at ¶ 5.B.iii.) This will be
18 calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Settlement
19 Class Members’ number of workweeks worked during the PAGA Period, and the denominator of
20 which is the total number of workweeks worked by all Settlement Class Members during the PAGA
21 Period. (*Id.*)

22 9. Tax Treatment: 40% of the Settlement Awards will be allocated as penalties, 40% as
23 interest, and 20% as wages. (*Id.* at ¶¶ 5.B.i-ii.) The amount distributed to Class Members as PAGA
24 penalties will be deemed 100% penalties and interest. (*Id.*)

25 10. Released Parties: “Released Parties” means AccentCare, its past, present, and future
26 affiliated and otherwise related companies, and its and their owners, shareholders, past and present
27 officers, directors, employees, and agents, successors, and assigns (collectively the “Released
28 Parties”). (*Id.* at ¶¶ 2A-B.)

11. Release by Settlement Class Members. Upon the “Effective Date”, Plaintiffs and every member of the Settlement Class (except those who opt-out) shall release and discharge the Released Parties, from all claims, demands, rights, liabilities and causes of action, whether known or unknown, that were asserted in the LWDA letters, or were pled in the Amended Class Action Complaint, or which could have been pled in the Amended Class Action Complaint based on the factual allegations therein, that arose during the Class Period (“Settlement Class Members’ Released Claims”) with respect to the following claims: (i) failure to pay minimum wages including for non-productive time and rest periods; (ii) failure to pay overtime wages; (iii) failure to provide meal periods; (iv) failure to provide rest periods; (v) failure to indemnify necessary business expenses; (vi) failure to timely pay final wages at the time of termination of employment, including paid time off; (vii) failure to provide itemized wage statements; and (viii) unfair business practices based on these claims. The release shall include claims arising under California Labor Code sections 201, 202, 203, 204, 210, 225.5, 226, 226.2, 226.3, 226.7, 227.3, 246, 256, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1182.12, 2802, the California Wage Orders, and Business & Professions Code section 17200, et seq. based on the same California Labor Code sections. (*Id.* at ¶ 2.A.)

12. Release by Aggrieved Employees: Upon the “Effective Date”, Plaintiffs, the State of California, and each Aggrieved Employee shall release and discharge the Released Parties, from all claims for PAGA penalties that were asserted in the LWDA letters, or were pled in the Amended Class Action Complaint, or which could have been pled in the Amended Class Action Complaint based on the factual allegations therein, that arose during the PAGA Period (“PAGA Released Claims”) with respect to the following claims: (i) failure to pay minimum wages including for non-productive time and rest periods; (ii) failure to pay overtime wages; (iii) failure to provide meal periods; (iv) failure to provide rest periods; (v) failure to indemnify necessary business expenses; (vi) failure to timely pay final wages at time of termination of employment, including paid-time-off; and (vii) failure to provide itemized wage statements. The release shall include claims for PAGA penalties for alleged violation of California Labor Code sections 201, 202, 203, 204, 210, 225.5, 226, 226.2,

1 226.3, 226.7, 227.3, 246, 256, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1182.12, and
2 2802. (*Id.* at ¶ 2.B.)

3 13. Uncashed Settlement Checks: Each member of the Settlement Class who receives a
4 Settlement Award must cash any Settlement Award check within 180 days from the date the
5 Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks
6 were not cashed within 180 days after mailing will escheat to the California State Controller for
7 deposit in the Unclaimed Property Fund in the name of the Settlement Class Member. (*Id.* at ¶
8 5.D.)

9 14. Class Notice: The proposed Class Notice sets forth, in plain terms, a statement of case,
10 the terms of the Settlement, the approximate amounts of attorneys' fees, costs, PAGA civil penalties,
11 and service award being sought, an explanation of how the settlement are calculated, and the Final
12 Approval Hearing information. (Settlement, ¶ 10.E, Exh. A.) The proposed method for providing
13 notice of the proposed Settlement and distribution thereof is the one most likely to give actual notice
14 to the greatest number, if not all, of the Class Members. (*See id.* at ¶ 10.B.) The Administrator will
15 undertake its best efforts to ensure the Class Notice is provided to the current address of Class
16 Members, including conducting a national change of address search and re-mailing the notice to
17 updated addresses. (*Id.*)

18 15. Procedure for Disputing Pay Periods, Opting Out, or Objecting: The Class Notice
19 explains the procedure under which a Class Member can dispute the number of individual workweeks
20 credited to them. (*Id.* at ¶ 10.E, Exh. A.) Additionally, the Class Notice explains how Class Members
21 may, should they choose to do so, opt-out or otherwise object to the Settlement. (*Id.* at ¶ 10.D, Exh.
22 A.)

