Kane Moon (SBN 249834)
E-mail: kmoon@moonlawgroup.com
Allen Feghali (SBN 301080)
E-mail: afeghali@moonlawgroup.com
S. Phillip Song (SBN 326572)
E-mail: psong@moonlawgroup.com
MOON LAW GROUP, PC
725 S. Figueroa Street, Suite 3100
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff BETSY SUSAN NYBO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

BETSY SUSAN NYBO, individually, and on behalf of all others similarly situated,

Plaintiff,

vs.

ONE COMMUNITY HEALTH; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 25CV003085

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, Declaration of Plaintiff Betsy Susan Nybo, the Declaration of Jodey Lawrence, and [Proposed] Preliminary Approval Order*]

PRELIMINARY APPROVAL HEARING:
Date: October 2, 2026
Time: 9:00 a.m.
Dept.: 8A
Judge: Hon. Jill H. Talley

Reservation #: A-03085-001

Action Filed: February 7, 2025
Trial Date: Not Set

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

PLEASE TAKE NOTICE that on October 2, 2026 at 9:00 a.m. in Department 8A of the Tani G. Cantil-Sakauye Sacramento Courthouse located at 500 G Street, Sacramento, California 95814, pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 *et seq*., Plaintiff Betsy Susan Nybo ("Plaintiff") will move the Court for an order granting preliminary approval of the proposed class action settlement between Plaintiff and Defendant One Community Health.

Plaintiff will further move the Court for an order:

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

The motion will be based upon this notice, the attached memorandum of points and authorities, the supporting Declarations of Kane Moon (and exhibits attached thereto) and Plaintiff, the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative ruling may be downloaded off the court's website. If the party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

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

Respectfully submitted,

Dated: June 19, 2026

MOON LAW GROUP, PC

By:______________________________

Kane Moon
Allen Feghali
S. Phillip Song

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Betsy Susan Nybo ("Plaintiff") seeks preliminary approval of a proposed $500,000.00 non-reversionary, wage and hour class action settlement (the "Settlement") with Defendant Cares Community Health dba One Community Health ("Defendant") (together with Plaintiff, the "Parties"). The Settlement will provide substantial monetary payments to 564 Class Members who worked an estimated aggregate of 42,134 Workweeks, of which roughly 451 are Aggrieved Employees who worked an estimated aggregate of 14,238 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 a mediation session by an experienced and neutral class action mediator, Deborah Saxe, Esq. Accordingly, Plaintiff requests the Court preliminarily approve the Settlement, certify the proposed Settlement Class, approve the proposed 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."], ¶ 3.) Plaintiff seeks to represent a class of all current and former hourly-paid or non-exempt employees of Defendant in California employed during the period from September 28, 2022, to May 9, 2026, for alleged Labor Code violations. (*Id.*) Defendant is a health clinic doing business in the State of California. (*Id.*) Plaintiff worked for Defendant from approximately June 2018 to January 2023 as a medical assistant. (*Id.*) Throughout her employment Plaintiff was employed in an hourly paid, non-exempt position. (*Id.*) Plaintiff contends that she and her coworkers were subjected to the same unlawful labor practices, including failure to pay wages for all hours worked.

(*Id.*)

Plaintiff's claim for unpaid wages stems from Defendant's alleged failure to compensate employees for off-the-clock work, failure to compensate employees for overtime work, and failure to incorporate all non-discretionary bonuses into the regular rate of pay when calculating the correct overtime pay, meal break premium, and sick day rate of pay. (*Id.* at ¶ 4.) Plaintiff also brings claims against Defendant for meal and rest period violations, unreimbursed business expenses for the personal use of her cellphone and vehicle for work purposes and for the maintenance of her uniform, and derivative claims for waiting time penalties, wage statement violations, unfair business practices, and civil penalties under PAGA. (*Id.*)

Because of the foregoing alleged violations of various provisions of the Labor Code, Plaintiff filed a class action on February 7, 2025, which alleges Defendant systematically: (1) failed to pay minimum wages, (2) failed to pay overtime compensation, (3) failed to provide meal periods, (4) failed to authorize and permit rest periods, (5) failed to indemnify necessary business expenses, (6) failed to pay final wages at termination, (7) failed to provide accurate itemized wage statements, and (8) engaged in unfair business practices. (*Id.* at ¶ 5.) On April 8, 2025, Plaintiff filed the operative First Amended Class and Representative Action Complaint, adding a single cause of action for Civil Penalties under PAGA. (*Id.*)

