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

SE’AHNNA PATIENCE MCPPIPE,
individually, and on behalf of all others
similarly situated,

Plaintiff,

vs.

HEARTLAND CHILD & FAMILY
SERVICES, a California corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 25CV009001

CLASS AND REPRESENTATIVE ACTION

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

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

PRELIMINARY APPROVAL HEARING:

Date: January 8, 2027
Time: 9:00 a.m.
Dept.: 8A
Judge: Hon. Jill H. Talley

Reservation # A-09001-001

Complaint Filed: April 15, 2025
Trial Date: Not Set

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

2 PLEASE TAKE NOTICE that on January 8, 2027 at 9:00 a.m. in Department 8A of the Tani
3 G. Cantil-Sakauye Sacramento County Courthouse located at 500 G Street, Sacramento, California
4 95814, pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 *et*
5 *seq.*, Plaintiff Se’Ahnna Patience McPipe (“Plaintiff”) will move the Court for an order granting
6 preliminary approval of the proposed class action settlement between Plaintiff and Defendant
7 Heartland Child & Family Services.

8 Plaintiff will further move the Court for an order:

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

18 The motion will be based upon this notice, the attached memorandum of points and
19 authorities, the supporting Declarations of Kane Moon (and exhibits attached thereto), Plaintiff,
20 Jodey Lawrence of Phoenix Class Action Administration Solutions, the records and files in this
21 action, and any other further evidence or argument that the Court may properly receive at or before
22 the hearing.

23 Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this
24 matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative ruling may
25 be downloaded off the court’s website. If the party does not have online access, they may call the
26 dedicated phone number for the department as referenced in the local telephone directory between
27 the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative
28 ruling. If you do not call the court and the opposing party by 4:00 p.m. the court day before the

1 hearing, no hearing will be held.

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

4
5 Respectfully submitted,

6 Dated: September 14, 2026

MOON LAW GROUP, PC

7 By: _____

8 Kane Moon
9 Allen Feghali
Charlotte Mikat-Stevens

10 *Attorneys for Plaintiff*
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Se’Ahna Patience McPipe (“Plaintiff”) seeks preliminary approval of a proposed \$238,275.00 non-reversionary, wage and hour class action settlement (the “Settlement”) with Defendant Heartland Child & Family Services (“Defendant”) (together with Plaintiff, the “Parties”). The Settlement will provide substantial monetary payments to an estimated 152 Class Members who worked an estimated aggregate of 9,531 Workweeks, of which roughly 99 are Aggrieved Employees who worked an estimated aggregate of 2,587 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, Marc Feder, Esq. Accordingly, Plaintiff requests the Court to 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 non-exempt, hourly-paid employees of Defendant who worked for Defendant in California at any time during the Class Period from April 15, 2021, through June 11, 2026. (*Id.*) Defendant is a California nonprofit corporation that provides mental health and family support services. (*Id.* at ¶ 4.) Plaintiff worked for Defendant in a non-exempt, hourly-paid position from approximately June 2023 to August 2024. (*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

1 pay wages for all hours worked. (*Id.*)

2 Plaintiff's claim for unpaid minimum and overtime wages stems from Defendant's alleged
3 failure to compensate employees for off-the-clock work and Defendant's failure to incorporate all non-
4 discretionary bonuses into its regular rate of pay when calculating the correct overtime pay, meal break
5 premium and sick pay. (*Id.* at ¶ 5.) Plaintiff also brings claims against Defendant for meal period and
6 rest period violations and unreimbursed business expenses. (*Id.*) Moreover, Plaintiff alleges derivative
7 claims for waiting time penalties, wage statement violations, unfair business practices, and civil
8 penalties under PAGA. (*Id.*)

9 On April 15, 2025, Plaintiff commenced a Class Action Complaint alleging causes of action
10 against Defendant for: (1) Failure to Pay Minimum Wages (Cal. Lab. Code sections 204, 1194, 1194.2,
11 and 1197); (2) Failure to Pay Overtime Compensation (Cal. Lab. Code sections 510, 1194, and 1198);
12 (3) Failure to Provide Meal Periods (Cal. Lab. Code sections 226.7 and 512); (4) Failure to Authorize
13 and Permit Rest Breaks (Cal. Lab. Code section 226.7); (5) Failure to Indemnify Necessary Business
14 Expenses (Cal. Lab. Code section 2802); (6) Failure to Timely Pay Final Wages at Termination (Cal.
15 Lab. Code sections 201-203); (7) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab.
16 Code section 226); and (8) Unfair Business Practices (Cal. Bus. & Prof. Code sections 17200, et seq.).
17 (*Id.* at ¶ 6.)

18 On April 13, 2025, pursuant to Labor Code section 2699.3(a)(1)(A), Plaintiff provided written
19 notice to the California Labor and Workforce Development Agency ("LWDA") with payment of filing
20 fee and by certified mail to Defendant of the alleged labor code violations (LWDA Case No. LWDA-
21 CM-1091956-25). (*Id.* at ¶ 7, Ex. 2.) Plaintiff's administrative exhaustion period under PAGA expired
22 without any notice from the LWDA of intent to investigate the allegations. (*Id.* at ¶ 7.) To date, the
23 LWDA has not sought to intervene in the Action. (*Id.*)

24 On August 12, 2025, Plaintiff filed a First Amended Class and Representative Action Complaint
25 against Defendant, adding a ninth cause of action for civil penalties under PAGA (Cal. Lab. Code
26 sections 2698, et seq.) (the "Operative Complaint"). (*Id.* at ¶ 8.) On August 21, 2025, in compliance
27 with PAGA, Plaintiff timely submitted a conformed copy of the First Amended Complaint containing
28 the Court-assigned case number to the LWDA. (*Id.*) On October 10, 2025, Defendant filed an Answer

1 to Plaintiff's First Amended Complaint denying all allegations and contending it complied with all
2 wage and hour laws. (*Id.* at ¶ 9.)

