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9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF SAN BERNARDINO**

12 CRUZ ULLOA MONTEON, individually, and on  
behalf of all others similarly situated,

13 Plaintiff,

14 vs.  
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16 M & M PRINTED BAG, INC.; and DOES 1  
through 10, inclusive,

17 Defendants  
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Case No.: CIVRS2503319

**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 Sean Hartranft, and [Proposed]  
Preliminary Approval Order]*

**PRELIMINARY APPROVAL HEARING:**

Date: December 14, 2026

Time: 9:00 a.m.

Dept.: R17

Judge: Hon. Gilbert Ochoa

Action Filed: May 9, 2025

Trial Date: Not Set

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

2 PLEASE TAKE NOTICE that on December 14, 2026, at 9:00 a.m. in Department R17 of this  
3 Court located at the Rancho Cucamonga District at 8303 Haven Avenue, Rancho Cucamonga,  
4 California 91730, pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule  
5 3.769 *et seq.*, Plaintiff Cruz Ulloa Monteon (“Plaintiff”) will, and hereby does, move the Court for an  
6 order granting preliminary approval of the proposed class action settlement between Plaintiff and  
7 Defendant M & M Printed Bag, Inc.

8 Specifically, Plaintiff moves the Court for an order:

- 9 1. Granting preliminary approval of the Joint Stipulation of Class and Representative Action  
10 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 Class Counsel Moon Law Group, PC as Class Counsel, for settlement  
15 purposes only;  
16 6. Appointing APEX Class Action Administration as the Administrator; and  
17 7. Setting the Final Approval Hearing approximately 120 days after preliminary approval.

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

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

23 Respectfully submitted,

24 Dated: September 30, 2026

**MOON LAW GROUP, PC**

25 By: \_\_\_\_\_

26 Kane Moon  
27 Allen Feghali  
28 Mariam Ghazaryan  
Mitchell H. Millet  
*Attorneys for Plaintiff*

**TABLE OF CONTENTS**

|    |                                                                                     |    |
|----|-------------------------------------------------------------------------------------|----|
| 1  |                                                                                     |    |
| 2  | TABLE OF CONTENTS.....                                                              | ii |
| 3  | TABLE OF AUTHORITIES .....                                                          | iv |
| 4  | I. INTRODUCTION .....                                                               | 1  |
| 5  | II. SUMMARY OF THE LITIGATION AND SETTLEMENT.....                                   | 1  |
| 6  | A. Plaintiff’s Claims .....                                                         | 1  |
| 7  | B. Discovery and Investigation .....                                                | 3  |
| 8  | C. Settlement Negotiations .....                                                    | 4  |
| 9  | D. Key Terms of the Proposed Settlement .....                                       | 4  |
| 10 | III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL .....                              | 10 |
| 11 | A. The Settlement Is Fair, Reasonable, Adequate, and the Product of Investigation,  |    |
| 12 | Litigation, and Negotiation.....                                                    | 11 |
| 13 | 1. The Settlement Is the Product of Discovery, Investigation, and Informed and      |    |
| 14 | Non-Collusive Arm’s-Length Negotiations .....                                       | 11 |
| 15 | 2. The Settlement Is Fair and Reasonable Considering the Parties’ Respective        |    |
| 16 | Legal Positions .....                                                               | 12 |
| 17 | 3. Class Counsel Have Extensive Experience in Class Action and PAGA                 |    |
| 18 | Litigation .....                                                                    | 14 |
| 19 | B. The Proposed Class Notice of Settlement Should Be Approved.....                  | 15 |
| 20 | C. The Proposed Attorneys’ Fees and Costs Are Reasonable.....                       | 15 |
| 21 | 1. Counsel Will Request a Fees Award Based On the “Common Fund” Method..            | 15 |
| 22 | 2. The Requested Fee Award Is in Line with Typical Cases.....                       | 16 |
| 23 | 3. This Matter Involves a “Fee-Shifting” Provision of the Labor Code .....          | 17 |
| 24 | 4. Counsel’s Experience, Reputation, and Ability Support the Requested Fees ....    | 17 |
| 25 | D. The Service Payment to Named Plaintiff Is Reasonable .....                       | 18 |
| 26 | IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED.....                         | 19 |
| 27 | A. Legal Standard .....                                                             | 19 |
| 28 | B. Plaintiff Maintains that the Criteria for Class Certification Are Satisfied..... | 20 |

