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

DANIEL ROBERTO ORTEGA, individually, and  
on behalf of all others similarly situated,

Plaintiff,

vs.

SUTTER HOME WINERY, INC., a California  
corporation dba TRINCHERO FAMILY  
ESTATES; and DOES 1 through 10, inclusive,

Defendants

Case No.: 25CV000461

CLASS AND REPRESENTATIVE ACTION

**PLAINTIFF'S NOTICE OF MOTION  
AND MOTION FOR PRELIMINARY  
APPROVAL OF CLASS AND  
REPRESENTATIVE ACTION  
SETTLEMENT; MEMORANDUM OF  
POINTS AND AUTHORITIES**

*[Filed with the Declaration of Kane Moon, the  
Declaration of Plaintiff, the Declaration of  
Jodey Lawrence, and [Proposed] Preliminary  
Approval Order]*

PRELIMINARY APPROVAL HEARING:

Date: September 30, 2026

Time: 8:30 a.m.

Dept.: Courtroom B

Judge: Hon. Joseph J. Solga

Complaint Filed: February 26, 2025

FAC Filed: April 30, 2025

Trial Date: Not set

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

2 PLEASE TAKE NOTICE that on September 30, 2026, at 8:30 a.m. in Department B of this  
3 Court located at 825 Brown Street, Napa, California, 94559 pursuant to Code of Civil Procedure section  
4 382 and California Rules of Court, rule 3.769 et seq., Plaintiff Daniel Roberto Ortega (“Plaintiff”) will,  
5 and hereby does, move the Court for an order granting preliminary approval of the proposed class action  
6 settlement between Plaintiff and Defendant Sutter Home Winery, Inc. dba Trinchero Family Estates.  
7 Specifically, Plaintiff moves the Court for an order:

- 8 1. Granting preliminary approval of the Joint Stipulation of Class and Representative Action  
9 Settlement Agreement;
- 10 2. Certifying a Class, for settlement purposes only;
- 11 3. Approving the Class Notice and plan for its distribution;
- 12 4. Appointing Plaintiff as the Class Representative, for settlement purposes only;
- 13 5. Appointing Moon Law Group, PC as Class Counsel, for settlement purposes only;
- 14 6. Appointing Phoenix Class Action Administration Solutions as the Administrator; and
- 15 7. Scheduling a Final Approval Hearing no earlier than 120 days from the date of preliminary  
16 approval.

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

20 As this Motion is unopposed, the Parties respectfully request relief from the page limit  
21 requirement set by California Rules of Court, Rule 3.1113(d).

22 Respectfully submitted,

23 Dated: August 27, 2026

**MOON LAW GROUP, PC**

24 By: \_\_\_\_\_  
25 Kane Moon  
26 Allen Feghali  
27 S. Phillip Song  
28 Micaela de Guzman  
*Attorneys for Plaintiff*

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## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

Plaintiff Daniel Roberto Ortega (“Plaintiff”) seeks preliminary approval of a proposed \$1,190,000.00 non-reversionary, wage-and-hour class action settlement (the “Settlement”) with Defendant Sutter Home Winery, Inc. dba Trinchero Family Estates (“Defendant”) (together with Plaintiff, the “Parties”). The Settlement will provide substantial monetary payments to an estimated 1,600 Class Members who worked an estimated aggregate of 144,000 Workweeks, of which roughly 1,140 are Aggrieved Employees who worked an estimated aggregate of 15,461 PAGA Pay Periods. As set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, informal discovery, and negotiations between the Parties. The negotiations were at arm’s-length and were facilitated through private mediation by an experienced and neutral class action mediator, Tripper Ortman, Esq. Accordingly, Plaintiff requests the Court preliminarily approve the Settlement, certify the proposed Class, approve the proposed Class Notice to Class Members, and set a final approval hearing no earlier than 120 days from the date of preliminary approval.

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

#### **A. Plaintiff’s Claims and Procedural History**

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 Plaintiff’s Motion for Preliminary Approval of Class and Representative Action Settlement [“Moon Decl.”], ¶ 2.) Plaintiff seeks to represent a class of all current and former hourly-paid or non-exempt employees of Defendant in the State of California from February 26, 2021, through February 27, 2026, as set forth in the Joint Stipulation of Class and Representative Action Settlement Agreement (the “Settlement”). (*Id.*)

Defendant is one of the largest family-owned wine companies in the United States and is headquartered in St. Helena, California. (*Id.* at ¶ 3.) Defendant employed Plaintiff and other non-exempt, hourly-paid employees during the Class Period. (*Id.*) Plaintiff worked for Defendant from approximately April 2023 through October 2024, in a non-exempt, hourly-paid position as a vineyard

1 mechanic. (Declaration of Plaintiff Daniel Roberto Ortega in Support of Class and Representative  
2 Action Settlement [“Plaintiff Decl.”], ¶ 2.) Plaintiff contends he and his coworkers were subjected to  
3 the same unlawful labor practices, including failure to pay wages for all hours worked. (*Id.* at ¶ 5; Moon  
4 Decl., ¶ 3.)