3 Defendant denies the allegations in the Operative Complaint, denies any failure to comply with
4 any laws, including, but not limited to, the laws identified in the Operative Complaint, and denies any
5 and all liability for the causes of action alleged in the Operative Complaint. (*Id.* at ¶ 10.)

6 **B. Discovery and Investigation**

7 The Parties agreed to mediate the instant action, and participated in private mediation with Marc
8 Feder, Esq., an experienced class and PAGA action mediator. (*Id.* at ¶ 11.) In preparation for mediation,
9 the Parties agreed to a protocol for an informal exchange of documents and information before
10 mediation. (*Id.*) Prior to mediation, Plaintiff obtained from Defendant, through informal discovery,
11 documents and data that were necessary and helpful to evaluate the claims asserted in this action. (*Id.*)
12 Defendant produced an 18.4% sample of time and pay records for the putative Class, Plaintiff's
13 personnel file, and Defendant's written policies and employee handbook during the relevant period.
14 (*Id.*) Defendant also provided information regarding the estimated number of current and formerly
15 employed Class Members, estimated total number of Workweeks, Aggrieved Employees, and PAGA
16 Pay Periods. (*Id.*)

17 In preparation for mediation, Plaintiff's Counsel reviewed and analyzed all the information
18 Defendant provided, including the sample records and documents regarding Defendant's wage and
19 hour policies. (*Id.* at ¶ 12.) Plaintiff's Counsel retained a statistics expert to analyze the sample records
20 and prepare a damage analysis prior to the mediation. (*Id.*) The sample time and pay records analyzed
21 contained 6,093 actual shifts worked (representing 14.5% of total shifts worked for the Class), which
22 allowed Plaintiff's expert to prepare an analysis with reasonable certainty. (*Id.*) In conjunction with
23 their extensive factual investigation, Plaintiff's Counsel also investigated the applicable law regarding
24 the claims and defenses asserted in the litigation. (*Id.*) Accordingly, Plaintiff's Counsel was able to
25 evaluate the probability of class certification, success on the merits, and Defendant's maximum and
26 realistic monetary exposure for all claims. (*Id.*) Thus, Plaintiff's and her Counsel's familiarity with the
27 facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in
28 negotiating the Settlement. (*Id.*)

1 **C. Settlement Negotiations**

2 On June 11, 2026, the Parties participated in a full day of private mediation before Marc Feder,
3 Esq. (*Id.* at ¶ 13.) The negotiations were at arm’s-length and, although conducted in a professional
4 manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for
5 a settlement of the dispute, but each side was also prepared to litigate their position through trial and
6 appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding
7 the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses, a resolution was reached
8 by the Parties, the material terms of which are set out in the Joint Stipulation of Class and
9 Representative Action Settlement Agreement (“Settlement”). (*Id.*, Ex. 1.)

10 In reaching a resolution, the Parties recognized that the issues presented in this action are likely
11 only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation
12 will lead to inconvenience, distraction, disruption, delay, and expense disproportionate to the potential
13 benefits of litigation. (*Id.* at ¶ 14.) Plaintiff and her Counsel also considered the risk and uncertainty of
14 the outcome inherent in any litigation when determining whether this Settlement was the correct option.
15 (*Id.*) In sum, Plaintiff and her Counsel believe the proposed Settlement is in the best interests of
16 Aggrieved Employees and the LWDA. (*Id.*)

17 Plaintiff’s Counsel have conducted a thorough investigation into the facts of this case. (*Id.* at ¶
18 37.) Based on the foregoing document and information exchange and on their own independent
19 investigation and evaluation, Plaintiff’s Counsel are of the opinion that the proposed Settlement is fair,
20 reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and circumstances, the risk
21 of significant delay, trial risk, appellate risk, and the defenses that Defendant may assert both to
22 certification and on the merits, the Settlement is in the best interest of the Class. (*Id.*; *see also Id.* at
23 ¶¶ 38–44.) **Indeed, the \$238,275.00 gross settlement figure represents about 67.5% of the**
24 **realistic recovery estimated to be \$353,174.03.** (*Id.* at ¶¶ 38, 45.)

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

26 Under the Settlement, Defendant will pay a non-reversionary, all-inclusive amount of
27 \$238,275.00 to resolve this action. (Settlement, ¶ 3.1.) The key terms include:

1 1. Non-reversionary Gross Settlement Amount: Defendant will separately pay its employer-
2 side payroll taxes owed on the Wage Portion of Individual Class Payments. (*Id.*) (*Id.* at ¶¶ 3.1.) No
3 claim form is required for distribution to Class Members and none of the Gross Settlement Amount
4 will revert to Defendant. (*Id.*)

5 2. Escalator Clause: The Gross Settlement Amount is based on an estimate that as of the date
6 of the Parties' mediation, there are 9,531 aggregate Workweeks worked by approximately 152 Class
7 Members during the Class Period. (*Id.* at ¶ 7.1.) If the actual number of Workweeks is more than 10%
8 greater than this figure (i.e., if the actual number of Workweeks exceeds 10,484.1), Defendant agrees,
9 at its sole discretion, to either (a) make a proportional increase to the Gross Settlement Amount by the
10 percentage increase for each additional Workweek above the escalator (e.g., if the number of
11 Workweeks increases by 11%, the Gross Settlement Amount will increase by 1%), or (b) end the Class
12 and PAGA Periods on or before the date the escalator is triggered. (*Id.*) The Parties agree that, before
13 Plaintiff files the motion for preliminary approval and sufficiently in advance of the preliminary
14 approval hearing, Defendant shall provide the Administrator selected by the Parties with complete and
15 accurate class data, and Defendant agrees to be prepared to inform the Court of its election at the
16 Preliminary Approval Hearing. (*Id.*). (*Id.*)

17 3. Net Settlement Amount: The Net Settlement Amount is the Gross Settlement Amount, less
18 the following payments in the amounts approved by the Court: the Individual PAGA Payments, the
19 LWDA PAGA Payment, the Class Representative Enhancement Award, the Class Counsel Fees
20 Payment, the Class Counsel Litigation Costs Payment, and the Administration Expenses Payment. (*Id.*
21 at ¶ 1.27.) The remainder is to be paid to Participating Class Members as Individual Class Payments.
22 (*Id.*) Accordingly, the Net Settlement Amount is the Gross Settlement Amount (\$238,275.00) minus
23 the following sums, subject to approval by the Court: (1) Class Counsel Fees Payment of not more than
24 one-third of the Gross Settlement amount (\$79,425.00); (2) Class Counsel Litigation Costs Payment
25 not to exceed \$25,000.00; (3) the Enhancement Award of not more than \$5,000.00; (4) the PAGA
26 Penalties of \$24,000.00; and (5) Administration Expenses Payment not to exceed \$7,250. (*Id.* at ¶¶ 3.2-
27 3.2.5.) The Net Settlement is estimated to be \$97,600.00. (Moon Decl., ¶¶ 18, 50.)