23 16. Funding: Defendant shall deposit the Gross Settlement Amount with the Settlement
24 Administrator no later than twenty (20) calendar days after the Effective Date. (*Id.* at ¶ 3.B.) If no
25 objections are filed (or any objections have been withdrawn), the "Effective Date" shall be the date
26 that the Court grants final approval of the Settlement and enters an Order and Judgment. (*Id.* at ¶
27 2.D.) If any objections have been filed and have not been withdrawn (the filing of an objection being
28 a prerequisite to the filing of an appeal), then the "Effective Date" will be either: (i) if no appeal is

1 filed, ten (10) days after the last date on which any appeal might have been filed; or (ii) if an appeal
2 is filed, ten (10) days after the final resolution of any appeal, presuming that the appeal upholds the
3 Settlement. (*Id.*)

4 **III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL**

5 The law favors the settlement of lawsuits, particularly in class actions and other complex
6 cases. (*See, e.g., Neary v. Regents of Univ. of Cal.* (1992) 3 Cal.4th 272, 277–81.) To prevent fraud,
7 collusion, or unfairness to the class, the settlement of a class action requires court approval. (*Dunk v.*
8 *Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800–01 [citing authority omitted].) To approve a
9 settlement, the Court must find “the settlement is fair, adequate, and reasonable.” (*Id.*) This Court
10 has wide discretion in making this determination. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434,
11 438.) Fairness, adequacy, and reasonableness are presumed, as here, when: “(1) the settlement is
12 reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow
13 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
14 percentage of objectors is small.” (*Dunk*, 48 Cal.App.4th at p. 1802 [citing Newberg, Newberg on
15 Class Actions (3rd ed. 1992) § 11.41].)

16 In evaluating a settlement, the trial court considers the following factors: (1) the strength of
17 plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk
18 of maintaining class action status through trial; (4) the settlement amount offered; (5) the extent of
19 discovery completed and the stage of the proceedings; (6) counsel’s experience and views; (7) the
20 presence of a governmental participant; and (8) the class members’ reaction to the proposed
21 settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) To approve a class
22 action settlement, “the court must satisfy itself that the class settlement is within the ‘ballpark’ of
23 reasonableness.” (*Id.* at p. 133.) The record need not contain an explicit statement of the maximum
24 theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App.4th 399,
25 408–09 [holding that *Kullar* does not require “an explicit statement of the maximum amount the
26 plaintiff class could recover if it prevailed on all its claims,” but instead, only an “understanding
27 of the amount that is in controversy and the realistic range of outcomes of the litigation”].)
28

1 As discussed below, Plaintiffs’ Counsel have provided materials and information exceeding
2 the threshold required for this Court to conclude the Settlement is fair, reasonable, and adequate.

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

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

7 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
8 evidence to the contrary is offered. (Newberg, Newberg on Class Actions (3rd ed. 1992) § 11.51.)
9 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super. Ct.*
10 (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The fact that
11 the plaintiff might have received more if the case had been fully litigated is no reason not to approve
12 the settlement.”].) Thus, there is a presumption here that negotiations were conducted in good faith.

