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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

MARLENI VELAZQUEZ, individually, and on behalf of all others similarly situated, Plaintiff, vs. CALIBRATED HEALTHCARE, LLC, a limited liability company; and DOES 1 through 10, inclusive, Defendants.	Case No.: CIVSB2507920 **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*] <u>PRELIMINARY APPROVAL HEARING</u>: Date: September 1, 2026 Time: 9:00 a.m. Dept.: S23 Judge: Hon. Donald Alvarez Action Filed: March 21, 2025 Trial Date: Not Set

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

PLEASE TAKE NOTICE that on September 1, 2026, at 9:00 a.m. in Department S23 of this Court located at the San Bernardino Justice Center at 247 West Third Street, San Bernardino, California 90415, pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 *et seq*., Plaintiff Marleni Velazquez ("Plaintiff") will, and hereby does, move the Court for an order granting preliminary approval of the proposed class action settlement between Plaintiff and Defendant Calibrated Healthcare, LLC.

Specifically, Plaintiff moves 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 Plaintiff's Counsel Moon Law Group, PC as Class Counsel, for settlement purposes only;
6. Appointing Phoenix Class Action Administration Solutions as the Administrator; and
7. Setting a Final Approval Hearing at least 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, and the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing.

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 29, 2026 **MOON LAW GROUP, PC**

By:______________________________
Kane Moon
Allen Feghali
S. Phillip Song

Attorneys for Plaintiff

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I. INTRODUCTION

Plaintiff Marleni Velazquez ("Plaintiff") seeks preliminary approval of a proposed $115,000.00, non-reversionary, class action settlement (the "Settlement") with Defendant Calibrated Healthcare, LLC ("Defendant") (together with Plaintiff, the "Parties"). The Settlement will provide substantial monetary payments to an estimated 62 current and former employees who worked an estimated aggregate of 2,500 Workweeks during the Class Period. 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 arm's-length negotiations between the Parties. Accordingly, Plaintiff respectfully requests the Court grants preliminary approval of the proposed Settlement, certify the proposed Settlement 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

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 non-exempt employees paid on an hourly basis who worked for Defendant in California at any time during the Class Period from March 21, 2021, to November 19, 2025, as set forth in the Joint Stipulation of Class and Representative Action Settlement Agreement and Class Notice (the "Settlement"). (*Id.*, Ex. 1.)

Defendant is an administrative and clinical services company, providing back office and clinical solutions. (*Id.* at ¶ 3.) Defendant has employed Plaintiff and other putative Class Members in California during the putative Class Period. (*Id.*) Plaintiff worked for Defendant as a mailroom clerk in San Bernardino County from approximately June 2022 to February 2025. (Declaration of Plaintiff Marleni Velazquez in Support of Approval of Class and Representative Action Settlement

["Plaintiff Decl."], ¶ 2.) Throughout her employment, Plaintiff was employed in a non-exempt position. (*Id.* at ¶ 7.) 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*; Moon Decl., ¶ 3.)

Plaintiff's claims for unpaid minimum and overtime wages stem from allegations that Defendant failed to incorporate all remunerations into the regular rate of pay for purposes of paying Class Members overtime wages, meal break premiums, and sick pay and that Defendant required Class Members to work off-the-clock without compensation. (Moon Decl., ¶ 4.) Plaintiff's meal and rest period claims are based on allegations that due to the nature of their work, Class Members' breaks were often short, late, interrupted, and sometimes missed altogether, and that Defendant did not pay all premium wages for non-code-compliant breaks. (*Id.*) Plaintiff further brings a claim for unreimbursed necessary business expenses based on allegations that Class Members were required to use their personal cellphones and purchase specific types of shoes and clothing for business purposes, without reimbursement from Defendant. (*Id.*) Finally, Plaintiff also brings 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 March 21, 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 timely pay final wages at termination, (7) failed to provide accurate itemized wage statements, and (8) engaged in unfair business practices. (*Id.* at ¶ 5.)

Pursuant to PAGA, on March 15, 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. (*Id.* at ¶ 6, Ex. 2.)