1 4. Tax Treatment: 10% of each Participating Class Member’s Individual Class Payment will
2 be allocated to settlement of wage claims (the “Wage Portion”) and the remaining 90% of each
3 Participating Class Member’s Individual Class Payment will be allocated to settlement of claims for
4 interest and penalties (the “Non-Wage Portion”). (Settlement, ¶ 3.2.4.a.) Each Individual PAGA
5 Payment will be treated as 100% penalties for tax purposes and reported on an IRS Form 1099-MISC.
6 (*Id.* at ¶ 3.2.5.a.)

7 5. Disbursement: Disbursement will occur within 14 calendar days after Defendant funds the
8 entire Gross Settlement Amount. (*Id.* at ¶ 4.3.) Class Members will not need to submit any claim form
9 as a condition of receiving Individual Class Payments. (*Id.* at ¶ 3.1.) Each Class Member who does not
10 opt-out will be entitled to a pro rata share of the Net Settlement Amount that is directly proportional to
11 the number of Workweeks worked during the Class Period. (*Id.* at ¶ 3.2.4.) Likewise, each Aggrieved
12 Employee will be entitled to a pro rata share of the 35% share of the PAGA Penalties directly
13 proportional to the number of PAGA Pay Periods. (*Id.* at ¶ 3.2.5.a.)

14 6. Class Members or Settlement Class, and Class Period: The “Class” is defined as all
15 current and former non-exempt, hourly-paid employees of Defendant who worked for Defendant in
16 California at any time during the Class Period from April 15, 2021, through June 11, 2026 (“Class
17 Period”). (*Id.* at ¶¶ 1.4, 1.12.) The Parties estimate that the Class included approximately 152 Class
18 Members. Class Members will be paid a pro-rata share based on the number of Workweeks worked by
19 the Class Member during the Class Period. (*Id.* at ¶¶ 3.2.4, 4.2.) “Workweeks” means any workweek
20 during which a Participating Class Member worked for Defendant in California at least one day during
21 the Class Period. (*Id.* at ¶ 1.46.) The Parties estimate that the number of weeks worked by all Class
22 Members as of the date of mediation on June 11, 2026 is 9,531. (*Id.* at ¶ 4.2, 7.1.)

23 7. Aggrieved Employees and PAGA Period: Aggrieved Employees is defined as all current
24 and former non-exempt, hourly-paid employees of Defendant who worked for Defendant in
25 California at any time during the PAGA Period from April 13, 2024, through June 11, 2026 (“PAGA
26 Period”). (*Id.* at ¶¶ 1.34, 1.35.) There are approximately 99 Aggrieved Employees who worked a total
27 of approximately 2,587 PAGA Pay Periods. (*Id.* at ¶ 4.2.)
28

1 8. Released Parties: Defendant, and each of its former and present directors, officers,
2 shareholders, owners, members, attorneys, insurers, reinsurers, predecessors, successors, assigns,
3 subsidiaries, and affiliates. (*Id.* at ¶ 1.42.)

4 9. Released Class Claims: The “Released Class Claims” is limited to any and all claims,
5 debts, liabilities, demands, obligations, penalties, costs, expenses, attorneys’ fees, damages, and
6 causes of action that were alleged or that reasonably could have been alleged based on the facts
7 alleged in the Operative Complaint arising during the Class Period. (*Id.* at ¶ 5.2.) The Released
8 Class Claims exclude any claims for vested benefits, unemployment benefits, disability benefits,
9 social security benefits or workers’ compensation benefits that arose at any time, any claims that
10 are not releasable as a matter of law or public policy, and any claims arising outside the Class
11 Period. (*Id.*)

12 10. Released PAGA Claims: The “Released PAGA Claims” is limited to any and all claims
13 for civil penalties, and attorneys’ fees and costs, under PAGA that were alleged or that reasonably could
14 have been alleged based on the facts alleged in the Operative Complaint or Plaintiff’s PAGA Notice
15 dated April 13, 2025. (*Id.* at ¶ 5.3.) The Released PAGA Claims include only claims for penalties under
16 PAGA and exclude any claims arising outside the PAGA Period. (*Id.*)

17 11. PAGA Penalties: The Settlement provides for PAGA Penalties in the amount of
18 \$24,000.00 to be paid from the Gross Settlement Amount, with 65% (\$15,600.00) allocated to the
19 LWDA PAGA Payment and 35% (\$8,400.00) allocated to the Individual PAGA Payments. (*Id.* at ¶
20 3.2.5.) In compliance with Labor Code section 2699, subdivision (l)(2), Plaintiffs’ Counsel submitted
21 to the LWDA a notice of settlement and a copy of the proposed Settlement. (Moon Decl., ¶ 15.)

22 12. Funding: The Gross Settlement Amount and all employer payroll taxes owed on the
23 Wage Portions of the Individual Class Payments shall be fully funded by transmission of such funds
24 to the Administrator within thirty (30) calendar days of entry of the Court’s Final Approval Order.
25 (Settlement, ¶ 4.1.)