13 The proposed Settlement at issue was reached following extensive negotiations and
14 discussions regarding the strengths and weaknesses of Plaintiffs’ claims and Defendant’s defenses
15 with an experienced and neutral class action mediator. (Moon Decl., ¶ 11.) Plaintiffs’ Counsel
16 performed an extensive investigation into the facts, claims, and defenses at issue, including by
17 reviewing the governing law, analyzing Defendant’s written policies and sampling time/pay data,
18 and retaining a statistics expert to prepare a damage analysis regarding Defendant’s potential liability.
19 (*Id.* at ¶¶ 9–10.) Plaintiffs obtained, through informal discovery, documents and data necessary and
20 helpful to evaluate the claims and defenses at issue, including a statistically significant sample of
21 time and pay records for the putative Class as well as demographic data. (*Id.*) The Settlement is based
22 on the following demographics: 8,646 Class Members who worked an aggregate of 202,943
23 Workweeks, at an average hourly rate of \$13.79. (*Id.* at ¶ 21.) Additionally, there are an estimated:
24 2,404 former employees falling within the three-year statute of limitations (“SOL”) period for waiting
25 time penalties, 2,261 employees falling within the one-year SOL period for inaccurate wage
26 statement penalties and PAGA penalties, and 62,308 workweeks in the PAGA Period. (*Id.*) Based on
27 Plaintiffs’ Counsel’s review of the time, payroll, and additional data provided by Defendant, on
28 Plaintiffs’ expert’s analysis of the sampling records provided by Defendant, and on information from

1 Plaintiffs, Plaintiffs’ Counsel evaluated the estimated maximum and risk-adjusted exposure that
2 Defendant faced. (*Id.*)

3 2. The Settlement Is Fair Considering the Parties’ Respective Positions

4 A settlement is not judged against what a plaintiff might recover had he prevailed at trial, nor
5 does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba*
6 *v. Apple Comp., Inc.* (2001) 91 Cal.App.4th 224, 246, 250 [“Compromise is inherent and necessary
7 in the settlement process . . . even if ‘the relief afforded by the proposed settlement is substantially
8 narrower than it would be if the suits were to be successfully litigated,’ this is no bar to a class
9 settlement because ‘the public interest may indeed be served by a voluntary settlement in which each
10 side gives ground in the interest of avoiding litigation.’”] [quoting *Air Line Stewards v. Am. Airlines,*
11 *Inc.* (7th Cir. 1972) 455 F.2d 101, 109].)

12 Here, based on the information provided at mediation, Defendant’s **realistic exposure**
13 (adjusted for risks at certification and proof on the merits) for the alleged claims, including penalties,
14 is estimated to be **\$3,217,171.86**. (Moon Decl., ¶¶ 21, 28.) This amount was calculated as follows:
15 **\$68,450.80** (90% discount) for the off-the-clock work claim; **\$20,037.69** (75% discount) for the
16 regular rate claim; **\$1,604,797.46** (25% discount) for the meal period claim; **\$381,805.11** (90%
17 discount) for the rest period claim; **\$126,839.38** (90% discount) for the unreimbursed business
18 expense claim; **\$397,813.92** (95% discount) for the waiting time penalties claim; **\$305,887.50** (95%
19 discount) for the wage statement claim; and **\$311,540.00** (95% discount) for the PAGA penalties
20 claim. (*Id.* at ¶¶ 20-27.) The foregoing discounts were based on the evidence presented and arguments
21 made during arm’s-length settlement negotiations. (*Id.* at ¶¶ 11, 20-27.) **The \$1,750,000.00 gross**
22 **settlement figure represents roughly 54% of the total realistic recovery.** (*Id.* at ¶ 28.) This is an
23 excellent result for the Class, particularly because, under the Settlement, Class Members will receive
24 timely and guaranteed relief, avoiding the risk of not being able to recover anything. (*Id.*)

25 With regards to the PAGA claims, Plaintiffs and their Counsel believe the Settlement is a fair
26 and reasonable resolution that satisfies PAGA’s dual statutory purposes of deterrence and
27 punishment, on the one hand, and providing PAGA Members with genuine and meaningful relief, on
28 the other. (*Id.* at ¶ 29; Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendant has had to

1 hire legal counsel, engage in informal discovery, and participate in mediation. (Moon Decl., ¶ 29.)
2 Defendant is also now having to pay civil penalties to the LWDA under the Settlement, assuming final
3 settlement approval is granted. (Settlement, ¶ 3.C.4.) Not including its own attorneys' fees and costs
4 as well as the employer's share of payroll taxes, Defendant will pay no less than \$1,750,000.00 to
5 resolve this matter— of which \$90,000.00 is allocated toward the PAGA claims and will be distributed,
6 in compliance with Labor Code section 2699 as 75% (\$67,500.00) to the LWDA and 25% (\$22,500.00)
7 to Aggrieved Employees—and the release obtained under the Settlement does not preclude Aggrieved
8 Employees from seeking remedies based on any underlying individual claims they may have against
9 Defendant or the other Released Parties. (Moon Decl., ¶ 29; Lab. Code § 2699(i).) Moreover, Plaintiffs'
10 Counsel are of the opinion that because the issues here are fairly contested, there is a possibility of
11 the Court not awarding the PAGA penalties even if Plaintiffs prevailed on the merits due to the largely
12 discretionary nature of awarding PAGA penalties. (Moon Decl., ¶ 29.) Indeed, under Labor Code
13 section 2699, subdivision (e)(2), a Court can reduce PAGA penalties "if, based on the facts and
14 circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary
15 and oppressive, or confiscatory." (Lab. Code § 2699(e)(2).) In other words, were this matter to go to
16 trial, any award granted would be at the discretion of the Court and subject to a substantial reduction.
17 (Moon Decl., ¶ 29.)