On May 29, 2025, Plaintiff filed a First Amended Complaint (the "Operative Complaint"), asserting a ninth cause of action for civil penalties under PAGA. (*Id.* at ¶ 7.) Pursuant to Labor Code section 2699(s)(1), Plaintiff subsequently submitted to the LWDA a file-stamped copy of the

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

Defendant ardently opposes the merits of this case and denies Plaintiff's factual allegations. (*Id.* at ¶ 8.) Defendant argues the putative Class was paid all minimum wages and overtime wages owed and that Defendant did not allow its employees to work off-the-clock. (*Id.*) Defendant maintains compliance with all its meal and rest period obligations. (*Id.*) As for the unreimbursed business expenses, Defendant maintains it reimbursed Class Members for all necessary business expenses incurred. (*Id.*) To the extent Class Members received wage statements that were allegedly inaccurate, Defendant asserts Class Members suffered no actual damage or harm as a result, and that there was no knowing or intentional violation. (*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 they 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., ¶ 8; *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, Defendant claims it did not engage in any unfair business practices and denies liability under PAGA. (Moon Decl., ¶ 8.) 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>

Following the filing of the complaint, the Parties met and conferred and agreed to engage in settlement negotiations. (*Id.* at ¶ 9.) Given the relatively small size of the Class and to preserve litigation costs for the benefit of the Class, the Parties agreed to negotiate without undergoing private mediation. (*Id.*) The Parties agreed to a protocol for an informal exchange of documents and information for negotiations. (*Id.*) Plaintiff obtained from Defendant, through informal but extensive discovery, information sufficient to meaningfully evaluate the claims at issue in the action, including applicable written policies, the employee handbook in effect during the Class Period, Plaintiff's personnel file, an approximate number of current and former employees, Workweeks, Aggrieved Employees, PAGA Pay Periods, and average hourly pay. (*Id.*)

In preparation for negotiations, Plaintiff's Counsel reviewed and analyzed all the information Defendant provided, including the time/pay records and documents regarding Defendant's wage and hour policies. (*Id.* at ¶ 10.) 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 were 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

The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.* at ¶ 11.) The Parties went into the negotiations 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, the Parties reached a resolution, the material terms of which are encompassed within the Settlement. (*Id.*) In compliance with Labor Code section 2699, Plaintiff's Counsel submitted to the LWDA a notice of settlement and a copy of the proposed Settlement Agreement. (*Id.* at ¶ 13, Ex. 3.) To date, the LWDA has not indicated any intent to investigate the allegations, intervene in the litigation, or object to the proposed Settlement. (*Id.*)

Plaintiff's Counsel represent they are not aware of any related case that would be extinguished or adversely affected by approval of this Settlement. (*Id.* at ¶ 12.)

Plaintiff's Counsel have conducted a thorough investigation into the facts of this case. (*Id.* at ¶ 16.) 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 ¶¶ 18–28.) **Indeed, the $115,000.00 gross settlement figure represents approximately 52% of the realistic (*risk-adjusted*) recovery estimated to be $221,423.33.** (*Id.* at ¶ 24.)

D. Key Terms of the Proposed Settlement

Under the Settlement Agreement, Defendant will pay a non-reversionary amount of $115,000.00 to resolve this litigation, subject to an escalator clause. (Settlement, ¶ 3.0.) The Settlement's key terms include[1]:

1. Class Members or Settlement Class: The proposed Class for purposes of the Settlement contains approximately 62 members who worked approximately 2,500 Workweeks and is defined as: all current and former non-exempt employees paid on an hourly basis who worked for Defendant in California at any time during the Class Period from March 21, 2021, to November 19, 2025 (the "Class Period"). (*Id.* at ¶¶ 1.4, 1.11.) The Class will exclude any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion ("Non-Participating Class Members"). (*Id.* at ¶ 1.27.)

2. Participating Class Members: means a Class Member who does not submit a valid and timely Request for Exclusion. (*Id.* at ¶ 1.35.)

3. Aggrieved Employee: There are approximately 21 Aggrieved Employees who worked approximately 1,350 PAGA Pay Periods, defined as: all current and former non-exempt employees paid on an hourly basis who worked for Defendant in California at any time during the PAGA Period from March 15, 2024, to November 19, 2025 (the "PAGA Period"). (*Id.* at ¶¶ 1.3, 1.31; Moon Decl., ¶ 17.)