26 13. Individual Payments: Based on a review of Defendant’s records, Defendant estimates that
27 as of the date of the Parties’ mediation, June 11, 2026, there are approximately 152 Class Members
28 who collectively worked a total of approximately 9,531 Workweeks, and approximately 99 Aggrieved

1 Employees who worked a total of approximately 2,587 PAGA Pay Periods. (*Id.* at ¶ 4.2.) Class
2 Members are estimated to receive an average of \$642.11, with an average Workweek value of \$10.24.
3 (Moon Decl., ¶¶ 30, 50.) Aggrieved Employees are estimated to receive an average of \$84.85, with an
4 average Pay Period value of \$3.25. (*Id.*)

5 14. Uncashed Settlement Checks: The Settlement does not provide for a *cy pres* distribution.
6 (Settlement, ¶ 4.3.3; Moon Decl., ¶ 31.) For any Class Member whose Individual Class Payment check
7 or for any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled
8 after 180 days after the date of mailing (the “Void Date”), the Administrator shall transmit the funds
9 represented by such checks to the California Controller’s Unclaimed Property Fund in the name of the
10 Class Member or Aggrieved Employee thereby leaving no “unpaid residue” in accordance with the
11 requirements of California Code of Civil Procedure section 384(b). (Settlement, ¶¶ 4.3.1-4.3.3.)

12 15. Administrator and Administration Expenses Payment: The Parties jointly appointed
13 Phoenix Class Action Administration Solutions (“Phoenix”) as the neutral entity to administer this
14 Settlement, agreed the Administrator will be paid an Administration Expenses Payment in an amount
15 not to exceed \$7,250.00. (*Id.* at ¶¶ 1.2, 3.2.3, 6.1.) At this time, the Administrator estimated costs will
16 be \$7,250.00. (Moon Decl., ¶ 32, Ex. 4.)

17 16. Class Notice: The Class Notice adequately informs Class Members of the terms of the
18 Settlement and avoids commentary on the merits of the Settlement. (*See generally id.*, Ex. A.) The
19 Administrator will mail the Class Notice to Class Members with Spanish translation by First Class
20 United States mail using data provided by Defendant and after running a check of the data from
21 Defendant against those on file with the U.S. Postal Services’ National Change of Address List (*Id.* at
22 ¶ 6.4.) No later than fourteen (14) calendar days after the Court grants Preliminary Approval of the
23 Settlement, Defendant will deliver the Class Data to the Administrator in the form of a Microsoft Excel
24 spreadsheet, and the Administrator will mail the Class Notices within 14 calendar days following
25 receipt of the Class Data. (*Id.* at ¶¶ 6.2, 6.4.) The Class Notice shall provide estimated amounts of any
26 Individual Class Payment and/or Individual PAGA Payment payable to the Class Member and/or
27 Aggrieved Employee, and the number of Workweeks and PAGA Pay Periods used to calculate these
28 amounts. (*Id.* at Ex. A.)

1 17. Procedure for Disputing Pay Periods, Opting Out, or Objecting: The Class Notice
2 explains how Class Members may, should they choose to do so, opt-out or otherwise object to the
3 Settlement, or dispute the allocated number of Workweeks and/or Pay Periods. (*Id.* at ¶¶ 6.13.1-6.13.3.)
4 Class Members need not file or serve, or state in any written objection, a notice of intention to appear
5 at the Final Approval Hearing. (*Id.* at Ex. A.) Class Members will have 45 days after the Administrator
6 initially mails the Class Notice to submit a Request for Exclusion or written objections to the
7 Settlement. (*Id.* at ¶¶ 6.13.1, 6.13.3.) In the case of a re-mailed Class Notice, Class Members will have
8 an additional 10 calendar days from re-mailing. (*Id.*) Requests for Exclusion and objections will be
9 mailed to and handled by the Administrator. (*Id.* at ¶¶ 6.6, 6.13.1.)

10 18. Website: The Administrator will establish, maintain, and use an internet website to post
11 information of interest to Class Members including the date, time, and location of the Final Approval
12 Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, Preliminary
13 Approval Order, Class Notice, Motion for Final Approval, and Final Approval Order and Judgment.
14 (*Id.* at ¶ 6.12.)

15 19. Attorneys' Fees and Costs: The Settlement provides a Class Counsel Fees Payment of not
16 more than one-third of the Gross Settlement Amount, currently estimated to be \$79,425.00, and a Class
17 Counsel Litigation Costs Payment for reimbursement of actual reasonable litigation costs incurred by
18 Plaintiff's Counsel, not to exceed \$25,000.00. (*Id.* at ¶ 3.2.2.) In the event the award finally approved
19 is less, the difference will be allocated to the Net Settlement Amount. (*Id.*) At this time, Plaintiff's
20 Counsel has incurred \$21,851.08 in litigation costs. (Moon Decl., ¶¶ 34, 81, Ex. 5.) Plaintiff's Counsel
21 expects to incur approximately \$1,000.00 or less in additional costs from preliminary approval to final
22 approval for filing and service fees. (Moon Decl., ¶ 34.)

23 20. Enhancement Award: The Settlement includes a Class Representative Enhancement
24 Award to the Class Representative of not more than \$5,000.00 (in addition to any Individual Class
25 Payment and Individual PAGA Payment the Class Representative is entitled to receive as a
26 Participating Class Member). (Settlement, ¶ 3.2.1.) This award is for initiating and providing services
27 in support of the Action. (*Id.* at ¶ 1.14.) In the event the award finally approved is less, the difference
28 will be allocated to the Net Settlement Amount. (*Id.* at ¶ 3.2.1.)