18 While Plaintiffs are confident in the merits of their claims, a legitimate controversy exists as
19 to each cause of action. (*Id.* at ¶ 30.) Plaintiffs also recognize that proving the amounts of wages
20 owed to each Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id.*)
21 The Settlement obviates the significant risk that this Court may deny certification of all or some of
22 Plaintiffs' claims. (*Id.* at ¶ 31.) Furthermore, even if Plaintiffs were able to pursue their claims on a
23 class-wide basis and obtain certification of all or some of the claims, continued litigation would be
24 expensive, involving a trial and possible appeals, and would substantially delay and reduce any
25 recovery by the Class. (*Id.*) This Settlement avoids the risks, burdens, and the accompanying expense
26 of further litigation. (*Id.* at ¶ 32.) Although the Parties have engaged in a significant amount of
27 investigation, informal discovery, and class-wide data analysis, they have not conducted extensive
28 formal discovery, including depositions. (*Id.*) Moreover, preparation for class certification and a trial

1 would remain for the Parties as well as the prospect of appeals in the wake of a disputed class
2 certification ruling for Plaintiffs and/or any summary judgment ruling. (*Id.*) As a result, the Parties
3 would incur considerably more attorneys' fees and costs through trial. (*Id.*)

4 The Net Settlement Amount available for settlement payments is estimated to be *no less than*
5 \$966,666.67 for an estimated Class of 8,646 individuals.¹ (*Id.* at ¶ 33.) As a result, it is estimated
6 each Settlement Class Member will receive **an average gross benefit of approximately \$111.81**
7 prior to tax withholdings on the wage portion of payments. (*Id.*) Considering Class Members' average
8 hourly rate is \$13.79, **the average benefit is roughly 8 hours of work.** (*Id.*) This amounts to an
9 **estimated workweek value of roughly \$4.76** for the currently estimated 202,943 Workweeks. (*Id.*)
10 Additionally, it is currently estimated there are 2,261 **Aggrieved Employees who will receive an**
11 **estimated average of approximately \$9.95** from their \$22,500.00 total share of the PAGA Amount,
12 which results in an estimated value of **\$0.36 per workweek in the PAGA Period** based on the
13 currently estimated 62,308 workweeks in the PAGA Period. (*Id.*) The actual amounts to Settlement
14 Class Members and Aggrieved Employees will vary based on each individual's duration of work
15 during the Class Period or PAGA Period, respectively; thus, those who worked longer will receive a
16 gross benefit greater than the average estimated amount. (*Id.*) At this time, the high and low range of
17 payments to Class Members is unknown. (*Id.*) These ranges will be calculated by the Administrator
18 following preliminary approval and receipt and processing of the Class Data and will be provided to
19 the Court in a motion for final approval. (*Id.*)

20 The proposed Settlement of \$1,750,000.00 therefore represents a substantial recovery when
21 compared to Plaintiffs' reasonably forecasted recovery. (*Id.* at ¶ 34.) When considering the risks of
22 litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to
23

24 _____
25
26 ¹ The Net Settlement Amount is at least \$1,750,000.00 less the following: \$10,000.00 for the
27 Class Representative Enhancement Payments (\$5,000.00 to each), \$45,000.00 for settlement
28 administration costs, \$90,000.00 for PAGA civil penalties to the LWDA and Aggrieved Employees,
\$583,333.33 attorneys' fees to Class Counsel, and up to \$55,000.00 for reimbursement of litigation
costs to Class Counsel. (Settlement, ¶¶ 3.C, 5.A.)