Defendant ardently opposes the merits of this case and denies Plaintiff's factual allegations. (*Id.* at ¶ 6.) Defendant asserts it complied with all of their compensation obligations, including compensating Class Members for all off-the-clock work, and therefore, Plaintiff and other Class Members were paid all wages owed. (*Id.*) Defendant argues that it adopted a valid alternative workweek schedule ("AWS") and that it did not fail to compensate Class members for overtime work. (*Id.*) Defendant also argue that it did not fail to incorporate any bonuses into Plaintiff's and Class Member's regular rate for purposes of overtime, meal break premium, and sick pay as such bonuses were discretionary. (*Id.*) Defendant maintains compliance with all its meal and rest period obligations. (*Id.*) Defendant asserts it complied with all of its reimbursement obligations, and therefore, Plaintiff and other Class Members were compensated for any and all necessary business expenses incurred. (*Id.*) To the extent Class Members received wage statements that were allegedly inaccurate, Defendant asserts employees suffered no actual damage or harm as a result. (*Id.*; *see, e.g.*, *Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013, No. C 12–05860 CRB) 2013 WL 622032, at *10 ["A plaintiff must adequately plead an injury arising from an employer's failure to provide full and accurate wage statements, and the omission of the required information alone is not sufficient."].) With respect to Plaintiff's claim for waiting time penalties, Defendant alleges its good-faith belief that it paid all wages precludes the imposition of waiting time penalties since Plaintiff cannot prove Defendant's alleged failure to pay all final wages at the time of separation was "willful." (Moon Decl., ¶ 6; *see, e.g.*, *Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012, No. ED CV 11–298 GHK (DTBx)) 2012 WL 9506073, *5.) For these reasons, among others, Defendant denies all of Plaintiff's claims and allegations, and further claims it did not engage in any unfair business practices and denies liability under PAGA. (Moon Decl., ¶ 6.) Defendant also maintains the claims are improper for class treatment, in part, due to the individualized and testimony-intensive nature of the wage claims that could bar class certification or significantly reduce Defendant's overall liability. (*Id.*)

B. <u>Discovery and Investigation</u>

The Parties agreed to mediate the instant action, and participated in private mediation with Deborah Saxe, Esq., an experienced class and PAGA action mediator. (*Id.* at ¶ 7.) In preparation for mediation, the Parties agreed to a protocol for an informal exchange of documents and information before mediation (*Id.*) Prior to mediation, Plaintiff obtained from Defendant, through informal discovery, documents and data that were necessary and helpful to evaluate the claims asserted in this action. (*Id.*) Defendant produced a statistically significant sample of time and pay records for the putative Class, Plaintiff's personnel file, and Defendant's written policies and employee handbook in effect during the Class Period. Defendant also provided information regarding the estimated number of current and formerly employed Class Members, Aggrieved Employees, and PAGA Pay Periods. (*Id.*)

In preparation for mediation, Plaintiff's Counsel reviewed and analyzed all the information Defendant provided, including the sample records and documents regarding Defendant's wage and hour policies. (*Id.* at ¶ 8.) Plaintiff's Counsel retained a statistics expert to analyze the sample records and prepare a damage analysis prior to the mediation. (*Id.*) The sample time and pay records analyzed represented approximately 93.8% of the Class, which allowed Plaintiff's expert to prepare an analysis with high degree of certainty. (*Id.*) In conjunction with their extensive factual investigation, Plaintiff's Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly, Plaintiff's Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum and realistic monetary exposure for all claims. (*Id.*) Thus, Plaintiff's and her Counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement. (*Id.*)

C. Settlement Negotiations

On March 9, 2026, the Parties participated in a full day of private mediation before Deborah Saxe, Esq. (*Id.* at ¶ 9.) The negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, a settlement was reached by the Parties. (*Id.*) The material terms of the Settlement are encompassed within the Joint Stipulation of Class and Representative Action Settlement Agreement (*Id.*, Ex. 1 [the "Settlement"].)

Plaintiff's Counsel have conducted a thorough investigation into the facts of this case. (*Id.* at ¶ 28.) Based on the foregoing document and information exchange and on their own independent investigation and evaluation, Plaintiff's Counsel are of the opinion that the proposed Settlement is fair, reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, and the defenses that Defendant may assert both to certification and on the merits, the Settlement is in the best interests of the Class. (*Id.*; *see also Id.* at ¶¶ 30–36.) **Indeed, the $500,000.00 gross settlement figure represents roughly 50% of the realistic recovery estimated to be $997,134.42.** (*Id.* at ¶ 37.)