|   |                                                                         |    |
|---|-------------------------------------------------------------------------|----|
| 1 | 1. The Class Is Ascertainable and Numerous .....                        | 20 |
| 2 | 2. There Are Many Common Issues of Law and Fact Which Predominate ..... | 21 |
| 3 | 3. Plaintiff’s Claims Are Typical of the Claims of the Class .....      | 21 |
| 4 | 4. Plaintiff and Her Counsel Meet the Adequacy Requirement .....        | 22 |
| 5 | 5. A Class Action Is Superior to a Multiplicity of Litigation .....     | 22 |
| 6 | V. THE PROPOSED CLASS NOTICE IS CONSTITUTIONALLY SOUND.....             | 23 |
| 7 | A. The Proposed Class Notice Plan Satisfies Due Process .....           | 23 |
| 8 | B. The Class Notice Is Accurate and Informative.....                    | 23 |
| 9 | VI. CONCLUSION.....                                                     | 24 |

**TABLE OF AUTHORITIES**

**FEDERAL CASES**

*Angeles v. United States Airways, Inc.* (N.D. Cal. Feb. 19, 2013)

No. C 12-05860 CRB, 2013 WL 622032 ..... 3

*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174..... 18

*Leyva v. Medline Industries Inc.* (9th Cir. 2013) 716 F.3d 510..... 22

*Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012)