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[1] A table listing the key financial terms of the Settlement, including the Gross Settlement Amount, each deduction from the gross amount (attorneys' fee, litigation costs, settlement administrator costs, service payment, and the PAGA Penalties), whether exact or in a "not to exceed" amount, and the estimated Net Settlement Amount, and the estimated average of individual settlement payments is provided in the accompanying Moon Decl., ¶ 14.

4. Gross Settlement Amount: This amount is $115,000.00, subject to a potential increase under the Escalator Clause. (Settlement, ¶ 3.0) Defendant agrees to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. (*Id.*) The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. (*Id.*) None of the Gross Settlement Amount will revert to Defendant. (*Id.*)

5. Escalator Clause: Defendant estimates, based on its current payroll records, that there are a total of approximately 2,500 workweeks during the Class Period. (*Id.* at ¶ 7.) In the event of an increase in workweeks of more than 10% from original estimate of 2,500 workweeks during the Class Period, specifically, if the number of workweeks worked by all Class Members during the Class Period is 2,750 or more, as determined by Defendant's payroll records, the Gross Settlement Amount shall be increased by the percentage that the actual number of workweeks exceeds 2,750. (*Id.*) However, should the number of workweeks exceed 2,750, Defendant shall have the right, in the exercise of its sole discretion, to limit the Class Period to the time at which the number of workweeks reaches 2,750. (*Id.*)

6. Net Settlement Amount: means the Gross Settlement Amount, less the following court-approved payments: Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment, Class Representative Service Payment, and the Administration Expenses Payment. (*Id.* at ¶ 1.26.) The remainder is to be paid to Participating Class Members as Individual Class Payments. (*Id.*) The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. (*Id.* at ¶ 3.0.)

7. Individual Class Payments: means the Participating Class Member's pro rata share of the Net Settlement Amount, calculated according to the number of Workweeks he or she worked during the Class Period. (*Id.* at ¶ 1.22.) "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.)

8. Individual PAGA Payment: means the Aggrieved Employee's pro rata share of 35% of the PAGA Penalties allocated pursuant to California Labor Code ("Labor Code") section 2699(m)

and calculated according to the number of PAGA Pay Periods he or she worked during the PAGA Period (*Id.* at ¶ 1.23.) "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.)

9. Tax Treatment: 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for wages (the "Wage Portion"). (*Id.* at ¶ 3.1.3.2.) 80% of each Participating Class Member's Individual Class Payment will be allocated to 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.)

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

11. Released Class Claims: The Released Class Claims include all claims that were alleged in Plaintiff's operative First Amended Class Action and Representative Action Complaint or that reasonably could have been alleged based on the facts stated therein, any other claims arising under applicable California or federal wage and hour law, including applicable IWC Wage Orders, based on the facts alleged in the Action (*Id.* at ¶ 5.1.)

12. Released PAGA Claims: The Released PAGA Claims include all claims against the Released Parties for civil penalties pursuant to the California Private Attorney's General Act of 2004, Lab. Code §§ 2698, et seq., which were alleged in Plaintiff's PAGA Notice to the LWDA dated March 15, 2025, or on the same primary rights as alleged in the LWDA notice and in Plaintiff's operative First Amended Class Action and Representative Action Complaint, and any other claims arising under applicable California or federal wage and hour law, including applicable IWC Wage Orders, based on the facts alleged in the Action. (*Id.* at ¶ 5.2.)

13. Uncashed Settlement Checks: For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled 180 days after 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 section 384(b). (Settlement, ¶¶ 4.1.1, 4.1.3.)

14. <u>PAGA Penalties</u>: The Settlement provides for PAGA Penalties in the amount of $10,000.00, which will be distributed sixty-five percent (65%) ($6,500.00) to the LWDA through the LWDA PAGA Payment and thirty-five percent (35%) ($3,500.00) to Aggrieved Employees through Individual PAGA Payments. (*Id.* at ¶ 3.1.4) Each Aggrieved Employee will be entitled to his or her pro rata share of the Individual PAGA Payments that is directly proportional to the number of PAGA Pay Periods during which the Aggrieved Employee worked in the PAGA Period. (*Id.* at ¶ 3.1.4.1.)