D. Key Terms of the Proposed Settlement

Under the Settlement, Defendant will pay a non-reversionary, all-inclusive amount of *no* *less than* $500,000.00 to resolve this action. (Settlement, ¶ 3.0.) The key terms include:

1. Non-reversionary Gross Settlement Amount: The Settlement provides for a non-reversionary, Gross Settlement Amount of at least $500,000.00, subject to potential increase pursuant to an escalator clause. (*Id.* at ¶ 3.0.) No portion will revert to Defendants. (*Id.*)

2. Escalator Clause: Defendant represents that there is a total of 42,134 Workweeks during the Class Period. (*Id.* at ¶ 7.) If the number of workweeks exceed 46,347, then, at its own election, Defendant may choose to either: (1) increase the Gross Settlement Amount on a proportional basis for each workweek above 46,347 workweeks; or (2) cut off the Class Period at the point the Class Period reaches 46,347 workweeks. (*Id.*) If Defendant exercises the option to cut off the Class Period, Defendant agrees to inform Plaintiff and Plaintiff's counsel of the Class Period cutoff date before the hearing on preliminary approval of the settlement. (*Id.*)

3. Net Settlement Amount: The Net Settlement Amount means the amount to be allocated as Individual Class Payments. (*Id.* at ¶ 1.26.) The Net Settlement Amount is the Gross Settlement Amount ($500,000.00) minus the following sums, subject to approval by the Court: (1) Class Counsel Fees Payment (not to exceed 1/3 of the Gross Settlement Amount, or $166,666.66, whichever is greater); (2) Class Counsel Expenses Payment (not to exceed $30,000.00); (3) Service Payment to Plaintiff (not more than $10,000.00); (4) PAGA Penalties Payment ($20,000.00); and (5) Administration Expenses Payment (not more than $15,000.00). (*Id.*) The Net Settlement is estimated to be $258,333.33 (Moon Decl., ¶ 42.).

4. Tax Treatment: 20% of each Participating Class Member's Individual Class Payment will be allocated to the settlement of claims for wages (the "Wage Portion"). (Settlement, ¶ 3.1.3.2.) 80% of each Participating Class Member's Individual Class Payment will be allocated to the settlement of claims for interest and penalties (the "Non-Wage Portion"). (*Id.*) 100% of each Individual PAGA Payment will be allocated as penalties. (*Id.* at ¶ 3.1.4.2.)

5. No Claim Form: Class Members will not need to submit any claim form as a condition of receiving Individual Class Payments. (*Id.* at ¶ 3.0.) Each Class Member who does not opt-out will be entitled to a *pro rata* share of the Net Settlement Amount that is directly proportional to the number of Workweeks worked during the Class Period. (*Id.* at ¶ 3.1.3.1.) Likewise, each PAGA Employee

will be entitled to a *pro rata* share of the 35% share of the PAGA Penalties directly proportional to the number of PAGA Pay Periods. (*Id.* at ¶ 3.1.4.1.)

6. Class and Class Period: The "Class" is defined as all current and former hourly-paid or non-exempt employees of Defendant in California employed during the period from September 28, 2022, to May 9, 2026 ("Class Period"). (*Id.* at ¶ 1.4, 1.11.) Class Members will be paid a *pro rata* share based on the number of Workweeks worked by the Class Member during the Class Period. (*Id.* at ¶ 3.1.3.1.) "Workweek" means any calendar week during the Class Period in which a Class Member worked at least one day for Defendant. (*Id.* at ¶ 1.43.) Defendant represents that there is a total of 42,134 Workweeks during the Class Period. (*Id.* at ¶ 7.) Class certification prerequisites have been met as discussed *infra* at Section IV.

7. Aggrieved Employees and PAGA Period: "Aggrieved Employees" is defined as all current and former hourly-paid or non-exempt employees of Defendant in California employed during the period from February 1, 2024, to May 9, 2026 ("PAGA Period"). (*Id.* at ¶ 1.3, 1.31.) Each Aggrieved Employee will be entitled to a *pro rata* share of the 35% share of the PAGA Penalties directly proportional to the number of PAGA Pay Periods. (*Id.* at ¶ 3.1.4.1.) "PAGA Pay Period" means any pay period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period. (*Id.* at ¶ 1.30.)

8. Released Parties: "Released Parties" means Defendant and its past, present and future subsidiaries, parents, affiliated and related companies, divisions, successors, predecessors or assigns; and each of their past, present, and future officers, directors, shareholders, partners, agents, insurers, employee, advisors, accountants, attorneys, representatives, trustees, heirs, executors, administrators, predecessors, successors or assigns. (*Id.* at ¶ 1.40.)