5 Plaintiff’s claim for unpaid minimum and overtime wages stem from allegations that Defendant  
6 rounded and retroactively adjusted employees’ time records, required Plaintiff and others to perform  
7 off-the-clock work, and failed to incorporate all remuneration into employees’ regular rate of pay for  
8 purposes of paying overtime, meal premium, or sick pay. (Moon Decl., ¶ 4.) Plaintiff’s meal and rest  
9 period claims are based on allegations that Defendant adjusted employees’ timekeeping records to  
10 reflect compliant meal punches, required Plaintiff and Class Members to remain on call and keep their  
11 work phones on their person during breaks, and failed to provide and pay all premium wages for non-  
12 compliant meal and rest periods. (*Id.*) Plaintiff further brings a claim for unreimbursed necessary  
13 business expenses based on allegations that Class Members were required to use cell phones for work  
14 purposes without reimbursement from Defendant. (*Id.*) Finally, Plaintiff also brings derivative claims  
15 for waiting time penalties, wage statement violations, unfair business practices, and civil penalties  
16 under PAGA. (*Id.*)

17 Because of the foregoing alleged violations of various provisions of the Labor Code, Plaintiff  
18 filed a class action on February 26, 2025, which alleges Defendant systematically: (1) failed to pay  
19 minimum wages, (2) failed to pay overtime compensation, (3) failed to provide meal periods, (4) failed  
20 to authorize and permit rest periods, (5) failed to indemnify necessary business expenses, (6) failed to  
21 timely pay final wages at termination, (7) failed to provide accurate itemized wage statements, and (8)  
22 engaged in unfair business practices. (*Id.* at ¶ 5.)

23 Pursuant to PAGA, on February 23, 2025, Plaintiff gave written notice to the California Labor  
24 and Workforce Development Agency (the “LWDA”) of the alleged Labor Code violations, with  
25 certified mail service on Defendant, and paid the required filing fee. (*Id.* at ¶ 6, Ex. 2.) On April 30,  
26 2025, Plaintiff timely filed a First Amended Class and Representative Action Complaint to add a ninth  
27 cause of action for civil penalties under PAGA (the “Operative Complaint”). (*Id.* at ¶ 6.) In compliance  
28 with Labor Code section 2699(s)(1), Plaintiff subsequently submitted to the LWDA a file-stamped

1 copy of the Operative Complaint containing the Court-assigned case number. (*Id.*) To date, the LWDA  
2 has not indicated its intent to investigate the alleged violations or intervene in this Action. (*Id.*)

3 Defendant ardently opposes the merits of this case and denies Plaintiff's factual allegations. (*Id.*  
4 at ¶ 7.) Defendant asserts it complied with all its compensation obligations, including compensating  
5 Class Members for all time worked, and therefore, Plaintiff and other Class Members were paid all  
6 wages owed. (*Id.*) Defendant disputes Plaintiff's allegations concerning Defendant's rounding  
7 practices, off-the-clock work, and retroactive adjustments to employees' time records. (*Id.*) Defendant  
8 further disputes Plaintiff's contention that it failed to incorporate all required remuneration into the  
9 regular rate of pay for purposes of paying overtime, meal period premiums, or sick pay. (*Id.*) Defendant  
10 maintains compliance with all its meal and rest period obligations and contends that meal period  
11 premiums were paid where required. (*Id.*) Defendant asserts it complied with all its reimbursement  
12 obligations and maintains that employees were provided company work phones, including Plaintiff.  
13 (*Id.*) To the extent employees received wage statements that were allegedly inaccurate, Defendant  
14 asserts employees suffered no actual damage or harm as a result. (*Id.*; *see, e.g., Angeles v. U.S. Airways,*  
15 *Inc.* (N.D. Cal. Feb. 19, 2013, No. C 12-05860 CRB) 2013 WL 622032, at \*10 ["A plaintiff must  
16 adequately plead an injury arising from an employer's failure to provide full and accurate wage  
17 statements, and the omission of the required information alone is not sufficient."].) With respect to  
18 Plaintiff's claim for waiting time penalties, Defendant alleges its good-faith belief that it paid all wages  
19 precludes the imposition of waiting time penalties since Plaintiff cannot prove Defendant's alleged  
20 failure to pay all final wages at the time of separation was "willful." (Moon Decl., ¶ 7; *see, e.g., Pedroza*  
21 *v. PetSmart, Inc.* (C.D. Cal. June 14, 2012, No. ED CV 11-298 GHK (DTBx)) 2012 WL 9506073, \*5.)  
22 For these reasons, among others, Defendant denies all of Plaintiff's claims and allegations, and further  
23 claims it did not engage in any unfair business practices and denies liability under PAGA. (Moon Decl.,  
24 ¶ 7.) Defendant also maintains the claims are improper for class treatment, in part, due to the  
25 individualized and testimony-intensive nature of the wage claims that could bar class certification or  
26 significantly reduce Defendant's overall liability. (*Id.*)

#### 27 **B. Discovery and Investigation**

28 The Parties agreed to mediate this action with Tripper Ortman, Esq., an experienced class and

1 PAGA action mediator. (*Id.* at ¶ 8.) In preparation for mediation, the Parties agreed to a protocol for an  
2 informal production of documents and information before mediation. (*Id.*) Prior to mediation, Plaintiff  
3 obtained from Defendant, through informal discovery, documents and data that were necessary and  
4 helpful to evaluate the claims asserted in this action. (*Id.*) Defendant produced a statistically sound  
5 sample of time and pay records for the putative Class, Plaintiff's personnel file and time and pay  
6 records, and Defendant's written employment policies in effect during the Class Period. (*Id.*) Defendant  
7 also provided information regarding the estimated number of current and formerly employed Class  
8 Members, Aggrieved Employees, and PAGA Pay Periods. (*Id.*)