1 establish liability, and the probability of appeal, it is clear the Gross Settlement Amount is within the
2 “ballpark” of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*)

3 **3. Plaintiffs’ Counsel Have Extensive Experience in Class and PAGA**
4 **Action Litigation, Which Was Integral to Negotiating the Settlement**

5 The Settlement negotiations were conducted by highly capable counsel with considerable
6 experience and demonstrated competence with litigating wage and hour class actions. (*Id.* at ¶¶ 39–
7 56; Murray Decl., ¶ XX.) Plaintiffs’ Counsel have a strong record of vigorous and effective advocacy
8 for their clients and are experienced in handling complex wage and hour class action litigation. (Moon
9 Decl., ¶ ¶¶ 39–56; Murray Decl., ¶ XX.) The experience of Plaintiffs’ Counsel was helpful in
10 assessing the reasonableness of the Settlement at issue here, and from this experience they concluded
11 that this litigation could not have been settled on better terms than provided under the Settlement.
12 (Moon Decl., 57.) Although Plaintiffs and their counsel were prepared to try the claims alleged in the
13 litigation, they support the proposed Settlement as being in the best interest of the Class based on
14 objective evidence that has been considered and weighed against the risks, expenses, and time
15 consumption to both sides of continued litigation. (*Id.* at ¶¶ 11, 19, 30–32.)

16 **B. The Proposed Class Notice of Settlement Should Be Approved**

17 The proposed Class Notice, in the form attached to the Settlement as **Exhibit A**, should be
18 approved for dissemination to the Class. The Class Notice informs the Class of the terms of the
19 Settlement and of their rights to be excluded from or object to the Settlement. (Settlement, Exh. A.)
20 Accordingly, the proposed Class Notice meets all the requirements of Rule 3.769(f) of the California
21 Rules of Court. (Cal. Rules of Court, rule 3.769(f).)

22 **C. The Proposed Attorneys’ Fees and Costs Are Reasonable**

23 Subject to the Court’s approval, the Settlement provides a fee application of up to 33.33% of
24 the Gross Settlement Amount for Class Counsel’s attorneys’ fees, plus reimbursement for out-of-
25 pocket litigation costs not to exceed \$55,000.00. (Settlement, ¶ 3.C.5.) These amounts are disclosed
26 to Class Members in the proposed Class Notice and are reasonable. (*Id.* at Exh. A.)
27
28

1 **1. Counsel Will Request a Fees Award Based On the “Common Fund” Method**

2 California courts have long awarded attorneys’ fees as a percentage of the benefit created by
3 counsel in pursuing claims on behalf of a class. (*See, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25.)
4 The California Supreme Court has held, “when a number of persons are entitled in common to a
5 specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the
6 creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out
7 of the fund.” (*Id.* at p. 34.)

8 Plaintiffs’ Counsel will seek an award of attorneys’ fees on the “percentage of
9 recovery/common fund” theory. (Moon Decl., ¶ 59.) The purpose of this approach is to “spread
10 litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear
11 the entire burden alone.” (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn*
12 *v. State of California* (1975) 15 Cal.3d 162, the California Supreme Court stated, “one who expends
13 attorneys’ fees in winning a suit which creates a fund from which others derive benefits, may require
14 those passive beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in
15 *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court
16 recognized that the common fund doctrine has been applied “consistently in California when an
17 action brought by one party creates a fund in which other persons[] are entitled to share.” (*Id.* at pp.
18 110–11 [pincite omitted].)

19 The California Supreme Court recently affirmed in *Laffitte v. Robert Half International Inc.*
20 (2016) 1 Cal.5th 480 that, “when class action litigation establishes a monetary fund for the benefit of
21 the class members, and the trial court in its equitable powers awards class counsel a fee out of that
22 fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage
23 of the fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the
24 percentage method—including relative ease of calculation, alignment of incentives between counsel
25 and the class, a better approximation of market conditions in a contingency case, and the
26 encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging
27 the litigation[]—convince us the percentage method is a valuable tool that should not be denied our
28

trial courts.” (*Id.* [internal citations omitted].) This line of legal authority supports a request for attorneys’ fees based on the percentage of recovery/common fund method.