1 21. Impact on Pending Litigation: Class Counsel aver that to the best of their knowledge, they
2 are not aware of any individual, representative, or class action in this jurisdiction, or any other court or
3 jurisdiction, asserting claims similar to those asserted in this action on behalf of a class or group of
4 individuals who would also be members of the putative Class, as defined in this matter. (Moon Decl.,
5 ¶ 36.) Class Counsel have come to this conclusion after a reasonable inquiry and review of the LWDA's
6 PAGA Case Search website, this Court's case search website, and other information reasonably
7 available online. (*Id.*) Additionally, Defendant has not indicated there is any related case pending as of
8 the date of this declaration. (*Id.*) As such, Class Counsel is unable to name any case, the nature of any
9 claims asserted in such case, or the definition of a class of parties on whose behalf any action was
10 brought that would overlap with the putative Class or would otherwise be adversely affected by
11 approval of this Settlement. (*Id.*)

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

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

24 In evaluating a settlement, the trial court considers the following factors: (1) the strength of
25 plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk
26 of maintaining class action status through trial; (4) the settlement amount offered; (5) the extent of
27 discovery completed and the stage of the proceedings; (6) counsel's experience and views; (7) the
28 presence of a governmental participant; and (8) the class members' reaction to the proposed

1 settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) To approve a class
2 action settlement, “the court must satisfy itself that the class settlement is within the ‘ballpark’ of
3 reasonableness.” (*Id.* at p. 133.) The record need not contain an explicit statement of the maximum
4 theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App.4th 399,
5 408–09 [holding that *Kullar* does not require “an explicit statement of the maximum amount the
6 plaintiff class could recover if it prevailed on all its claims,” but instead, only an “understanding
7 of the amount that is in controversy and the realistic range of outcomes of the litigation”].)

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

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

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

14 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
15 evidence to the contrary is offered. (Newberg, *Newberg on Class Actions* (3rd ed. 1992) § 11.51.)
16 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super. Ct.*
17 (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The fact that
18 the plaintiff might have received more if the case had been fully litigated is no reason not to approve
19 the settlement.”].) Thus, there is a presumption here that negotiations were conducted in good faith.

20 The proposed Settlement at issue was reached following extensive negotiations and
21 discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses
22 with an experienced and neutral class action mediator. (Moon Decl., ¶ 13.) Plaintiff’s Counsel
23 performed an extensive investigation into the facts, claims, and defenses at issue, including by
24 reviewing the governing law, analyzing Defendant’s written policies and sampling time/pay data,
25 and retaining a statistics expert to prepare a damage analysis regarding Defendant’s potential liability.
26 (*Id.* at ¶¶ 11–12.) Once an agreement to mediate was made, Plaintiff obtained, through informal
27 discovery, documents and data necessary and helpful to evaluate the claims and defenses at issue,
28 including a statistically significant sample of time and pay records for the putative Class as well as

1 demographic data. (*Id.*) As of the date of mediation on June 11, 2026, there were an estimated: 152
2 Class Members who collectively worked a total of 9,531 Workweeks, at an average hourly rate of
3 \$28.82 and average regular rate of \$31.78. (Settlement, ¶ 4.2; Moon Decl., ¶ 38.) Additionally, there
4 were an estimated: 88 former employees falling within the three-year statute of limitations (“SOL”)
5 period for waiting time penalties, 99 Aggrieved Employees falling within the one-year SOL period for
6 inaccurate wage statement penalties and PAGA penalties, and 2,587 PAGA Pay Periods. (*Id.*) Based
7 on Plaintiff’s Counsel’s review of the time, payroll, and additional data provided by Defendant, on
8 Plaintiff’s expert’s analysis of the sample records provided by Defendant, and on information from
9 Plaintiff, Plaintiff’s Counsel evaluated the estimated maximum and risk-adjusted exposure that
10 Defendant faced. (Moon Decl., ¶ 38.)

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

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

20 Here, based on the information provided at mediation, Defendant’s **realistic exposure**
21 (adjusted for risks at certification and proof on the merits) for the alleged claims, including penalties,
22 is estimated to be **\$353,174.03**. (Moon Decl., ¶¶ 38, 45.) This amount was calculated as follows:
23 **\$15,127.75** (75% discount) for the regular rate claim; **\$90,103.91** (90% discount) for the off-the-clock
24 work claim; **\$148,797.66** (75% discount) for the meal period claim; **\$30,018.91** (90% discount) for
25 the rest period claim; **\$5,956.88** (90% discount) for the unreimbursed business expense claim;
26 **\$30,433.92** (95% discount) for the waiting time penalties claim; **\$19,800.00** (95% discount) for the
27 wage statement claim; and **\$12,935.00** (95% discount) for the PAGA penalties claim. (*Id.* at ¶¶ 39-
28 44.) The foregoing discounts were based on the evidence presented and arguments made during

1 arm's-length settlement negotiations. (*Id.* at ¶¶ 13, 37.) **The \$238,275.00 gross settlement figure**
2 **represents about 67.5% of the total realistic recovery.** (*Id.* at ¶ 45.) This is an excellent result for
3 the Class, particularly because, under the Settlement, Class Members will receive timely and
4 guaranteed relief, avoiding the risk of not being able to recover anything. (*Id.*)

5 With regard to the PAGA claims, Plaintiff and her Counsel believe the Settlement is a fair and
6 reasonable resolution that satisfies PAGA's dual statutory purposes of deterrence and punishment, on
7 the one hand, and providing Aggrieved Employees with genuine and meaningful relief, on the other.
8 (Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendant has had to hire legal counsel,
9 engage in informal discovery, and participate in mediation. Defendant is also now having to pay civil
10 penalties to the LWDA under the Settlement, assuming final settlement approval is granted.
11 (Settlement, ¶ 3.2.5.) Not including its own attorneys' fees and costs as well as the employer's share of
12 payroll taxes, Defendant will pay \$238,275.00 to resolve this matter—of which \$24,000.00 is allocated
13 toward the PAGA claims and will be distributed, in compliance with Labor Code section 2699 as 65%
14 (\$15,600.00) to the LWDA and 35% (\$8,400.00) to Aggrieved Employees—and the release obtained
15 under the Settlement does not preclude Aggrieved Employees from seeking remedies based on any
16 underlying individual claims they may have against Defendant or the other Released Parties. (Lab.
17 Code § 2699(i).) The PAGA Allocation is also greater than the realistic damage estimate for PAGA
18 civil penalties. (Moon Decl., ¶ 46.) Moreover, Plaintiff's Counsel are of the opinion that because the
19 issues here are fairly contested, there is a possibility of the Court not awarding the PAGA penalties
20 even if Plaintiff prevailed on the merits due to the largely discretionary nature of awarding PAGA
21 penalties. (*Id.*) Indeed, under Labor Code section 2699, subdivision (e)(2), a Court can reduce PAGA
22 penalties "if, based on the facts and circumstances of the particular case, to do otherwise would result
23 in an award that is unjust, arbitrary and oppressive, or confiscatory." (Lab. Code § 2699(e)(2).) In other
24 words, were this matter to go to trial, any award granted would be at the discretion of the Court and
25 subject to a substantial reduction. (Moon Decl., ¶ 46.)