No. ED CV 11–298 GHK (DTBx), 2012 WL 9506073 ..... 3

*Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438 ..... 11, 12

*Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948..... 17

*Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294 ..... 16

*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759 ..... 15

**STATE CASES**

*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960..... 23

*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43 ..... 16

*City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105 ..... 15

*Classen v. Weller* (1983) 145 Cal.App.3d 27 ..... 22

*Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605 ..... 21

*Collins v. Rocha* (1972) 7 Cal.3d 232..... 20, 21

*Daar v. Yellow Cab Co.* (1967) 67 Cal. 2d 695..... 19

*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 ..... 10, 11, 21

*Gentry v. Superior Court* (2007) 42 Cal.4th 443 ..... 18, 22, 23

*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116..... 11

*Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480..... 16

*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429 ..... 20

*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434 ..... 10

*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442 ..... 22

*Miller v. Woods* (1983) 148 Cal.App.3d 862..... 20, 22

|    |                                                                                            |        |
|----|--------------------------------------------------------------------------------------------|--------|
| 1  | <i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399 ..... | 11, 18 |
| 2  | <i>Neary v. Regents of University of California</i> (1992) 3 Cal.4th 272 .....             | 10     |
| 3  | <i>Quinn v. State of California</i> (1975) 15 Cal.3d 162.....                              | 15     |
| 4  | <i>Richmond v. Dart Industries, Inc.</i> (1981) 29 Cal. 3d 462.....                        | 19, 20 |
| 5  | <i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926 .....                             | 20     |
| 6  | <i>Serrano v. Priest</i> (1977) 20 Cal.3d 25 .....                                         | 15     |
| 7  | <i>Stamburgh v. Superior Court</i> (1976) 62 Cal.App.3d 231.....                           | 11, 23 |
| 8  | <i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224.....                      | 12     |
| 9  | <i>Wilner v. Sunset Life Insurance Co.</i> (2000) 78 Cal.App.4th 952 .....                 | 20     |
| 10 | <b>STATE STATUTES</b>                                                                      |        |
| 11 | California Code of Civil Procedure § 382 .....                                             | 19     |
| 12 | California Private Attorneys General Act, Labor Code §§ 2698, <i>et seq.</i> .....         | 1      |
| 13 | California Labor Code § 90.5 .....                                                         | 18     |
| 14 | California Labor Code § 218.5 .....                                                        | 17     |
| 15 | California Labor Code § 226 .....                                                          | 17     |
| 16 | California Labor Code § 1194 .....                                                         | 17     |
| 17 | California Labor Code § 2699(e)(2) .....                                                   | 13     |
| 18 | California Labor Code § 2699(k)(1).....                                                    | 17     |
| 19 | California Labor Code § 2802(d).....                                                       | 17     |
| 20 | <b>OTHER AUTHORITIES</b>                                                                   |        |
| 21 | Eisenberg & Miller, <i>Incentive Awards to Class Action Plaintiffs: An Empirical Study</i> |        |
| 22 | (2006) 53 UCLA L. Rev. 1303 .....                                                          | 19     |
| 23 | <b>COURT RULES</b>                                                                         |        |
| 24 | California Rules of Court, rule 3.766(e), (f) .....                                        | 23     |
| 25 | California Rules of Court, rule 3.769(f) .....                                             | 15     |
| 26 | <b>TREATISES</b>                                                                           |        |
| 27 | Newberg, Newberg on Class Actions (3rd ed. 1992) § 8.39 .....                              | 23     |
| 28 | Newberg, Newberg on Class Actions (3rd ed. 1992) § 11.51 .....                             | 11     |

|   |                                                                |    |
|---|----------------------------------------------------------------|----|
| 1 | Newberg, Newberg on Class Actions (3rd ed. 1992) § 14.03 ..... | 16 |
|---|----------------------------------------------------------------|----|

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78

1 variety of industries. (Moon Decl., ¶ 3.) Defendant has employed Plaintiff and other putative Class  
2 Members in California during the putative Class Period. (*Id.*) Plaintiff worked for Defendant as a  
3 machine operator from approximately March 2024 to February 2025. (Declaration of Plaintiff Cruz  
4 Ulloa Monteon in Support of Approval of Class Action and PAGA Action Settlement [“Plaintiff  
5 Decl.”], ¶ 2.) Throughout her employment, Plaintiff was employed in an hourly paid, non-exempt  
6 position. (*Id.* at ¶ 7.) Plaintiff contends she and her coworkers were subjected to the same unlawful  
7 labor practices, including failure to pay wages for all hours worked. (*Id.*)

8 Plaintiff’s claims for unpaid minimum and overtime wages stem from allegations that  
9 Defendant failed to incorporate all remunerations into the regular rate of pay for purposes of paying  
10 Class Members overtime wages, meal break premiums, and sick pay and that Defendant required Class  
11 Members to work off-the-clock without compensation. (Moon Decl., ¶ 4.) Plaintiff’s meal and rest  
12 period claims are based on allegations that Class Members’ breaks were often short, late, interrupted,  
13 and sometimes missed altogether, and that Defendant did not pay all premium wages for non-code-  
14 compliant breaks. (*Id.*) Plaintiff further brings a claim for unreimbursed necessary business expenses  
15 based on allegations that Class Members were required to purchase tools and occasionally use their  
16 personal vehicles and cellphones for business purposes, without reimbursement for the same. (*Id.*)  
17 Finally, Plaintiff also brings claims for waiting time penalties, wage statement violations, unfair  
18 business practices, and civil penalties under PAGA. (*Id.*)

19 On April 7, 2025, pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave written notice  
20 to Defendant and the LWDA of alleged Labor Code violations and Plaintiff’s intent to seek civil  
21 penalties under California Labor Code § 2699, *et seq.* (*Id.* at ¶ 5.) Plaintiff’s PAGA notice was  
22 submitted to the LWDA online and sent to Defendant by certified mail. (*Id.* at ¶ 5, Ex. 2.)