2. The Requested Fee Award Is in Line with Typical Cases

According to a leading treatise on class actions: “No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.” (Newberg, *Newberg on Class Actions* (3rd ed. 1992) § 14.03.) Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with thirty to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 297 [stating that most cases where 30–50% was awarded involved “smaller” settlement funds of under \$10 million].)

Here, Plaintiffs’ Counsel will request fees equal to 33.33% of the Gross Settlement Amount, which is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. (*Compare* Settlement, ¶ 3.C.5, with *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 [“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.”].) Accordingly, Plaintiffs request the Court preliminarily approve their counsel’s ability to request attorneys’ fees as negotiated by the Parties.

3. This Matter Involves a “Fee-Shifting” Provision of the Labor Code

Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(g)(1), 2802(d).) Under these sections, Plaintiffs would be permitted to recover their actual attorneys’ fees, even if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) This Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Plaintiffs’ Counsel for their decision to assume risk by taking on this matter. (*See* Moon Decl., ¶ 32.) In fact, prosecution of this action involved significant financial risk for Plaintiffs’ Counsel. (*Id.* at ¶¶ 61–65.) Their Counsel

1 undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.* at ¶¶ 61–65.)
2 Once Plaintiffs’ Counsel undertook this litigation on behalf of the Class, they committed to pursue it
3 to its conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶ 64.)

4 **4. Counsel’s Experience, Reputation, and Ability Support the Requested Fees**

5 As demonstrated by their past experience in pursuing class actions on behalf of consumers
6 and employees, Plaintiffs’ Counsel possess considerable expertise in litigating class actions. (*Id.* at
7 ¶¶ 39-56; **Murray Decl., ¶ XX**.) Plaintiffs’ Counsel have been involved as lead counsel or co-counsel
8 in numerous class actions that resulted in millions in recovery. (Moon Decl., ¶¶ 39-56; Murray Decl.,
9 ¶ XX.) Plaintiffs’ Counsel’s experience in wage and hour litigation was integral in evaluating the
10 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement.
11 (Moon Decl., ¶ 57.) Practice in the narrow field of wage and hour litigation requires skill and
12 knowledge concerning the rapidly evolving substantive law (state and federal) as well as the
13 procedural law of class action litigation. (*Id.* at ¶ 55.) Based on these and other factors, Plaintiffs’
14 Counsel have frequently received fee awards of this percentage from the gross recovery for the class.
15 (*See id.* at ¶¶ 43, 49; **Murray Decl., ¶ XX**.) Because it is reasonable to compensate counsel
16 commensurate with their skill, reputation, and experience, the requested fee award is supported here.

17 **D. The Enhancement Payments to Plaintiffs Are Reasonable**

18 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
19 compensate them for the expense or risk they have incurred in conferring a benefit on other members
20 of the class.” (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Courts routinely grant approval of class
21 action settlement agreements containing enhancements for the class representatives, which are
22 necessary to provide incentive to represent the class and are appropriate given the benefit the class
23 representatives help to bring about for the class. (*See Rodriguez v. W. Publ’g Corp.* (9th Cir. 2009)
24 563 F.3d. 948, 958–59.) Service awards are particularly important to plaintiffs in wage and hour
25 cases because they promote the important public policies underlying the wage and hour laws. This
26 strong policy is codified in California Labor Code section 90.5, which provides, “[i]t is the policy of
27 this state to vigorously enforce minimum labor standards in order to ensure employees are not
28 required or permitted to work under substandard unlawful conditions . . .” (Lab. Code § 90.5.)

1 Nonetheless, the California Supreme Court has noted that “retaliation against employees for asserting
2 statutory rights under the Labor Code is widespread,” despite anti-retaliation statutes designed to
3 protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61.) In this context, class
4 representatives should be rewarded for assuming the risk of retaliation for the sake of class members.
5 (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

6 Under the Settlement here, subject to the Court’s approval, Defendant agrees to pay a Class
7 Representative Enhancement Payment of \$5,000.00 to each Plaintiff, which will be in addition to
8 their amounts as Class Members. (Settlement, ¶ 3.C.3.) This award is in recognition of their
9 contributions to the Action, their service to the Settlement Class, and their general release of
10 claims. (*Id.*) Plaintiffs have devoted a great deal of time and work assisting counsel in the case and
11 communicated with counsel frequently. (Moon Decl., ¶¶ 35–38; Trujillo Decl., ¶¶ 17-24; Taylor
12 Decl., ¶ XX.) The requested awards are fair and reasonable, particularly considering the substantial
13 benefits Plaintiffs generated for all Class Members. (Moon Decl., ¶¶ 28–38.)