9. Release of Claims: Plaintiff releases all claims alleged in the Action, and be bound by a Civil Code Section 1542 release and waiver of all claims known and unknown, without exception, except as may be prohibited by law. (*Id.* at ¶ 5.0.) Participating Class members releases all causes of action and claims that were alleged in the Operative Complaint or reasonably could have been alleged based on the facts and legal theories contained in the Operative Complaint during the Class Period. (*Id.* at ¶ 5.1.) Aggrieved Employees all causes of action and claims for civil penalties under

the California Labor Code Private Attorneys General Act of 2004 that were alleged in the Operative Complaint and Plaintiff's PAGA notice letter or reasonably could have been alleged based on the facts and legal theories contained in the Operative Complaint and Plaintiff's PAGA notice letter, during the PAGA Period. (*Id.* at ¶ 5.2.)

10. PAGA Penalties: The Settlement provides for a PAGA Penalties of $20,000.00. (*Id.* at ¶ 3.1.4.) Pursuant to PAGA, 65% or $13,000.00 is allocated to the LWDA and 35% of $7,000.00 is allocated to Aggrieved Employees. (*Id.*) On February 1, 2025, Plaintiff gave written notice to the California Labor and Workforce Development Agency (the "LWDA") of the alleged Labor Code violations, with certified mail service on Defendant, and paid the required filing fee. (Moon Decl., ¶ 18, Ex. 2.) To date, the LWDA has not indicated its intent to investigate the alleged violations or intervene in this Action. (*Id.* at ¶ 18.) In compliance with Labor Code section 2699, subdivision (*l*)(2), Plaintiff's Counsel submitted to the LWDA a notice of settlement and a copy of the proposed Settlement. (*Id.*)

11. Funding: The Gross Settlement Amount, together with all employer-side payroll taxes owed on the wage portions of the Individual Class Payments, shall be fully funded by transmission of such funds to the Administrator by Defendant no later than 10 business days following the Effective Date. (Settlement, ¶ 4.0.) "Effective Date" refers to the date upon which all of the following have occurred: (i) the Court has approved the Settlement; (ii) the Court has issued the Final Order and entered Judgment in accordance with the terms described herein; and (iii) Judgment is final. (*Id.* at ¶ 1.11.)

12. Individual Class and PAGA Payments: There are an estimated 564 Class Members who worked approximately 42,134 Workweeks. (Moon Decl., ¶ 21.) Additionally, there are 451 Aggrieved Employees who worked approximately 14,238 Pay Periods. (*Id.*) Class Members are estimated to receive an average of $458.04, with an average Workweek value of $6.13. (*Id.*) Aggrieved Employees are estimated to receive an average of $15.52, with an average Pay Period value of $0.49. (*Id.*)

13. Uncashed Settlement Checks: The Settlement does not provide for a *cy pres* distribution. (*Id.* at ¶ 22.) For any Individual Class Payment check or Individual PAGA Payment check that is

uncashed and cancelled after 180 days from date of mailing (the "void date"), or for any Class Member whose envelope is returned and no forwarding address can be located for the Class Member after reasonable efforts have been made, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure (CCP") section 384(b). (Settlement, ¶¶ 4.1.1, 4.1.3.)

14. Administrator and Costs: The Parties jointly appointed Phoenix Class Action Administration Solutions as the neutral entity to administer this Settlement, agreed the Administrator will be paid the costs of administration work from the Gross Settlement Amount, and estimated administration costs will not more than $15,000.00 (*Id.* at ¶¶ 1.1, 3.1.3.) At this time, the Administrator estimates costs will be $10,000.00. (Moon Decl., ¶ 23, Ex 4.)

15. Class Notice: The Class Notice adequately informs Class Members of the terms of the Settlement and avoids commentary on the merits of the Settlement. (Settlement, Ex. A.) The Administrator will mail the Class Notice to Class Members in English and Spanish by First Class United States mail using data provided by Defendant and after running a check of the data from Defendant against those on file with the U.S. Postal Services' National Change of Address List (*Id.* at ¶ 6.3.) Defendant will provide the Class Data to the Administrator within 21 calendar days after grant of preliminary approval, and the Administrator will mail the Class Notices within 14 calendar days following receipt of the Class Data. (*Id.* at ¶¶ 6.1, 6.3.)