23 On May 9, 2025, Plaintiff commenced this action by filing a wage and hour class action  
24 complaint, alleging causes of action against Defendant for (1) failure to pay minimum wages; (2) failure  
25 to pay overtime compensation; (3) failure to provide meal periods; (4) failure to authorize and permit  
26 rest breaks; (5) failure to indemnify necessary business expenses; (6) failure to timely pay final wages  
27 at termination; (7) failure to provide accurate itemized wage statements; and (8) unfair business  
28 practices. (*Id.* at ¶ 6.)

1 On June 17, 2025, Plaintiff filed a First Amended Class and Representative Action Complaint,  
2 adding a PAGA cause of action to the wage and hour class action claims. (*Id.* at ¶ 7.) The First Amended  
3 Complaint is the operative complaint in the action (the “Operative Complaint”). (*Id.*)

4 Defendant ardently opposes the merits of this case and denies Plaintiff’s factual allegations. (*Id.*  
5 at ¶ 8.) Defendant disputes Plaintiff’s claims for unpaid minimum wages, overtime wages, and sick pay  
6 and argues that it properly compensated its employees for all hours worked. (*Id.*) Defendant maintains  
7 compliance with all its meal and rest period obligations. (*Id.*) As for the unreimbursed business  
8 expenses, Defendant argues that it compensated its employees for all necessary business expenses  
9 incurred. (*Id.*) To the extent Class Members received wage statements that were allegedly inaccurate,  
10 Defendant asserts Class Members suffered no actual damage or harm as a result, and that there was no  
11 knowing or intentional violation. (*Id.*; *see, e.g., Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013)  
12 No. C 12–05860 CRB, 2013 WL 622032, at \*10 [“A plaintiff must adequately plead an injury arising  
13 from an employer’s failure to provide full and accurate wage statements, and the omission of the  
14 required information alone is not sufficient.”].) With respect to Plaintiff’s claim for waiting time  
15 penalties, Defendant argues that its good-faith belief that it paid all wages precludes the imposition of  
16 waiting time penalties since Plaintiff cannot prove Defendant’s alleged failure to pay all final wages at  
17 the time of separation was “willful.” (Moon Decl., ¶ 8; *see, e.g., Pedroza v. PetSmart, Inc.* (C.D. Cal.  
18 June 14, 2012) No. ED CV 11–298 GHK (DTBx), 2012 WL 9506073, \*5.) For these reasons,  
19 Defendant claims it did not engage in any unfair business practices and denies liability under PAGA.  
20 (Moon Decl., ¶ 8.)

21 **B. Discovery and Investigation**

22 Following the filing of Plaintiff’s complaint, the Parties met and conferred regarding an  
23 agreement to mediate Plaintiff’s claims. (Moon Decl., ¶ 9.) The Parties agreed to mediate with Hon.  
24 Carl West (ret.), an experienced class and PAGA action mediator. (*Id.*) In preparation for mediation,  
25 the Parties agreed to an information exchange of documents and time and payroll records of the Class.  
26 (*Id.*) Prior to mediation, Plaintiff obtained from Defendant, through informal discovery, information  
27 concerning the claims at issue in the action, including applicable written policies, the employee  
28

1 handbook in effect during the Class Period, Plaintiff’s personnel file, and a sample of time and  
2 corresponding payroll records for the Class. (*Id.*)

3 In preparation for mediation, Class Counsel reviewed and analyzed the information Defendant  
4 provided, including Plaintiff’s time/pay records and documents regarding Defendant’s wage and hour  
5 policies. (*Id.* at ¶ 10.) In conjunction with their factual investigation, Class Counsel also investigated  
6 the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly, Class  
7 Counsel evaluated the prospects for class certification, success on the merits, and Defendant’s potential  
8 monetary exposure based. (*Id.*) Thus, Plaintiff’s and her Counsel’s familiarity with the facts of the case  
9 and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the  
10 Settlement. (*Id.*)