9 In preparation for mediation, Class Counsel reviewed and analyzed all the information  
10 Defendant provided, including the sample records and documents regarding Defendant's wage-and-  
11 hour policies. (*Id.* at ¶ 9.) Class Counsel retained a statistics expert to analyze the sample records and  
12 prepare a damage analysis prior to the mediation. (*Id.*) The sample time and pay records analyzed  
13 represented about 47% of total shifts worked in the Class Period, which allowed Plaintiff's expert to  
14 prepare an analysis with a reasonable degree of certainty. (*Id.*) In conjunction with their extensive  
15 factual investigation, Class Counsel also investigated the applicable law regarding the claims and  
16 defenses asserted in the litigation. (*Id.*) Accordingly, Class Counsel was able to evaluate the probability  
17 of class certification, success on the merits, and Defendant's maximum and realistic monetary exposure  
18 for all claims. (*Id.*) Thus, Plaintiff's and his Counsel's familiarity with the facts of the case and the  
19 legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement. (*Id.*)

### 20 **C. Settlement Negotiations and Notice of Settlement to the LWDA**

21 On February 27, 2026, the Parties participated in a full day of private mediation with Tripper  
22 Ortman, Esq. (*Id.* at ¶ 10.) The negotiations were at arm's length and, although conducted in a  
23 professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the  
24 potential for a settlement of the dispute, but each side was also prepared to litigate their position through  
25 trial and appeal if a settlement had not been reached. (*Id.*) After a full discussion regarding the strengths  
26 and weaknesses of Plaintiff's claims and Defendant's defenses and with the assistance of the mediator,  
27 the Parties reached a resolution, the material terms of which are set out in the Settlement. (*Id.*, Ex. 1.)

28 In compliance with Labor Code section 2699(s)(2), notice of settlement and a copy of the

1 proposed Settlement has been submitted to the LWDA along with a copy of Plaintiff’s preliminary  
2 approval motion and the hearing date. (*Id.* at ¶ 11, Ex. 3.) To date, the LWDA has not indicated any  
3 objection to the Settlement. (*Id.* at ¶ 11.)

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

5 Under the Settlement, Defendant will pay a non-reversionary amount of no less than  
6 **\$1,190,000.00** (“GSA”), subject to potential increase under an Escalator Clause, to resolve this action.  
7 (Settlement, ¶ 3.1.) Defendant will separately pay its employer-side payroll taxes owed on the Wage  
8 Portion of Individual Class Payments. (*Id.*) Other key terms of the Settlement are outlined in the counsel  
9 declaration submitted concurrently herewith. (Moon Decl., ¶¶ 12–30.) The proposed Settlement  
10 Administrator— Phoenix Class Action Administration Solutions —was jointly selected by the Parties  
11 based on its bid of \$17,000.00. (*Id.* at ¶ 16, Ex. 5; Settlement, ¶¶ 1.2, 7.1.)

12 The Class is defined as all current and former hourly-paid or non-exempt employees of  
13 Defendant who worked for Defendant in California from February 26, 2021, through February 27, 2026  
14 (“Class Period”). (*Id.* at ¶¶ 1.5, 1.12.) “Aggrieved Employees” are defined as all current and former  
15 hourly-paid or non-exempt employees of Defendant who worked for Defendant in California from  
16 February 23, 2024, through February 27, 2026. (“PAGA Period”). (*Id.* at ¶¶ 1.4, 1.31.) The Settlement  
17 allocates \$50,000.00 from the GSA for settlement of the Released PAGA Claims, which will be  
18 distributed 65% (\$32,500.00) to the LWDA and 35% (\$17,500.00) to Aggrieved Employees pursuant  
19 to PAGA law governing Plaintiff’s claims. (Settlement, ¶¶ 1.34, 3.2.5.) Each Aggrieved Employee will  
20 be entitled to a pro rata share of the 35% share of the PAGA Penalties directly proportional to their  
21 number of PAGA Pay Periods. (*Id.* at ¶ 3.2.5.a.) This results in an average Individual PAGA Payment  
22 of roughly **\$15.35** for each of the estimated 1,140 Aggrieved Employees (\$17,500.00 / 1,140), and a  
23 PAGA Pay Period value of roughly **\$1.13** for each of the 15,461 estimated Pay Periods in the PAGA  
24 Period (\$17,500.00 / 15,461). (Moon Decl., ¶ 18.)

25 After deducting the Class Representative Enhancement Award, the Class Counsel Fees and  
26 Litigation Costs Payments, the PAGA Penalties allocation, and the Administration Expenses Payment  
27 from the GSA, in the amounts specifically approved by the Court, any difference in the amounts  
28 requested and the amounts awarded will be allocated to the Net Settlement Amount for distribution to

1 Participating Class Members. (Settlement, ¶¶ 1.27, 3.2.) Accordingly, the Net Settlement Amount will  
2 be no less than **\$688,833.33** for an estimated Class of **1,600 individuals**.<sup>1</sup> (Moon Decl., ¶ 19.) Each  
3 Class Member who does not opt-out will be entitled to a pro rata share of the Net Settlement Amount  
4 that is directly proportional to the number of Workweeks worked during the Class Period. (Settlement,  
5 ¶ 3.2.4.) The estimated **\$688,833.33** Net Settlement Amount results in an average Individual Class  
6 Payment of roughly **\$430.52** for each of the estimated 1,600 Class Members ( $\$688,833.33 / 1,600$ ),<sup>2</sup>  
7 and a Workweek value of roughly **\$4.78** for each of the 144,000 estimated Workweeks in the Class  
8 Period ( $\$688,833.33 / 144,000$ ). (Moon Decl., ¶ 21.)

9 To the best of Plaintiff’s knowledge, there is no other pending litigation involving similar claims  
10 against Defendant that may be impacted by approval of the Settlement at issue, nor has Defendant  
11 pointed to any. (Moon Decl., ¶ 30.)