26 While Plaintiff is confident in the merits of her claims, a legitimate controversy exists as to each
27 cause of action. (*Id.* at ¶ 47.) Plaintiff also recognizes that proving the amounts of wages owed to each
28 Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id.*) The Settlement

1 obviates the significant risk that this Court may deny certification of all or some of Plaintiff's claims.
2 (*Id.* at ¶ 48.) Furthermore, even if Plaintiff was able to pursue her claims on a class-wide basis and
3 obtain certification of all or some of the claims, continued litigation would be expensive, involving a
4 trial and possible appeals, and would substantially delay and reduce any recovery by the Class. (*Id.*)
5 This Settlement avoids the risks, burdens, and the accompanying expense of further litigation. (*Id.* at ¶
6 49.) Although the Parties have engaged in a significant amount of investigation, informal discovery,
7 and class-wide data analysis, they have not conducted extensive formal discovery. (*Id.*) Moreover,
8 preparation for class certification and a trial would remain for the Parties as well as the prospect of
9 appeals in the wake of a disputed class certification ruling for Plaintiff and/or any summary judgment
10 ruling. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through
11 trial. (*Id.*)

12 The Net Settlement Amount available for settlement payments is estimated to be *no less than*
13 **\$97,600.00** for an estimated Class of **152 individuals**.¹ (Moon Decl., ¶ 50.) As a result, it is estimated
14 each Participating Class Member will receive an average gross benefit of approximately **\$642.11** prior
15 to tax withholdings on the wage portion of payments. (*Id.*) Considering Class Members' average hourly
16 rate is \$28.82, the average benefit is roughly **22.28 hours of work**. (*Id.*) This amounts to **an estimated**
17 **Workweek value of roughly \$10.24** for the currently estimated **9,531 Workweeks**. (*Id.*) Additionally,
18 it is currently estimated there are **99 Aggrieved Employees** who will receive an estimated average of
19 approximately **\$84.85** from their \$8,400.00 total share of the PAGA Penalties, which results in an
20 estimated per **Pay Period value of \$3.25** based on the currently estimated **2,587 PAGA Pay Periods**.
21 (*Id.*) The actual amounts to Participating Class Members and Aggrieved Employees will vary based on
22 each individual's duration of work during the Class Period or PAGA Period, respectively; thus, those
23 who worked longer will receive a gross benefit greater than the average estimated amount. (*Id.*) At this
24

25
26 ¹ The Net Settlement Amount is at least \$238,275.00 less the following: \$5,000.00 for the
27 Class Representative Enhancement Award to Plaintiff, \$7,250.00 for Administration Expense
28 Payment, \$24,000.00 for the PAGA Penalties to the LWDA and Aggrieved Employees, \$79,425.00
for Class Counsel Fees Payment, and up to \$25,000.00 for Class Counsel Litigation Costs Payment.
(Settlement, ¶¶ 3.2 - 3.2.5.)

1 time, the high and low range of payments to Class Members is unknown. (*Id.*) These ranges will be
2 calculated by the Administrator following preliminary approval and receipt and processing of the Class
3 Database and will be provided to the Court in a motion for final approval. (*Id.*)

4 The proposed Settlement of \$238,275.00 therefore represents a substantial recovery when
5 compared to Plaintiff's reasonably forecasted recovery. (*Id.* at ¶ 51.) When considering the risks of
6 litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to establish
7 liability, and the probability of appeal, it is clear the Settlement amount of \$238,275.00 is within the
8 "ballpark" of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*)

9 **3. Plaintiff's Counsel Have Extensive Experience in Class and PAGA**
10 **Action Litigation, Which Was Integral to Negotiating the Settlement**

11 The Settlement negotiations were conducted by highly capable counsel with considerable
12 experience and demonstrated competence with litigating wage and hour class actions. (*Id.* at ¶¶ 56–
13 72.) Plaintiff's Counsel has a strong record of vigorous and effective advocacy for their clients and
14 are experienced in handling complex wage and hour class action litigation. (*Id.*) The experience of
15 Plaintiff's Counsel was helpful in assessing the reasonableness of the Settlement at issue here, and
16 from this experience they concluded that this litigation could not have been settled on better terms
17 than provided under the Settlement. (*Id.* at ¶ 73.) Although Plaintiff and her counsel were prepared
18 to try the claims alleged in the litigation, they support the proposed Settlement as being in the best
19 interest of the Class based on objective evidence that has been considered and weighed against the
20 risks, expenses, and time consumption to both sides of continued litigation. (*Id.* at ¶¶ 14, 37-38.)

21 **B. The Proposed Notice of Class and Representative Action Settlement Should**
22 **Be Approved**

23 The proposed Class Notice, in the form attached to the Settlement as **Exhibit A**, should be
24 approved for dissemination to the Class. The Class Notice informs the Class of the terms of the
25 Settlement and of their rights to be excluded from or object to the Settlement. (Settlement, Ex. A.)
26 Accordingly, the proposed Notice meets all the requirements of Rule 3.769(f) of the California Rules
27 of Court. (Cal. Rules of Court, rule 3.769(f).)
28

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

2 Subject to the Court’s approval, the Settlement provides for attorneys’ fees payable to Class
3 Counsel in an amount up to one-third of the Gross Settlement Amount, estimated to be \$79,425.00 for
4 Class Counsel’s attorneys’ fees, plus reimbursement for out-of-pocket litigation costs not to exceed
5 \$25,000.00. (Settlement, ¶ 3.2.2.) These amounts are disclosed to Class Members in the proposed
6 Notice and are reasonable. (*Id.* at Ex. A.)