15. <u>Class Representative Service Payment</u>: The Settlement includes a Class Representative Service Payment to Plaintiff in an amount not more than $5,000.00 from the Gross Settlement Amount, subject to the Court's approval, and in addition to the amount she is eligible to receive as a Class Member. (*Id.* at ¶ 3.1.1.) This service payment is for Plaintiff's services in support of the action and general release. (*Id.* at ¶ 1.13.) If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. (*Id.* at ¶ 3.1.1.)

16. <u>Class Counsel Fees and Expenses Payments</u>. The Settlement provides for a Class Counsel Fees Payment not to exceed 1/3 of the Gross Settlement Amount or $38,333.33, whichever is higher, for Plaintiff's Counsel's attorneys' fees, and a Class Counsel Expenses Payment not to exceed $15,000.00. (*Id.* at ¶ 3.1.2.) If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. (*Id.*) At this time, my firm has incurred $1,827.90 in costs. (Moon Decl., ¶ 14(c), Ex. 4.)

17. <u>Administration Expenses Payment</u>: The Parties jointly appoint Phoenix Class Action Administration Solutions as the neutral entity to administer this Settlement. (Settlement, ¶ 1.1.) The Settlement provides the Administrator will be paid an Administration Expenses Payment from the Gross Settlement Amount, in an amount not more than $3,000.00, for its fees and expenses in

administering this Settlement. (*Id.* at ¶ 3.1.3.) To the extent actual expenses are less and/or the Court approves payment less than the requested amount, the Administrator will allocate the remainder to the Net Settlement Amount. (*Id.*) Phoenix's not to exceed bid is $3,000.00. (Moon Decl., ¶ 14(d), Ex. 5.)

18. Class Data and Notice: No later than twenty-one (21) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator in a mutually agreed electronic format. (Settlement, ¶ 6.1.) The proposed Class Notice has been approved by the Parties and sets forth, in plain terms, a statement of case, the terms of the Settlement Agreement, the approximate amounts of attorneys' fees, costs, PAGA Penalties, and service payments being sought, an explanation of how the individual payments are calculated, and a Final Approval Hearing date. (*Id.* at Ex. A.) Class Members will be notified of the proposed Settlement by first-class mail of the Class Notice. (*Id.* at ¶ 6.3.) The Administrator will undertake its best efforts to ensure the Class Notice is provided to the current addresses of Class Members, including conducting a national change of address search and re-mailing the notice to updated addresses. (*Id.*) If a Class Notice is "undeliverable" and no forwarding address is provided, the Administrator shall employ standard skip-tracing to obtain updated address information and then shall re-mail the Notice to those Class Members. (*Id.* at ¶ 6.4.)

19. Response Deadline and Procedure for Disputing Workweeks and/or Pay Periods, Opting Out, or Objecting: Within forty-five (45) calendar days from the date the Administrator mails the Class Notice to the Class and the last date on which Class Members may: (a) mail a Request for Exclusion from the Settlement; or (b) mail an Objection to the Settlement. Class Members to whom a Class Notice is resent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) calendar days beyond the Response Deadline to timely mail a Request for Exclusion or Objection. (*Id.* at ¶ 1.42.) The Class Notice explains the procedure under which a Class Member and/or Aggrieved Employee can dispute the number of his or her individual Workweeks and/or PAGA Pay Periods stated in their Class Notice. (*See id.* at ¶ 6.12.2, Ex. A.) Additionally, the Class Notice explains how Class Members may, should they choose to do so, request exclusion, or

otherwise submit a written objection or state an oral objection at the Final Approval Hearing. (*See id.* at ¶¶ 6.12.1, 6.12.3, Ex. A.)

20. Funding of the Gross Settlement Amount: 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 no later than fifteen (15) days following the Effective Date. (*Id.* at ¶ 4.0.). "Effective Date" means the date on which the judgment entered by the Court upon granting final approval of the Class Settlement (the "Judgment") becomes final. (*Id.* at ¶ 1.17.) The Judgment is final as of the latest of the following occurrences: (a) if no Class Member objects to the Class Settlement, the day the Court enters Judgment; (b) if one or more Class Members objects to the Class Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur. (*Id.*)

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.) In order to approve a class action settlement, "the court must satisfy itself that the class settlement is within the 'ballpark' of reasonableness." (*Id*. at p. 133.) The record need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of 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 information exceeding the threshold required to provide this Court with materials and information necessary to determine that the proposed Settlement is fair, adequate, and reasonable.