### 12 **III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL**

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

---

22  
23  
24 <sup>1</sup> The Net Settlement Amount was calculated by deducting the following from the \$1,190,000.00  
25 GSA: \$7,500.00 for the Class Representative Enhancement Award, \$17,000.00 for the Administration  
26 Expenses Payment, \$50,000.00 for the PAGA Penalties to the LWDA and Aggrieved Employees,  
\$396,666.67 for the Class Counsel Fees Payment, and up to \$30,000.00 for the Class Counsel  
Litigation Costs Payment. (Moon Decl., ¶ 19, n.1; Settlement, ¶¶ 1.27, 3.2.)

27 <sup>2</sup> At this time, the actual amounts to Class Members and/or Aggrieved Employees are unknown  
28 and will be calculated by the Administrator following preliminary approval and receipt and processing  
of the Class Data. (Settlement, ¶¶ 3.2.4-3.2.5.) The high and low range of payments will be provided  
to the Court in a motion for final approval. (Moon Decl., ¶ 21, n.2.)

1 is small.” (*Dunk*, 48 Cal.App.4th at p. 1802 [citing Newberg, Newberg on Class Actions (3rd ed. 1992)  
2 § 11.41].)

3 In evaluating a settlement, the trial court considers the following factors: (1) the strength of  
4 plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk  
5 of maintaining class action status through trial; (4) the settlement amount offered; (5) the extent of  
6 discovery completed and the stage of the proceedings; (6) counsel’s experience and views; (7) the  
7 presence of a governmental participant; and (8) the class members’ reaction to the proposed settlement.  
8 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) To approve a class action  
9 settlement, “the court must satisfy itself that the class settlement is within the ‘ballpark’ of  
10 reasonableness.” (*Id.* at p. 133.) The record need not contain an explicit statement of the maximum  
11 theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App.4th 399, 408–  
12 09 [holding that *Kullar* does not require “an explicit statement of the maximum amount the plaintiff  
13 class could recover if it prevailed on all its claims,” but instead, only an “understanding of the amount  
14 that is in controversy and the realistic range of outcomes of the litigation”].)

15 As discussed below, Class Counsel have provided materials and information exceeding the  
16 threshold required for this Court to conclude the Settlement is fair, reasonable, and adequate.

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

19 **1. The Settlement Is the Product of Discovery, Investigation, Informed and Non-**  
20 **Collusive Arm’s-Length Negotiations, and Realistic Claims Analysis**

21 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless  
22 evidence to the contrary is offered. (Newberg, Newberg on Class Actions (3rd ed. 1992) § 11.51.)  
23 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super. Ct.*  
24 (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The fact that  
25 the plaintiff might have received more if the case had been fully litigated is no reason not to approve  
26 the settlement.”].) Thus, there is a presumption here that negotiations were conducted in good faith.

27 Here, Class Counsel have conducted a thorough investigation into the facts of this case. (Moon  
28 Decl., ¶ 31.) As previously noted, the Settlement at issue was reached through arm’s-length

1 negotiations, private mediation, and the assistance of a statistics expert. (*Id.*) Based on Defendant's  
2 informal class-wide discovery production, on Class Counsel independent investigation and evaluation,  
3 and on counsel's extensive experience in wage-and-hour litigation, Class Counsel are of the opinion  
4 that the proposed Settlement is fair, reasonable, and adequate. (*Id.*)

5 Based on Class Counsel's review of the time, payroll, and additional data provided by  
6 Defendant, on Plaintiff's expert's analysis of the sample records provided by Defendant, and on  
7 information from Plaintiff, Class Counsel evaluated the estimated maximum and risk-adjusted  
8 exposure that Defendant faced. (*Id.* at ¶ 32.) Specifically, based on the information provided for  
9 mediation, the total estimated **realistic recovery** (adjusted for risks at certification and proof on the  
10 merits) for the alleged claims, including penalties, is estimated to be **\$1,591,585.80**. (*Id.* at ¶¶ 32, 40.)  
11 This amount was calculated as follows: **\$1,037.25** (75% discount) for the regular rate claim; **\$93,286.04**  
12 (50% discount) for the rounding claim; **\$247,497.98** (90% discount) for the off-the-clock work claim;  
13 **\$431,415.65** (75% discount) for the meal period claim; **\$362,265.88** (90% discount) for the rest period  
14 claim; **\$108,000.00** (90% discount) for the unreimbursed business expenses claim; **\$196,635.50** (95%  
15 discount) for the waiting time penalties claim; **\$74,142.50** (95% discount) for the wage statement claim;  
16 and **\$77,305.00** (95% discount) for the PAGA penalties claim. (*Id.* at ¶¶ 32–39.) The foregoing  
17 discounts were based on the evidence presented for mediation and arguments made during arm's-length  
18 settlement negotiations. (*Id.*)

19 **The \$1,190,000.00 gross settlement figure represents approximately 75% of the total**  
20 **realistic recovery estimated to be \$1,591,585.80.** (*Id.* at ¶ 40.) This is an excellent result for the Class,  
21 particularly because, under the Settlement, Class Members will receive timely and guaranteed relief,  
22 avoiding the risk of not being able to recover anything. (*Id.*)

## 23 **2. The Class Settlement Is Fair Considering the Parties' Respective Positions and** 24 **Significant Risks to Certification and Proof on the Merits**

25 A settlement is not judged against what a plaintiff might recover had he prevailed at trial, nor  
26 does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba*  
27 *v. Apple Comp., Inc.* (2001) 91 Cal.App.4th 224, 246, 250 ["Compromise is inherent and necessary in  
28 the settlement process . . . even if 'the relief afforded by the proposed settlement is substantially

1 narrower than it would be if the suits were to be successfully litigated,’ this is no bar to a class settlement  
2 because ‘the public interest may indeed be served by a voluntary settlement in which each side gives  
3 ground in the interest of avoiding litigation.’”] [quoting *Air Line Stewards v. Am. Airlines, Inc.* (7th  
4 Cir. 1972) 455 F.2d 101, 109].)