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

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

14 Plaintiff’s Counsel will seek an award of attorneys’ fees on the “percentage of
15 recovery/common fund” theory. (Moon Decl., ¶ 75.) The purpose of this approach is to “spread
16 litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear
17 the entire burden alone.” (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn*
18 *v. State of California* (1975) 15 Cal.3d 162, the California Supreme Court stated, “one who expends
19 attorneys’ fees in winning a suit which creates a fund from which others derive benefits, may require
20 those passive beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in
21 *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court
22 recognized that the common fund doctrine has been applied “consistently in California when an
23 action brought by one party creates a fund in which other persons[] are entitled to share.” (*Id.* at pp.
24 110–11 [pincite omitted].)

25 The California Supreme Court recently affirmed in *Laffitte v. Robert Half International Inc.*
26 (2016) 1 Cal.5th 480 that, “when class action litigation establishes a monetary fund for the benefit of
27 the class members, and the trial court in its equitable powers awards class counsel a fee out of that
28 fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage

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

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

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

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

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

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

1 even if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) This
2 Settlement is beneficial in that it limits the risk of continued expenses and consumption of time,
3 energy, and resources facing Defendant while at the same time rewarding Plaintiff’s Counsel for their
4 decision to assume risk by taking on this matter. (*See* Moon Decl., ¶¶ 48-49.) In fact, prosecution of
5 this action involved significant financial risk for Plaintiff’s Counsel. (*Id.* at ¶¶ 76–79.) Their Counsel
6 undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once
7 Plaintiff’s Counsel undertook this litigation on behalf of the Class, they committed to pursue it to its
8 conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶ 78.)

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

10 As demonstrated by their past experience in pursuing class actions on behalf of consumers
11 and employees, Plaintiffs’ Counsel possess considerable expertise in litigating class actions. (*Id.* at
12 ¶¶ 56–72.) Plaintiff’s Counsel have been involved as lead counsel or co-counsel in numerous class
13 actions that resulted in millions in recovery. (*Id.*) Plaintiff’s Counsel’s experience in wage and hour
14 litigation was integral in evaluating the strengths and weaknesses of the case against Defendant and
15 the reasonableness of the settlement. (*Id.* at ¶ 73.) Practice in the narrow field of wage and hour
16 litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and
17 federal) as well as the procedural law of class action litigation. (*Id.* at ¶ 71.) Based on these and other
18 factors, Plaintiff’s Counsel have frequently received fee awards of this percentage from the gross
19 recovery for the class. (*See id.* at ¶¶ 60, 65, 70.) Because it is reasonable to compensate counsel
20 commensurate with their skill, reputation, and experience, the requested fee award is supported here.

21 **D. The Enhancement Award to Plaintiff Is Reasonable**

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

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

10 Under the Settlement here, subject to the Court’s approval, Defendant agrees to pay a Class
11 Representative Enhancement Award to the Class Representative of not more than \$5,000.00 (in
12 addition to any Individual Class Payment and Individual PAGA Payment the Class Representative is
13 entitled to receive as a Participating Class Member). (*Id.* at ¶ 3.2.1.) This award is for initiating and
14 providing services in support of the Action. (*Id.* at ¶ 1.14.) Plaintiff has devoted a great deal of time
15 and work assisting counsel in the case and communicated with counsel frequently for litigation and
16 to prepare for the mediation session. (Moon Decl., ¶¶ 52–55; Declaration of Plaintiff Se’Ahanna
17 Patience McPipe in Support of Motion for Preliminary Approval of Class and Representative Action
18 Settlement [“Plaintiff Decl.”], ¶¶ 16–22.) The requested award is fair and reasonable, particularly
19 considering the substantial benefits Plaintiff generated for all Class Members. (*See* Moon Decl., ¶¶
20 52–55.)

21 When compared with the amounts awarded in typical class action cases, the amount requested
22 here is particularly reasonable. A 2006 study examining the average incentive award given to class
23 action plaintiffs from 1993 to 2002 found that the “average award per class representative was
24 \$15,992 and the median award per class representative was \$4357.” (Eisenberg & Miller, *Incentive*
25 *Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L. Rev. 1303, 1307–08.)
26 The same study found that named plaintiffs in employment discrimination class actions received an
27 average award of \$69,850 and a median award of \$31,081, while named plaintiffs in other
28 employment class actions received an average award of \$12,121 and a median award of \$13,059. (*Id.*

1 at p. 1333.) The authors of the study found that higher awards in employment cases reflected the
2 “courts’ wish to make representative plaintiffs whole by compensating them for the high costs of
3 their service to the class, including risks of stigmatization or retaliation on the job.” (*Id.* at p. 1308.)

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

5 **A. Legal Standard**

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

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

1 **B. Plaintiff Maintains that the Criteria for Class Certification Are Satisfied**

2 **1. The Class Is Ascertainable and Numerous**

3 When determining whether a class is ascertainable, California courts focus on the following
4 three factors: “(1) the class definition, (2) the size of the class and (3) the means of identifying class
5 members.” (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, Plaintiff maintains there is an
6 easily ascertainable Class, defined by objective and precise criteria. (Settlement, ¶ 1.4, 1.12.) The
7 proposed Class that Plaintiff seeks to represent is ascertainable because (1) the Class definition is
8 sufficiently precise, (2) the Class consists of about 152 individuals, and (3) Class Members can be
9 readily identified by looking at Defendant’s records. (*Id.*) Because Class Members are identified
10 using specific criteria in the regular business records of Defendant—their employment by Defendant
11 in California, non-exempt classification, and actual work during the Class Period—the Class is
12 ascertainable. (*See Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 959–60 [class
13 membership defined by ownership of product that is the subject of the lawsuit is sufficient to make
14 the class ascertainable].) “The requirement of Code of Civil Procedure section 382 that there be
15 ‘many’ parties to a class action suit is indefinite and has been construed liberally.” (*Rose v. City of*
16 *Hayward* (1981) 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’
17 persons, an action may be maintained as a class action even where the parties are numerous and it is
18 in fact practicable to join them all.” (*Id.*) “No set number is required as a matter of law for the
19 maintenance of a class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the
20 10 beneficiaries of a trust in an action for removal of the trustees.” (*Id.* [citing *Bowles v. Super. Ct.*
21 (1955) 44 Cal.2d 574]; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a class of 9 plaintiffs
22 and 35 members].) Therefore, numerosity is plainly satisfied.