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; thus, there is a presumption here that the negotiations were conducted in good faith. (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."].)

Although the parties did not undergo mediation, the settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (Moon Decl., ¶ 11.) The Parties went into the negotiations 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, the Parties reached a settlement, the material terms of which are encompassed within the Settlement. (*Id.*)

In preparation for negotiations, Plaintiff's Counsel reviewed and analyzed all the information Defendant provided, including the time/pay records and documents regarding Defendant's wage and hour policies. (*Id.* at ¶ 10.) 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 were able to evaluate the probability of class certification, success on the merits, and Defendant's maximum and realistic monetary exposure for all claims. (*Id.*) Accordingly, Plaintiff and her Counsel acted intelligently in negotiating the Settlement. (*Id.*)

Furthermore, Plaintiff's Counsel have considerable experience and demonstrated competence with litigating wage and hour class actions. (*Id.* at ¶¶ 35–51.) The experience of Plaintiff's Counsel was helpful in assessing the reasonableness of the Settlement at issue here, and from this experience Plaintiff's Counsel concluded that this litigation could not have been settled on better terms than provided under the proposed Settlement. (*Id.* at ¶ 52.) Again, this supports the conclusion that the terms of the Settlement are based on objective evidence that has been considered and weighed against the risks, expenses, and time consumption to both sides of continued litigation of this action.

2. The Settlement Is Fair and Reasonable Considering the Parties' Respective Legal 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].)

The Settlement obviates the significant risk that this Court may deny certification of all or some of Plaintiff's claims. (Moon Decl., ¶ 27.) 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.*) While Plaintiff is confident in the merits of her claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 25.) Plaintiff also recognizes that proving the amounts of wages owed to each Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id.*)

Plaintiff's Counsel are also 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.* at ¶ 26.) 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., ¶ 26.)

Because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of not being able to recover anything. (*Id.* at ¶ 24.) This Settlement avoids the risks, burdens, and the accompanying expense of further litigation. (Moon Decl., ¶ 28.) Although the Parties have engaged in a significant amount of investigation, informal discovery, and class-wide data analysis, they have not commenced 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 proposed settlement of $115,000.00 therefore represents a substantial recovery when compared to the reasonably forecasted recovery of the Class. (*Id.* at ¶ 30.) 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 $115,000.00 is within the "ballpark" of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*)

Indeed, the Net Settlement Amount available for settlement payments is no less than **$43,666.67** for an estimated Class size of **62 individuals**.[2] (*Id.* at ¶ 29.) As a result, it is estimated each Participating Class Member is eligible to receive an average benefit of approximately **$704.30** prior to tax withholdings on the wage portion of payments. Considering Class Members' average hourly rate is $17.00, the average benefit is approximately **41 hours of work**. (*Id.*) Additionally, it is estimated there are **21 Aggrieved Employees** who are each receive an estimated average of **$166.67** from the total Individual PAGA Payments of $3,500.00, which results in an estimated **PAGA Pay Period value of $2.59** based on the estimated **1,350 PAGA Pay Periods** during the PAGA Period. (*Id.*) The actual amounts to Participating 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 for Defendant during the relevant period will receive a benefit greater than the average estimated amount. (*Id.*) The high and low range of payments to Class Members 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.*)

3. Plaintiff's Counsel Have Extensive Experience in Class Action and PAGA Litigation

The Settlement negotiations were conducted by highly capable and experienced counsel. (*Id.* at ¶¶ 35–51.) 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.*) 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. (*Id.* at ¶¶ 11, 16.)

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[2] The Net Settlement Amount is at least $115,000.00 less the following: $5,000.00 for the Class Representative Service Payment, $3,000.00 for the Administration Expenses Payment, $10,000.00 for the PAGA Penalties to the LWDA and to Aggrieved Employees, $38,333.33 for Class Counsel's attorneys' fees, and up to $15,000.00 for Class Counsel Expenses Payment. (Settlement, ¶¶ 1.26, 3.1.)