5 Here, considering all known facts and circumstances, the risk of significant delay, trial risk,  
6 appellate risk, and the defenses Defendant may assert both to certification and on the merits, the  
7 Settlement is in the best interest of the Class and LWDA. (Moon Decl., ¶ 31.) While Plaintiff is  
8 confident in the merits of his claims, a legitimate controversy exists as to each cause of action. (*Id.* at  
9 ¶ 43.) Plaintiff also recognizes that proving the amount owed to each Class Member would be an  
10 expensive, time-consuming, and uncertain proposition. (*Id.*)

11 The Settlement obviates the significant risk that this Court may deny certification of all or some  
12 of Plaintiff’s claims. (*Id.* at ¶ 44.) Class Counsel took into account the risk of not prevailing at trial due  
13 to low or no participation by Class Members. (*Id.*) Indeed, the individualized and testimony-intensive  
14 nature of certain claims could bar class certification or otherwise significantly reduce any recovery  
15 whatsoever. (*Id.*) For example, the rest period and unreimbursed expense claims are testimony-driven  
16 claims. (*Id.*) The rest period exposure analysis assumes a 50% violation rate for qualifying shifts, while  
17 the unreimbursed expense analysis assumes that Class Members incurred approximately \$30.00 per  
18 month in unreimbursed business expenses throughout the applicable period. (*Id.*) These assumptions  
19 would not likely be demonstrated at trial without substantial participation from Class Members or,  
20 alternatively, the use of surveys or statistical evidence as a surrogate. (*Id.*) Even assuming employees  
21 would be willing to participate, obtaining declarations would potentially reveal that each individual  
22 employee had a different experience with respect to rest periods and the nature and amount of any  
23 work-related expenses incurred. (*Id.*)

24 Furthermore, even if Plaintiff was able to pursue his claims on a class-wide basis and obtain  
25 certification of all or some of the claims, continued litigation would be expensive, involving a trial and  
26 possible appeals, and would substantially delay and reduce any recovery by the Class. (*Id.* at ¶ 45.)  
27 Although the Parties have engaged in a significant amount of investigation, informal discovery, and  
28 class-wide data analysis, they have not conducted extensive formal discovery. (*Id.*) Moreover,

1 preparation for class certification and a trial would remain for the Parties as well as the prospect of  
2 appeals in the wake of a disputed class certification ruling for Plaintiff and/or any summary judgment  
3 ruling. (*Id.*) As a result, the Parties would incur considerably more attorneys’ fees and costs through  
4 trial. In sum, this Settlement avoids the risks, burdens, and the accompanying expense of further  
5 litigation. (*Id.*)

6 The proposed \$1,190,000.00 Settlement therefore represents a substantial recovery when  
7 compared to the reasonably forecasted recovery for the Class. (*Id.* at ¶ 46.) When considering the risks  
8 of litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to  
9 establish liability, and the probability of appeal, it is clear the Settlement amount is within the  
10 “ballpark” of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*; *Kullar*,  
11 *supra*, 168 Cal.App.4th at p. 133; *see Munoz, supra*, 186 Cal.App.4th at pp. 408–09.)

### 12 **3. The PAGA Settlement Is Fair Considering the Parties’ Respective Positions** 13 **and Significant Risks**

14 With regards to the PAGA claims, the Settlement is a fair and reasonable resolution that satisfies  
15 PAGA’s dual statutory purposes of deterrence and punishment, on the one hand, and providing  
16 Aggrieved Employees with genuine and meaningful relief, on the other. (Moon Decl., ¶ 41; Lab. Code  
17 §§ 2698, *et seq.*) As a result of this litigation, Defendant has had to hire legal counsel, engage in informal  
18 class-wide discovery, and participate in mediation. (Moon Decl., ¶ 41.) Defendant will also have to pay  
19 civil penalties to the LWDA under the Settlement, assuming final settlement approval is granted. (*Id.*;  
20 Settlement, ¶ 3.2.5.) Not including its own attorneys’ fees and costs as well as the employer’s share of  
21 payroll taxes, Defendant will pay no less than \$1,190,000.00 to resolve this matter, of which \$50,000.00  
22 is allocated toward the PAGA claims and will be distributed, in compliance with Labor Code section  
23 2699, as 65% (\$32,500.00) to the LWDA and 35% (\$17,500.00) to Aggrieved Employees—and the  
24 Released PAGA Claims are limited to claims for PAGA penalties that were alleged, or reasonably could  
25 have been alleged, in Plaintiff’s PAGA Notice to the LWDA and in Plaintiff’s Operative Complaint  
26 during the PAGA Period. (Moon Decl., ¶ 41.)

27 Moreover, Class Counsel are of the opinion that because the issues here are fairly contested,  
28 there is a possibility of the Court not awarding the PAGA penalties even if Plaintiff prevailed on the

merits due to the largely discretionary nature of awarding PAGA penalties. (*Id.*) Indeed, under PAGA, a Court can reduce penalties “if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” (Lab. Code § 2699(e)(2).) In other words, were this matter to go to trial, any award granted would be at the discretion of the Court and subject to a substantial reduction. (Moon Decl., ¶ 41.) Further, Class Counsel took into account the risk of not being able to proceed on a representative basis due to the potential manageability issues and that even if Plaintiff prevailed at trial, penalties would likely be limited due to the largely discretionary nature of awarding PAGA penalties and in light of other defenses available to Defendant. (*Id.* at ¶ 42.) Thus, it is entirely possible that even if Plaintiff would be successful at trial, assuming he is first able to certify the claims and defeat the manageability issues presented at litigation, Plaintiff could be awarded substantially less than what was obtained through the Settlement. (*Id.*)

In sum, the \$50,000.00 PAGA Penalties allocation under the Settlement constitutes “genuine and meaningful” relief that is “consistent with the underlying purpose of the statute to benefit the public.” (*See O’Connor v. Uber Tech., Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133–35 [denying settlement approval where allocation for PAGA claims was 0.1% of the estimated full worth].)