16. Procedure for Disputing Pay Periods, Opting Out, or Objecting: The Class Notice explains the procedure under which a Class Member can dispute the number of individual Workweeks and/or Pay Periods credited to them. (*Id.* at Ex. A.) Additionally, the Class Notice explains how Class Members may, should they choose to do so, opt-out, dispute the number of Workweeks, or otherwise object to the Settlement. A Participating Class Member may object to the Settlement by (1) appearing at the Final Approval Hearing and verbally objecting to the Settlement or any term thereof; and/or (2) sending a written Objection to the Administrator. (*Id.* at Ex. A.) Class Members will have 45 calendar days after the Administrator initially mails the Class Notice to submit a Request for Exclusion or written objections to the Settlement. (*Id.* at ¶ 6.12, *et seq*.) In the case of a re-mailed

Notice, Class Members will have an additional 14 calendar days from re-mailing. (*Id.*) Requests for Exclusion, disputes, and objections will be mailed to and handled by the Administrator. (*See id.*)

17. Attorney's Fees and Costs: The Settlement provides a fee application of not to exceed 1/3 of the Gross Settlement Amount for reasonable attorneys' fees, plus reimbursement for actual litigation costs not to exceed $30,000.00, payable from the Gross Settlement Amount, subject to Court Approval. (*Id.* at ¶ 3.1.2.) At this time, Plaintiff's Counsel has incurred $26,913.42 in litigation costs. (Moon Decl., ¶ 25., Ex. 5.). Plaintiff's Counsel expects to incur not more than $500 in additional costs from preliminary approval to final approval for filing and service fees. (*Id.* at ¶ 25.)

18. Class Representative Service Payment: The Settlement includes a Class Representative Service Payment of not more than $10,000.00 payable from the Gross Settlement Amount, subject to the Court's approval, to Plaintiff, in addition to the amount she is eligible to receive as a Class Member. (*Id.* at ¶ 3.1.1.) This award is for Plaintiff's services in support of the Action and for her general release. (*Id.* at ¶ 1.7.) In the event the award finally approved is less, the difference will be allocated to the Net Settlement Amount. (*Id.* at ¶ 3.1.1.)

19. No Impact on Pending Litigation: Plaintiff's Counsel represent they are not aware of any related case that would be extinguished or adversely affected by approval of this Settlement. (Moon Decl., ¶ 27.)

III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL

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

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

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

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

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

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

The proposed Settlement at issue was reached following extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses with an experienced and neutral class action mediator. (Moon Decl., ¶ 9.) Plaintiff's Counsel performed an extensive investigation into the facts, claims, and defenses at issue, including by reviewing the governing law, analyzing' Defendant's written policies, employee handbook, and sampling time/pay data, and retaining a statistics expert to prepare a damage analysis regarding Defendants' potential liability. (*Id.* at ¶¶ 7–8.) Once an agreement to mediate was made, Plaintiff obtained, through informal discovery, documents and data necessary and helpful to evaluate the claims and defenses at issue, including a statistically significant sample of time and pay records for the putative Class as well as demographic data. (*Id.*) There are an estimated 564 Class Members who worked 42,134 Workweeks, at an average hourly rate of $31.16. (*Id.* at ¶ 29.) Additionally, there are an estimated: 347 former employees falling within the three-year statute of limitations ("SOL") period for waiting time penalties, 451 employees falling within the one-year SOL period for inaccurate wage statement penalties and PAGA penalties, and 14,238 PAGA Pay Periods. (*Id.*) Based on Plaintiff's Counsel's review of the time, payroll, and additional data provided by Defendant, on Plaintiff's expert's analysis of the sample records provided by Defendant, and on information from Plaintiff, Plaintiff's Counsel evaluated the estimated maximum and realistic (risk-adjusted) exposure that Defendant faced. (*Id.*)

2. The Settlement Is Fair Considering the Parties' Respective Positions

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

Here, based on the information provided at mediation, Defendant's ***realistic*** **exposure** (adjusted for risks at certification and proof on the merits) for the alleged claims, including penalties, is estimated to be **$997,134.42**. (Moon Decl., ¶¶ 29, 37.) This amount was calculated as follows:

$206,789.45 (75% discount) for the unpaid overtime wages claim; **$66,124.43** (90% discount) for the off-the-clock work claim; **$13,925.00** (75% discount) for the regular rate claim; **$135,094.18** (75% discount) for the meal period claim; **$239,866.56** (90% discount) for the rest period claim; **$42,134.00** (90% discount) for the unreimbursed business expense claim; **$131,810.80** (95% discount) for the waiting time penalties claim; **$90,200.00** (95% discount) for the wage statement claim; and **$71,190.00** (95% discount) for the PAGA penalties claim. (*Id.* at ¶¶ 30-36.) The foregoing discounts were based on the evidence presented and arguments made during arm's-length settlement negotiations. (*Id.* at ¶¶ 9, 30–36.) **The $500,000.00 gross settlement figure represents roughly 50% of the total realistic recovery estimated to be $997,134.42**. (*Id.* at ¶ 37.) This is an excellent result for the Class, particularly because, under the Settlement, Class Members will receive timely and guaranteed relief, avoiding the risk of not being able to recover anything. (*Id.*)