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

24 To satisfy the community of interest requirement, Parties must show (1) common questions
25 of law and fact that predominate over individual issues, (2) class representatives have claims or
26 defenses typical of the class, and (3) class representatives adequately represent the class. (*Dunk,*
27 *supra*, 48 Cal.App.4th at p. 1806.) This inquiry tests whether proposed classes are sufficiently
28

1 cohesive to rationally warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE*
2 *Corp.* (1987) 191 Cal.App.3d 605, 611–12.)

3 Here, Plaintiff’s claims satisfy all three requirements. The employment practices at issue
4 include whether or not Defendant paid proper wages at the regular rate to the Class; whether or not
5 Defendant paid for all hours worked; whether or not Defendant provided meal periods to the Class;
6 whether or not Defendant provided rest periods to the Class; whether or not Defendant paid proper
7 overtime pay; whether or not Defendant reimbursed all business expenses incurred by the Class;
8 whether or not Defendant paid proper compensation timely upon separation of employment to Class
9 Members; whether or not Defendant timely paid proper compensation throughout Class Members’
10 employment; whether or not Defendant provided accurate and complete itemized wage statements to
11 the Class; whether or not waiting-time penalties are available to Class Members who are no longer
12 employed by Defendant for violation of *Labor Code* § 203; whether or not Defendant maintained
13 adequate and requisite records; and whether or not Defendant engaged in unlawful or unfair business
14 practices affecting the Class in violation of *Business and Professions Code* §§ 17200-17208. (Moon
15 Decl., ¶ 3–4) Plaintiff contends the factual and legal issues are the same for all Class Members, and
16 further that all Class Members suffered from and seek redress for the same alleged injuries. (Plaintiff
17 Decl., ¶¶ 4–5.) Considering Class Members would need to prove the same issues of law and fact to
18 prevail, and their legal remedies are identical, it would be preferable to resolve all claims through a
19 settlement than to force each Class Member to litigate their own individual claims. Thus, the Court
20 should grant conditional class certification for settlement purposes because common questions of law
21 and fact predominate over any individual questions within the Class.

22 3. Plaintiff’s Claims Are Typical of the Claims of the Class

23 The typicality requirement does not focus on the individual characteristics or circumstances
24 of the representative plaintiff compared to those of the remainder of the class, but rather, upon the
25 typicality of the proposed representative’s claims as they relate to the defendant’s conduct and
26 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 [“The only requirements are [sic] that
27 common questions of law and fact *predominate* and that the class representative be *similarly* situated”
28 vis-à-vis the class.] [emphasis in original].) A representative plaintiff’s claims are typical of the class

1 if they arise from the same event, practice, or course of conduct, and if the claims rest on the same
2 legal theories. (*Id.*) That is precisely the case here. Plaintiff is a former hourly-paid and non-exempt
3 employee of Defendant; as such, she alleges that she was subjected to the same policies and practices
4 as other similarly situated employees. (Plaintiff Decl., ¶ 6.)

5 **4. Plaintiff and Her Counsel Meet the Adequacy Requirement**

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

10 Here, all requirements are met. Plaintiff retained counsel with extensive experience in
11 prosecuting complex class actions, including similar class actions that previously settled. (Moon
12 Decl., ¶¶ 56-72.) With their experience, Plaintiff's Counsel unquestionably are "qualified,
13 experienced and generally able to conduct the proposed litigation." (*Miller, supra*, 148 Cal.App.3d
14 at p. 874.) In addition, Plaintiff and her Counsel have no conflicts with one another, other Class
15 Members, the proposed Administrator. (Plaintiff Decl., ¶¶ 7-8; Moon Decl., ¶ 74.) Further, Plaintiff
16 has, with counsel, litigated this case and diligently reviewed the settlement terms, showing
17 dedication, and with full knowledge and acceptance of duties, she has committed to her role as Class
18 Representative. (Plaintiff Decl., ¶¶ 16-22.)

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

20 Finally, in making its class certification decision, the Court must determine that a class action
21 would be superior to alternative means for the fair and efficient adjudication of the litigation. (*See*
22 *Leyva v. Medline Indus. Inc.* (9th Cir. 2013) 716 F.3d 510, 514-15.) By consolidating many potential
23 individual actions into a single proceeding, this Court's use of the class action device enables it to
24 manage this litigation in a manner that serves the economics of time, effort, and expense for the
25 litigants and the judicial system. (*Id.*) Absent class treatment, similarly situated employees with
26 small, but nevertheless meritorious, claims for damages would, as a practical matter, have no means
27 of redress because of the time, effort, and expense required to prosecute individual actions. (*Id.* at p.
28

515; *Gentry, supra*, 42 Cal.4th at pp. 457–62.) Moreover, in the context of settlement, the superiority concerns are essentially non-existent. (*See generally, e.g., Stamburgh, supra*, 62 Cal.App.3d.)

V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND

A. The Proposed Notice Plan Satisfies Due Process

Class Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court, rule 3.766(e)–(f).) California law vests the Court with broad discretion in fashioning an appropriate notice program. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 970, 973–74.) There is no statutory or due process requirement that all class members receive actual notice, but in this matter, the Class Members will receive direct mailed notice. (Settlement, ¶ 6.4.) 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, ¶ 6.4.)

B. The Class Notice Is Accurate and Informative

The proposed Class Notice should be approved. It will be disseminated through direct U.S. first-class mail to the current address for each Class Member. (*Id.* at ¶ 6.4.) It informs the Class of the terms of the Settlement and the right to be excluded. (*Id.* at ¶ 6.4, 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 ¶¶ 6.13-6.13.3, 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,

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