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

The Settlement negotiations were conducted by highly capable counsel with considerable experience and demonstrated competence with litigating wage-and-hour class actions. (Moon Decl., ¶¶ 51–69.) Class Counsel have a strong record of vigorous and effective advocacy for their clients and are experienced in handling complex wage-and-hour class action litigation. (*Id.*) Their experience was helpful in assessing the reasonableness of the Settlement at issue here, and from this experience they concluded that this litigation could not have been settled on better terms than provided under the Settlement. (*Id.* at ¶ 70.) Although Plaintiff and his counsel were prepared to try the claims alleged in the litigation, they support the proposed Settlement as being in the best interest of the Class based on objective evidence that has been considered and weighed against the risks, expenses, and time consumption to both sides of continued litigation. (*Id.* at ¶¶ 10, 31.)

1           **B. The Proposed Attorneys’ Fees and Costs Are Reasonable**

2           Subject to the Court’s approval, the Settlement provides a fee application of one-third of the  
3 GSA for Class Counsel’s attorneys’ fees, plus reimbursement for out-of-pocket litigation costs not to  
4 exceed \$30,000.00.<sup>3</sup> (Settlement, ¶ 3.2.2.) These amounts are disclosed to Class Members in the  
5 proposed Class Notice and are reasonable. (*Id.* at Ex. A.)

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

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

13           Plaintiff’s Counsel seek an award of attorneys’ fees on the “percentage of recovery/common  
14 fund” theory. (Moon Decl., ¶ 72.) The purpose of this approach is to “spread litigation costs  
15 proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden  
16 alone.” (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of*  
17 *California* (1975) 15 Cal.3d 162, the California Supreme Court stated, “one who expends attorneys’  
18 fees in winning a suit which creates a fund from which others derive benefits, may require those passive  
19 beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in *City and County of*  
20 *San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the  
21 common fund doctrine has been applied “consistently in California when an action brought by one  
22 party creates a fund in which other persons[ ] are entitled to share.” (*Id.* at pp. 110–11 [pincite omitted].)

23           The California Supreme Court affirmed in *Laffitte v. Robert Half International Inc.* (2016) 1  
24 Cal.5th 480 that, “when class action litigation establishes a monetary fund for the benefit of the class  
25 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the  
26

27  
28           <sup>3</sup> Plaintiff’s Counsel’s current litigation costs are \$25,383.09, and they anticipate incurring  
additional costs up to final approval. (Moon Decl., ¶¶ 15, 77, Ex. 4.)

1 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund  
2 created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage method—  
3 including relative ease of calculation, alignment of incentives between counsel and the class, a better  
4 approximation of market conditions in a contingency case, and the encouragement it provides counsel  
5 to seek an early settlement and avoid unnecessarily prolonging the litigation[ ]—convince us the  
6 percentage method is a valuable tool that should not be denied our trial courts.” (*Id.* [internal citations  
7 omitted].) This line of legal authority supports a request for attorneys’ fees based on the percentage of  
8 recovery/common fund method.

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

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

19 Here, Class Counsel’s fees request for one-third of the GSA, is in line with the prevailing  
20 guidelines established in California case law and academic literature and is consistent with awards in  
21 California. (*Compare Settlement*, ¶ 3.2.2, with *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66,  
22 n.11 [“Empirical studies show that, regardless whether the percentage method or the lodestar method  
23 is used, fee awards in class actions average around one-third of the recovery.”].) Accordingly, Plaintiff  
24 requests the Court preliminarily approve the attorneys’ fees as negotiated by the Parties.

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

26 Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable  
27 fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(k)(1),  
28 2802(d).) Under these sections, Plaintiff would be permitted to recover his actual attorneys’ fees, even

1 if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) This Settlement  
2 is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and  
3 resources facing Defendant while at the same time rewarding Plaintiff’s Counsel for their decision to  
4 assume risk by taking on this matter on a contingent basis with no guarantee of recovery. (Moon Decl.,  
5 ¶¶ 72–75.) In fact, prosecution of this action involved significant financial risk for Class Counsel. (*Id.*)  
6 Once Class Counsel undertook this litigation, they committed to pursue it to its conclusion, placing  
7 their fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶ 76.)

#### 8 **4. Counsel’s Experience, Reputation, and Ability Support the Fees Request**

9 As demonstrated by their past experience in pursuing class actions on behalf of consumers and  
10 employees, Class Counsel possess considerable expertise in litigating class actions. (*Id.* at ¶¶ 51–67.)  
11 Class Counsel have been involved as lead counsel or co-counsel in numerous class actions that resulted  
12 in millions in recovery. (*Id.*) As noted above, their experience in wage-and-hour litigation was integral  
13 in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the  
14 Settlement. (*Id.* at ¶ 70.) Practice in the narrow field of wage-and-hour litigation requires skill and  
15 knowledge concerning the rapidly evolving substantive law (state and federal) as well as the procedural  
16 law of class action litigation. (*Id.* at ¶ 68.) Based on these and other factors, Plaintiff’s Counsel have  
17 frequently received fee awards of this percentage from the gross recovery for the class. (*See id.* at ¶¶  
18 55, 60, 62.) Because it is reasonable to compensate counsel commensurate with their skill, reputation,  
19 and experience, the requested fee award is supported here.