With regard to the PAGA claims, Plaintiff and her Counsel believe the Settlement is a fair and reasonable resolution that satisfies PAGA's dual statutory purposes of deterrence and punishment, on the one hand, and providing PAGA Members with genuine and meaningful relief, on the other. (Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendant had to hire legal counsel, engage in informal discovery, and participate in mediation. (Moon Decl., ¶ 38.) Defendant is also now having to pay civil penalties to the LWDA under the Settlement, assuming final settlement approval is granted. (Settlement, ¶ 3.1.4.) Not including its own attorneys' fees and costs as well as the employer's share of payroll taxes, Defendant will pay no less than $500,000.00 to resolve this matter—of which $20,000.00 is allocated toward the PAGA claims and will be distributed, in compliance with Labor Code section 2699 as 65% ($13,000.00) to the LWDA and 35% ($7,000.00) to Aggrieved Employees—and the release obtained under the Settlement does not preclude Aggrieved Employees from seeking remedies based on any underlying individual claims they may have against Defendant or the other Released Parties. (Lab. Code § 2699(i).) The PAGA Penalties represent approximately 28% of the realistic damage estimate for PAGA civil penalties ($20,000 / $71,190.00). (Moon Decl., ¶ 38.) Moreover, Plaintiff's Counsel are of the opinion that because the issues here are fairly contested, 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 Labor

Code section 2699, subdivision (e)(2), a Court can reduce PAGA 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., ¶ 38.)

While Plaintiff is confident in the merits of her claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 39.) Plaintiff also recognizes that proving the amounts of wages owed to each Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id.*) The Settlement obviates the significant risk that this Court may deny certification of all or some of Plaintiff's claims. (*Id.* at ¶ 40.) Furthermore, even if Plaintiff was able to pursue her claims on a class-wide basis and obtain certification of all or some of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the Class. (*Id.*) This Settlement avoids the risks, burdens, and the accompanying expense of further litigation. (*Id.* at ¶ 41.) Although the Parties have engaged in a significant amount of investigation, informal discovery, and class-wide data analysis, they have not conducted extensive formal discovery. (*Id.*) Moreover, preparation for class certification and a trial would remain for the Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or any summary judgment ruling. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through trial. (*Id.*)

The Net Settlement Amount available for settlement payments is estimated to be *no less than* **$258,333.33** for an estimated Class of **564 individuals**.[1] (*Id.* at ¶ 42.) As a result, it is estimated each Participating Class Member will receive an average gross benefit of approximately **$458.04** prior to tax withholdings on the wage portion of payments. (*Id.*) Considering Class Members' average hourly

[1] The Net Settlement Amount is at least $500,000.00 less the following: $10,000.00 for the Service Payment to Plaintiff, $15,000.00 for Administration Expenses Payment, $20,000.00 for the PAGA Penalties to the LWDA and Aggrieved Employees, $166,666.66 for attorneys' fees to Class Counsel, and up to $30,000.00 for reimbursement of litigation costs to Class Counsel. (Settlement, ¶ 3.1, *et seq.*)

rate is $31.16, the average benefit is roughly **14.7 hours of work**. (*Id.*) This amounts to **an estimated Workweek value of roughly $6.13** for the currently estimated **42,134 Workweeks**. (*Id.*) Additionally, it is currently estimated there are **451 Aggrieved Employees** who will receive an estimated average of approximately **$15.52** from their $7,000.00 total share of the PAGA Penalties, which results in an estimated per **Pay Period value of $0.49** based on the currently estimated **14,238 PAGA Pay Periods**. (*Id.*) The actual amounts to Class Members and Aggrieved Employees will vary based on each individual's duration of work during the Class Period or PAGA Period, respectively; thus, those who worked longer will receive a gross benefit greater than the average estimated amount. (*Id.*) At this time, the high and low range of payments to Class Members are unknown. (*Id.*) These ranges will be calculated by the Administrator following preliminary approval and receipt and processing of the Class Data and will be provided to the Court in a motion for final approval. (*Id.*)

The proposed Settlement of $500,000.00 therefore represents a substantial recovery when compared to Plaintiff's reasonably forecasted recovery. (*Id.* at ¶ 43.) When considering the risks of litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to establish liability, and the probability of appeal, it is clear the Settlement amount of $500,000.00 is within the "ballpark" of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*)

3. 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. (*Id.* at ¶¶ 48–62.) Plaintiff's 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.*) The experience of Plaintiff's Counsel 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 ¶ 63.) Although Plaintiff and her 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 ¶¶ 9, 28, 39–41.)