B. The Proposed Class Notice of 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

Subject to Court approval, the Settlement Agreement provides for attorneys' fees payable to Class Counsel in an amount up to 1/3 of the Gross Settlement Amount or $38,333.33, whichever is higher, for Plaintiff's Counsel's attorneys' fees, plus reimbursement for out-of-pocket litigation costs not to exceed $15,000.00. (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., ¶ 54.) 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 request fees equal to 1/3 of the Gross Settlement Amount 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 their counsel's ability to request attorneys' fees as negotiated by the Parties.

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

Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(k)(1), 2802(d).) Under these sections, Plaintiff would be permitted to recover his 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., ¶ 58.) In fact, prosecution of this action involved significant financial risk for Plaintiff's Counsel as they undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.* at ¶¶ 55–58.) Once 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 ¶ 57.)

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 ¶¶ 35–51.) Plaintiff's Counsel have been involved as lead counsel or co-counsel in numerous class actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate Plaintiff's Counsel commensurate with their skill, reputation, and experience, the requested fee award is supported here.

Plaintiff's Counsel's experience in wage and hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. (Moon Decl., ¶ 52.) 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 ¶ 50.) 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 ¶¶ 39, 44, 49.) Therefore, the requested fee award is fair, reasonable, and adequate.

D. The Service Payment to Named Plaintiff Is Reasonable

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, a Class Representative Service Payment will be paid to Plaintiff in an amount up to $5,000.00. (Settlement, ¶ 3.1.1.) This service payment is for Plaintiff's services in support of the action and general release. (*Id.* at ¶ 1.13.) 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 negotiations. (Moon Decl., ¶¶ 31–34; Plaintiff Decl., ¶¶ 12–22.) The requested award is fair and reasonable, particularly considering the substantial benefits Plaintiff generated for all Class Members. (Moon Decl., ¶¶ 24–34.)

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. <u>CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED</u>

A. <u>Legal Standard</u>

The proposed Settlement Class is well suited for class certification. All of the claims derive from a core set of alleged violations of California's wage and hour laws and regulations. (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, the proposed Class that Plaintiff seeks to represent is ascertainable because (1) the Class definition is sufficiently precise, (2) the Class consists of approximately 62 individuals, and (3) Class Members can be readily identified by looking at Defendant's records. (Settlement, ¶¶ 1.4, 1.8.) Plaintiff maintains there is an easily ascertainable Class, defined by objective and precise criteria. (*Id.*) 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 Defendant: had legally compliant policies and practices to pay employees all minimum and overtime wages owed; had legally compliant policies and practices to provide employees with and authorize meal and rest periods; had legally compliant policies to reimburse employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge of their duties; paid all wages to employees during employment and at the time of termination; intentionally failed to pay all final wages; provided inaccurate itemized wage statements; engaged in unfair business practices; and violated civil penalty provisions recoverable under PAGA. (Moon Decl., ¶¶ 4-5.) Plaintiff contends the factual and legal issues are the same for all Class Members, including Plaintiff, and further, that all Class Members suffered from and seek redress for the same alleged injuries. (Plaintiff Decl., ¶¶ 3–8.) 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 agreement 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 he was subject to the same policies and practices as other similarly situated employees. (Plaintiff Decl., ¶¶ 2, 5.)

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., ¶¶ 35–51.) 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 has no known conflicts, and Plaintiff has, with counsel, litigated this case and diligently reviewed the settlement terms, showing dedication. (Plaintiff Decl., ¶¶ 9–22.) Plaintiff's willingness to serve as the representative demonstrates her serious commitment to bringing about the best results possible for the Class. (*Id.* at ¶¶ 12-22.)

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

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 Members of the terms of the Settlement and their right to be excluded from the Settlement. (*Id.* at ¶¶ 6.12, *et. seq*, Ex. A.) And if there are Class Members who wish to object to the proposed Settlement, they will have the opportunity to submit written objections and/or be heard at the Final Approval Hearing. (*Id.* at ¶ 6.12.3.)

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 denies 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 29, 2026

MOON LAW GROUP, PC

By: ____________________________________

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