#### 20 **C. The Enhancement Award to Plaintiff Is Reasonable**

21 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to  
22 compensate them for the expense or risk they have incurred in conferring a benefit on other members  
23 of the class.” (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Courts routinely grant approval of class action  
24 settlement agreements containing enhancements for the class representatives, which are necessary to  
25 provide incentive to represent the class and are appropriate given the benefit the class representatives  
26 help to bring about for the class. (*See Rodriguez v. W. Publ’g Corp.* (9th Cir. 2009) 563 F.3d 948, 958–  
27 59.) Service awards are particularly important to plaintiffs in wage-and-hour cases because they  
28 promote the important public policies underlying the wage-and-hour laws. This strong policy is

1 codified in California Labor Code section 90.5, which provides, “[i]t is the policy of this state to  
2 vigorously enforce minimum labor standards in order to ensure employees are not required or permitted  
3 to work under substandard unlawful conditions . . .” (Lab. Code § 90.5.) Nonetheless, the California  
4 Supreme Court has noted that “retaliation against employees for asserting statutory rights under the  
5 Labor Code is widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry v.*  
6 *Super. Ct.* (2007) 42 Cal.4th 443, 460–61.) In this context, class representatives should be rewarded for  
7 assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.*  
8 (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

9 Under the Settlement here, subject to the Court’s approval, a Class Representative Enhancement  
10 Award of \$7,500.00 will go to Plaintiff, in addition to his Individual Class and PAGA Payments.  
11 (Settlement, ¶¶ 1.14, 3.2.1.) This award is for his services in support of the Action and General Release.  
12 (*Id.* at ¶ 1.14.) Plaintiff has devoted a great deal of time and work assisting counsel in the case and  
13 communicated with counsel frequently for litigation and to prepare for mediation. (Moon Decl., ¶¶ 47–  
14 50; Plaintiff Decl., ¶¶ 11–21.) The requested award is fair and reasonable, particularly considering the  
15 substantial benefits Plaintiff generated for all Class Members. (Moon Decl., ¶¶ 47–50.)

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

#### 1     **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

##### 2     **A. Legal Standard**

3     The proposed Settlement Class is well suited for class certification. The claims all derive from  
4 a core set of alleged violations of California’s wage and hour laws and regulations. (Moon Decl., ¶¶ 4–  
5 5.) For the reasons set forth more fully below, the Class, for purposes of Settlement, satisfies the  
6 prerequisites for certification under Code of Civil Procedure section 382. (Code Civ. Proc. § 382.)  
7 Section 382 provides that “when the question is one of a common or general interest, of many persons,  
8 or when the parties are numerous, and it is impracticable to bring them all before the court, one or more  
9 may sue or defend for the benefit of all.” (*Id.*) There are two requirements to section 382: “(1) there  
10 must be an ascertainable class[ ]; and (2) there must be a well defined community of interest in the  
11 questions of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow Cab Co.*  
12 (1967) 67 Cal. 2d 695, 704 [internal citations omitted].) To clarify these requirements, the California  
13 Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the community-of-  
14 interest requirement itself embodies three factors: “(1) predominant common questions of law or fact;  
15 (2) class representatives with claims or defenses typical of the class; and (3) class representatives who  
16 can adequately represent the class.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal. 3d 462, 470.)

17     California law and policy favor the fullest and most flexible use of the class action device. (*Id.*  
18 at pp. 469–73.) Indeed, “Courts long have acknowledged the importance of class actions as a means to  
19 prevent a failure of justice in our judicial system” particularly where the rights of consumers are at  
20 issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434.) Any doubt as to the appropriateness of  
21 class treatment should be resolved in favor of certification. (*Richmond, supra*, 29 Cal.3d at pp. 473–  
22 75.)

##### 23     **B. The Criteria for Class Certification Are Satisfied**

###### 24     **1. The Class Is Ascertainable and Numerous**

25     When determining whether a class is ascertainable, California courts focus on the following  
26 three factors: “(1) the class definition, (2) the size of the class and (3) the means of identifying class  
27 members.” (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, Plaintiff maintains there is an  
28 easily ascertainable Class, defined by objective and precise criteria. (Settlement, ¶¶ 1.5, 1.12.) The

1 proposed Class that Plaintiff seeks to represent is ascertainable because (1) the Class definition is  
2 sufficiently precise, (2) the Class consists of about 1,600 individuals, and (3) Class Members can be  
3 readily identified by Defendant’s records. (*Id.*; Moon Decl., ¶¶ 19–20.) Because Class Members are  
4 identified using specific criteria in the regular business records of Defendant—their employment by  
5 Defendant in California, non-exempt classification, hourly wage, and actual work during the Class  
6 Period—the Class is ascertainable. (*See Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 959–  
7 60 [class membership defined by ownership of product that is the subject of the lawsuit is sufficient to  
8 make the class ascertainable].) “The requirement of Code of Civil Procedure section 382 that there be  
9 ‘many’ parties to a class action suit is indefinite and has been construed liberally.” (*Rose v. City of*  
10 *Hayward* (1981) 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’  
11 persons, an action may be maintained as a class action even where the parties are numerous and it is in  
12 fact practicable to join them all.” (*Id.*) “No set number is required as a matter of law for the maintenance  
13 of a class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries  
14 of a trust in an action for removal of the trustees.” (*Id.* [citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d  
15 574]; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a class of 9 plaintiffs and 35 members].)  
16 Therefore, numerosity is plainly satisfied.