B. The Proposed Notice of Class and PAGA Settlement Should Be Approved

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

C. The Proposed Attorneys' Fees and Costs Are Reasonable

The Settlement provides for attorneys' fees payable to Class Counsel in an amount not to exceed 1/3 of the Gross Settlement Amount, $166,666.66, for reasonable attorney's fees, plus reimbursement for out-of-pocket litigation costs not to exceed $30,000.00. (Settlement, ¶ 3.1.2.) These amounts are disclosed to Class Members in the proposed Class Notice and are reasonable. (*Id.* at Ex. A.)

1. Counsel Will Request a Fees Award Based On the "Common Fund" Method

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

Plaintiff's Counsel will seek an award of attorneys' fees on the "percentage of recovery/common fund" theory. (Moon Decl., ¶ 65.) The purpose of this approach is to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1975) 15 Cal.3d 162, the California Supreme Court stated, "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons[ ] are entitled to share." (*Id.* at pp. 110–11 [pincite omitted].)

The California Supreme Court recently affirmed in *Laffitte v. Robert Half International Inc*. (2016) 1 Cal.5th 480 that, "when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." (*Id.* at p. 503.) The court explained: "The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation[ ]—convince us the percentage method is a valuable tool that should not be denied our 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, Plaintiff's Counsel will request fees equal to one-third 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, ¶ 3.1.2., *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, Plaintiff requests the Court preliminarily approve her 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(k)(1), 2802(d).) Under these sections, Plaintiff would be permitted to recover her 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 Plaintiff's Counsel for their decision to assume risk by taking on this matter. (*See* Moon Decl., ¶¶ 66-69.) In fact, prosecution of this action involved significant financial risk for Plaintiff's Counsel. (*Id.*) Plaintiff's Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once Plaintiff's Counsel undertook this litigation on behalf of the Class, they committed to pursue it to its conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶ 68.)

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

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Plaintiff's Counsel possess considerable expertise in litigating class actions. (*Id.* at ¶¶ 48-62.) Plaintiff's Counsel have been involved as lead counsel or co-counsel in numerous class actions that resulted in millions in recovery. (*Id.* at ¶¶ 48-62.) Plaintiff's Counsel's experience in wage and hour litigation was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. (*Id.* at ¶ 63.) Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal) as well as the procedural law of class action litigation. (*Id.* at ¶ 61.) Based on these and other factors, Plaintiff's Counsel have frequently received fee awards of this percentage from the gross recovery for the class. (*See id.* at ¶¶ 51, 57, 60.) Because it is reasonable to compensate counsel commensurate with their skill, reputation, and experience, the requested fee award is supported here.

D. <u>The Service Payment to Plaintiff Is Reasonable</u>

Named plaintiffs in class action lawsuits "are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz*, *supra*, 186 Cal.App.4th at p. 412.) Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp*. (9th Cir. 2009) 563 F.3d 948, 958–59.) Service awards are particularly important to plaintiffs in wage and hour cases because they promote the important public policies underlying the wage and hour laws. This strong policy is codified in California Labor Code section 90.5, which provides, "[i]t is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions . . ." (Lab. Code § 90.5.) Nonetheless, the California Supreme Court has noted that "retaliation against employees for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61.) In this context, class representatives should be rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

Under the Settlement here, subject to the Court's approval, Defendant agrees to pay a Service Payment of not more than $10,000.00 to Plaintiff, which will be in addition to the amount she is entitled to receive as a Class Member. (*Id.* at ¶ 3.1.1.) This award is for Plaintiff's services in support of the Action and for her general release. (*Id.* at ¶ 1.7.) Plaintiff has devoted a great deal of time and work assisting counsel in the case and communicated with counsel frequently for litigation and to prepare for the mediation session. (Moon Decl., ¶¶ 44–47; Declaration of Plaintiff Betsy Susan Nybo in Support of Motion for Preliminary Approval of Class and Representative Action Settlement ["Plaintiff Decl."], ¶¶ 9-25.) The requested award is fair and reasonable, particularly considering the substantial benefits Plaintiff generated for all Class Members. (*See* Moon Decl., ¶ 43.)