14 When compared with the amounts awarded in typical class action cases, the amount requested
15 here is particularly reasonable. A 2006 study examining the average incentive award given to class
16 action plaintiffs from 1993 to 2002 found that the “average award per class representative was
17 \$15,992 and the median award per class representative was \$4357.” (Eisenberg & Miller, *Incentive*
18 *Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L. Rev. 1303, 1307–08.)
19 The same study found that named plaintiffs in employment discrimination class actions received an
20 average award of \$69,850 and a median award of \$31,081, while named plaintiffs in other
21 employment class actions received an average award of \$12,121 and a median award of \$13,059. (*Id.*
22 at p. 1333.) The authors of the study found that higher awards in employment cases reflected the
23 “courts’ wish to make representative plaintiffs whole by compensating them for the high costs of
24 their service to the class, including risks of stigmatization or retaliation on the job.” (*Id.* at p. 1308.)

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

26 **A. Legal Standard**

27 The proposed Settlement Class is well suited for class certification. The claims all derive from
28 a core set of alleged violations of California’s wage and hour laws and regulations. (Moon Decl., ¶¶

3, 6.) For the reasons set forth more fully below, the Class, for purposes of Settlement, satisfies the prerequisites for certification under Code of Civil Procedure section 382. (Code Civ. Proc. § 382.) Section 382 provides that “when 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.” (*Id.*) 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 [internal 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 common 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 pp. 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, supra*, 29 Cal.3d at pp. 473–75.)

B. Plaintiffs Maintain that the Criteria for Class Certification Are Satisfied

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.” (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, Plaintiffs maintain there is an easily ascertainable Class, defined by objective and precise criteria. (Settlement, ¶ 1.A.) The proposed Class that Plaintiffs seek to represent is ascertainable because (1) the Class definition is sufficiently precise, (2) the Class consists of about 8,646 individuals, and (3) Class Members can be readily identified by looking at Defendant’s records. (*Id.* at ¶¶ 1.A, 10.A; Moon Decl., ¶ 21.) Because Class

Members are identified using specific criteria in the regular business records of Defendant—their employment by Defendant in California, non-exempt classification, and actual work during the Class Period—the Class is ascertainable. (*See Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 959–60 [class membership defined by ownership of product that is 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 class of 9 plaintiffs and 35 members].) Therefore, 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 have claims or defenses typical of the class, and (3) class representatives adequately represent the class. (*Dunk, supra*, 48 Cal.App.4th at p. 1806.) This inquiry tests whether proposed classes are sufficiently cohesive to rationally warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 611–12.)

Here, Plaintiffs’ claims satisfy all three requirements. The employment practices at issue include whether Defendant: had legally compliant policies and practices to pay employees all minimum and overtime wages owed; reimbursed employees for necessary business expenses; had legally compliant policies and practices to provide employees with and authorize meal and rest periods; paid all final wages to employees at the time of termination; intentionally failed to pay all final wages; provided inaccurate itemized wage statements; engaged in unfair business practices; and violated civil penalty provisions recoverable under PAGA. (Moon Decl., ¶¶ 3, 6.) Plaintiffs contend the factual and legal issues are the same for all Class Members, and further that all Class Members

1 suffered from and seek redress for the same alleged injuries. (Trujillo Decl., ¶¶ 4–5; Taylor Decl., ¶
2 X.) Considering Class Members would need to prove the same issues of law and fact to prevail, and
3 their legal remedies are identical, it would be preferable to resolve all claims through a settlement
4 than to force each Class Member to litigate their own individual claims. Thus, the Court should grant
5 conditional class certification for settlement purposes because common questions of law and fact
6 predominate over any individual questions within the Class.