## 17 **2. There Are Many Common Issues of Law and Fact Which Predominate**

18 To satisfy the community of interest requirement, a proponent must show (1) common questions  
19 of law and fact that predominate over individual issues, (2) class representatives have claims or  
20 defenses typical of the class, and (3) class representatives adequately represent the class. (*Dunk, supra*,  
21 48 Cal.App.4th at p. 1806.) This inquiry tests whether proposed classes are sufficiently cohesive to  
22 rationally warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987)  
23 191 Cal.App.3d 605, 611–12.)

24 Here, Plaintiff’s claims satisfy all three requirements. The employment practices at issue  
25 include whether Defendant: paid employees all minimum, overtime, double time, meal premium, and  
26 sick pay wages owed; reimbursed employees for necessary business expenses; provided employees  
27 with and authorized meal and rest periods or paid premiums for non-compliant breaks; paid all final  
28 wages to employees at the time of termination; intentionally failed to pay all final wages; provided

1 inaccurate itemized wage statements and whether Class Members were harmed; engaged in unfair  
2 business practices; and violated civil penalty provisions under PAGA. (Moon Decl., ¶¶ 4–5.) Plaintiff  
3 contends the factual and legal issues are the same for all Class Members, and further that all Class  
4 Members suffered from and seek redress for the same alleged injuries. (Plaintiff Decl., ¶¶ 5–6.)  
5 Considering Class Members would need to prove the same issues of law and fact to prevail, and their  
6 legal remedies are identical, it would be preferable to resolve all claims through a settlement than to  
7 force each Class Member to litigate their own individual claims. Thus, the Court should grant  
8 conditional class certification for settlement purposes because common questions of law and fact  
9 predominate over any individual questions within the Class.

### 10 **3. Plaintiff’s Claims Are Typical of the Claims of the Class**

11 The typicality requirement does not focus on the individual characteristics or circumstances of  
12 the representative plaintiff compared to those of the remainder of the class, but rather, upon the  
13 typicality of the proposed representative’s claims as they relate to the defendant’s conduct and  
14 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 [“The only requirements are [sic] that  
15 common questions of law and fact *predominate* and that the class representative be *similarly* situated”  
16 vis-à-vis the class.] [emphasis in original].) A representative plaintiff’s claims are typical of the class  
17 if they arise from the same event, practice, or course of conduct, and if the claims rest on the same legal  
18 theories. (*Id.*) That is precisely the case here. Plaintiff is a former employee of Defendant and alleges  
19 he was subject to the same policies and practices as other similarly situated employees. (Plaintiff Decl.,  
20 ¶¶ 2–6.)

### 21 **4. Plaintiff and His Counsel Meet the Adequacy Requirement**

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

26 Here, all requirements are met. Plaintiff retained counsel with extensive experience in  
27 prosecuting complex class actions, including similar class actions that previously settled. (Moon Decl.,  
28 ¶¶ 51–69.) Based on their experience, Class Counsel unquestionably are “qualified, experienced and

generally able to conduct the proposed litigation.” (*Miller, supra*, 148 Cal.App.3d at p. 874.) Plaintiff has, with counsel, litigated this case and diligently reviewed the settlement terms, showing dedication, and with full knowledge and acceptance of duties, he has committed to his role as Class Representative. (Plaintiff Decl., ¶¶ 11–21.) In addition, Plaintiff and his Counsel have no conflicts with one another, other Class Members, or the proposed Administrator. (*Id.* at ¶¶ 8–10; Moon Decl., ¶ 71.)

### 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 CLASS NOTICE IS CONSTITUTIONALLY SOUND AND SATISFIES RULES OF COURT

Class Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court, rule 3.766(e)–(f), rule 3.769(f).) Here, the proposed Class Notice, in the form attached to the Settlement as **Exhibit A**, meets all the requirements of California Rules of Court. The Class Notice summarizes the proceedings to date and the terms and conditions of the proposed Settlement in an informative and coherent manner. (Settlement, ¶ 7.4, Ex. A.) 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.*) It explains the right and procedures to opt-out or submit any written objections and/or arrange to appear at the Final Approval Hearing and verbally state any objections. (Settlement, ¶¶ 7.5, 7.8.) It makes clear the Settlement does not constitute an admission of liability by Defendant, who denies all liability, and it recognizes that this Court has not ruled on the merits of the action. (Settlement, Ex. A.) Thus, the

1 proposed Class Notice meets all the requirements of California Rule of Court 3.769(f). (Cal. Rules of  
2 Court, rule 3.769(f).)

3 The Class Notice also fulfills the requirement of neutrality in class notices. (Newberg, Newberg  
4 on Class Actions (3rd ed. 1992) § 8.39.) Accordingly, the Class Notice complies with the standards of  
5 fairness, completeness, and neutrality required of a combined settlement-certification class notice.

6 California law vests the Court with broad discretion in fashioning an appropriate notice  
7 program. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 970, 973–74.) There is no statutory or due  
8 process requirement that all class members receive actual notice, but in this matter, Class Members will  
9 receive direct mailed notice, which is the best possible form of notice under the circumstances.  
10 (Settlement, ¶ 7.4.2.) As the Court of Appeals has explained, “[t]he notice given should have a  
11 reasonable chance of reaching a substantial percentage of the Class Members . . .” (*Cartt*, 50  
12 Cal.App.3d at p. 974.)

13 **VI. CONCLUSION**

14 For the foregoing reasons, Plaintiff respectfully requests the Court grant this motion, enter the  
15 proposed order submitted herewith regarding preliminary approval, and set a final approval hearing no  
16 earlier than 120 days from the preliminary approval order.

17 Respectfully submitted,

18 Dated: August 27, 2026

**MOON LAW GROUP, PC**

19  
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