When compared with the amounts awarded in typical class action cases, the amount requested here is particularly reasonable. A 2006 study examining the average incentive award given to class action plaintiffs from 1993 to 2002 found that the "average award per class representative was $15,992 and the median award per class representative was $4357." (Eisenberg & Miller, *Incentive*

Awards to Class Action Plaintiffs: An Empirical Study (2006) 53 UCLA L. Rev. 1303, 1307–08.) The same study found that named plaintiffs in employment discrimination class actions received an average award of $69,850 and a median award of $31,081, while named plaintiffs in other employment class actions received an average award of $12,121 and a median award of $13,059. (*Id.* at p. 1333.) The authors of the study found that higher awards in employment cases reflected the "courts' wish to make representative plaintiffs whole by compensating them for the high costs of their service to the class, including risks of stigmatization or retaliation on the job." (*Id.* at p. 1308.)

IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

A. Legal Standard

The proposed Settlement Class is well suited for class certification. The claims all derive from a core set of alleged violations of California's wage and hour laws and regulations. (Moon Decl., ¶¶ 4-5.) 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. Plaintiff Maintains 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, Plaintiff maintains there is an easily ascertainable Class, defined by objective and precise criteria. (Settlement, ¶ 1.4, 1.5.) The proposed Class that Plaintiff seeks to represent is ascertainable because (1) the Class definition is sufficiently precise, (2) the Class consists of about 564 individuals, and (3) Class Members can be readily identified by looking at Defendant's records. (*Id.* at ¶¶ 1.2, 1.8; 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, Plaintiff's claims satisfy all three requirements. The employment practices at issue include whether or not Defendant paid proper wages to the Class; whether or not Defendant provided meal periods to the Class; whether or not Defendant provided rest periods to the Class; whether or not Defendant paid proper meal or rest period pay to the Class; whether or not Defendant reimbursed any and all business expenses incurred by the Class; whether or not Defendant paid proper compensation timely upon separation of employment to Class Members; whether or not Defendant timely paid proper compensation throughout Class Members' employment; whether or not Defendant provided accurate and complete itemized wage statements to the Class; whether or not waiting-time penalties are available to Class Members who are no longer employed by Defendant for violation of *Labor Code* § 203; whether or not Defendant maintained adequate and requisite records; and whether or not Defendant engaged in unlawful or unfair business practices affecting the Class in violation of *Business and Professions Code* §§ 17200-17208. (Moon Decl., ¶ 3–4.) Plaintiff contends the factual and legal issues are the same for all Class Members, and further that all Class Members suffered from and seek redress for the same alleged injuries. (Plaintiff Decl., ¶¶ 4–5.) Considering Class Members would need to prove the same issues of law and fact to prevail, and their legal remedies are identical, it would be preferable to resolve all claims through a settlement than to force each Class Member to litigate their own individual claims. Thus, the Court should grant conditional class certification for settlement purposes because common questions of law and fact predominate over any individual questions within the Class.

3. Plaintiff's Claims Are Typical of the Claims of the Class

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

4. Plaintiff and Her Counsel Meet the Adequacy Requirement

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

Here, all requirements are met. Plaintiff retained counsel with extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Moon Decl., ¶¶ 48–62.) With their experience, Plaintiff's Counsel unquestionably are "qualified, experienced and generally able to conduct the proposed litigation." (*Miller*, *supra*, 148 Cal.App.3d at p. 874.) In addition, Plaintiff and her Counsel have no conflicts with one another, other Class Members, the proposed Administrator. (Plaintiff Decl., ¶ 8; Moon Decl., ¶ 64.) Further, Plaintiff has, 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. (Plaintiff Decl., ¶¶ 9–25.)

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 Class 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, ¶ 6.3..) 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, ¶ 6.3.)

B. The Class Notice Is Accurate and Informative

The proposed Class Notice should be approved. It will be disseminated in English and Spanish through direct U.S. first-class mail to the current address for each Class Member. (*Id.* at ¶ 6.3.) It informs the Class of the terms of the Settlement and the right to be excluded. (*Id.* at ¶ 6.5., Ex. 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 ¶ 6.12.3, Ex. 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, Ex. 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, Plaintiff respectfully requests the Court grant this motion, enter the proposed order submitted herewith regarding preliminary approval, and set a final approval hearing no earlier than 120 days from the preliminary approval order.

Respectfully submitted,

Dated: June 19, 2026

MOON LAW GROUP, PC

By: ______________________________________
Kane Moon
Allen Feghali
S. Phillip Song

Attorneys for Plaintiff