7 **3. Plaintiffs’ Claims Are Typical of the Claims of the Class**

8 The typicality requirement does not focus on the individual characteristics or circumstances
9 of the representative plaintiff compared to those of the remainder of the class, but rather, upon the
10 typicality of the proposed representative’s claims as they relate to the defendant’s conduct and
11 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 [“The only requirements a re [sic] that
12 common questions of law and fact *predominate* and that the class representative be *similarly* situated”
13 vis-à-vis the class.] [emphasis in original].) A representative plaintiff’s claims are typical of the class
14 if they arise from the same event, practice, or course of conduct, and if the claims rest on the same
15 legal theories. (*Id.*) That is precisely the case here. Plaintiffs are former employees of Defendant; as
16 such, they allege they were subject to the same policies and practices as other similarly situated
17 employees. (Trujillo Decl., ¶ 6; Taylor Decl., ¶ X.)

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

19 The adequacy of representation requirements is met by fulfilling two conditions: (1) a named
20 plaintiff must be represented by counsel qualified to conduct the pending litigation, and (2) a named
21 plaintiff’s interests cannot be antagonistic to those of the class. (*McGhee v. Bank of Am.* (1976) 60
22 Cal.App.3d 442, 450.)

23 Here, all requirements are met. Plaintiffs retained counsel with extensive experience in
24 prosecuting complex class actions, including similar class actions that previously settled. (Moon
25 Decl., ¶¶ 39–54; Murray Decl., ¶ X.) With their experience, Plaintiffs’ Counsel unquestionably are
26 “qualified, experienced and generally able to conduct the proposed litigation.” (*Miller, supra*, 148
27 Cal.App.3d at p. 874.) In addition, Plaintiffs and their Counsel have no conflicts with one another,
28 other Class Members, the proposed Administrator. (Trujillo Decl., ¶¶ 7–8; Taylor Decl., ¶ X; Moon

Decl., ¶ 58; Murray Decl., ¶ X.) Further, Plaintiffs have, with counsel, litigated this case and diligently reviewed the settlement terms, showing dedication, and with full knowledge and acceptance of duties, she has committed to her role as Class Representative. (Trujillo Decl., ¶¶ 16–23; Taylor Decl., ¶ X.)

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. (*See Leyva v. Medline Indus. Inc.* (9th Cir. 2013) 716 F.3d 510, 514–15.) 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. (*Id.*) 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. (*Id.* at p. 515; *Gentry, supra*, 42 Cal.4th at pp. 457–62.) Moreover, in the context of settlement, the superiority concerns are essentially non-existent. (*See generally, e.g., Stamburgh, supra*, 62 Cal.App.3d.)

V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND

A. The Proposed Notice Plan Satisfies Due Process

Class Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court, rule 3.766(e)–(f).) California law vests the Court with broad discretion in fashioning an appropriate notice program. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 970, 973–74.) There is no statutory or due process requirement that all class members receive actual notice, but in this matter, the Class Members will receive direct mailed notice. (Settlement, ¶ 10.B.) As the Court of Appeals has explained, “[t]he notice given should have a reasonable chance of reaching a substantial percentage of the Class Members . . .” (*Cartt*, 50 Cal.App.3d at p. 974.) In this case, notice of the proposed Settlement will be provided by direct mailing, the best possible form of notice under the circumstances. (Settlement, ¶ 10.B.)

B. The Notice Is Accurate and Informative

The proposed Class Notice should be approved. It will be disseminated through direct U.S. first-class mail to the current address for each Class Member. (*Id.* at ¶ 10.B.) It informs the Class of the terms of the Settlement and the right to be excluded. (*Id.* at ¶¶ 10.C, Exh. A.) And if there are Class Members who wish to object to the proposed Settlement, they are informed of their right to submit written objections and/or be heard at the Final Approval Hearing. (*Id.* at ¶ 10.D, Exh. A.)

The Class Notice also fulfills the requirement of neutrality in class notices. (Newberg, Newberg on Class Actions (3rd ed. 1992) § 8.39.) It summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner. (Settlement, Exh. A.) It makes clear the Settlement does not constitute an admission of liability by Defendant, who deny all liability, and it recognizes that this Court has not ruled on the merits of the action. (*Id.*) It also states that the final approval decision has yet to be made, and provides the date, time, and location of the Final Approval Hearing. (*Id.*) Accordingly, the Class Notice complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court grant this motion, enter the proposed order submitted herewith regarding preliminary approval, and set a final approval hearing no earlier than 130 days from the preliminary approval order.

Respectfully submitted,

Dated: May 16, 2025

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