11 **C. Settlement Negotiations**

12 Mediation occurred on April 21, 2026. (Moon Decl., ¶ 11.) The settlement negotiations were at  
13 arm’s length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went  
14 into the mediation willing to explore the potential for a settlement of the dispute, but each side was also  
15 prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*)  
16 Although the Parties did not reach a settlement at mediation, the Parties continued to negotiate a  
17 settlement with the assistance of Hon. Carl West (Ret.), and the Parties ultimately reached a settlement  
18 of the Action on May 5, 2026, the material terms of which are encompassed within the Settlement. (*Id.*)

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

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

22 Under the Settlement Agreement, Defendant will pay a non-reversionary amount of  
23 \$250,000.00 to resolve this litigation, subject to an escalator clause. (Settlement, ¶ 3.1.) The  
24 Settlement’s key terms include:<sup>2</sup>

25 \_\_\_\_\_  
26 <sup>2</sup> A summary of the key financial terms of the Settlement, including the Gross Settlement  
27 Amount, each deduction from the gross amount (attorneys’ fees, litigation costs, settlement  
28 administrator costs, service award, and PAGA Penalties), whether exact or in a “not to exceed” amount,  
the estimated Net Settlement Amount, and the estimated average individual settlement payments is  
provided in the accompanying Moon Decl., ¶ 14.

1           1. Class Members or Settlement Class: The proposed Class for purposes of the Settlement  
2 contains approximately 110 members who worked approximately 9,000 Workweeks and is defined as  
3 all current and former non-exempt employees of Defendant in the State of California during the Class  
4 Period. (Settlement, ¶¶ 1.4, 7.1.) Any Class Member who opts out of the Settlement by sending the  
5 Administrator a valid and timely Request for Exclusion will be a “Non-Participating Class Member”  
6 and will not receive an Individual Class Payment (“Non-Participating Class Members”). (*Id.* at ¶ 1.28.)

7           2. Class Period: means the period from May 9, 2021 through July 4, 2026. (*Id.* at ¶ 1.12.)

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

10          4. Aggrieved Employee: There are approximately 52 Aggrieved Employees who worked  
11 approximately 3,765 PAGA Pay Periods, defined as all current and former non-exempt employees of  
12 Defendant in the State of California during the PAGA Period. (*Id.* at ¶ 1.3; Moon Decl., ¶ 17.)

13          5. PAGA Period: means the period from April 7, 2024, through July 4, 2026.<sup>3</sup> (Settlement, ¶  
14 1.31.)

15          6. Gross Settlement Amount: This amount is \$250,000.00, subject to a potential increase  
16 under the Escalator Clause. (*Id.* at ¶ 3.1.) Defendant agrees to separately pay all employer payroll taxes  
17 owed on the Wage Portions of the Individual Class Payments. (*Id.*) The Administrator will disburse the  
18 entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved  
19 Employees to submit any claim as a condition of payment. (*Id.*) None of the Gross Settlement Amount  
20 will revert to Defendant. (*Id.*)

21          7. Escalator Clause: The Gross Settlement Amount is based on an estimate that Class  
22 Members worked approximately 9,000 Workweeks during the Class Period. (*Id.* at ¶ 7.1.) If the actual  
23 number of Workweeks during the Class Period exceeds 9,000 by more than ten percent (10%), meaning  
24 more than 9,900 Workweeks, Defendant will increase the Gross Settlement Amount proportionately

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26  
27           <sup>3</sup> Paragraph 1.31 of the Settlement defines "PAGA Period" as the period from April 7, 2024,  
28 through the earlier of (a) sixty (60) days from the date the parties reached the settlement (May 5,  
2026) or (b) the date of the Preliminary Approval Order. Sixty days from May 5, 2026 is July 4,  
2026, which is earlier than the date of the Preliminary Approval Order. (Moon Decl., ¶ 2, n.1.)

1 by the percentage increase in Workweeks above the ten percent (10%) threshold. (*Id.*) For example, if  
2 the number of Workweeks increases by 12%, the Gross Settlement Amount will increase by 2%. (*Id.*)

3 8. Net Settlement Amount: means the Gross Settlement Amount, less the following payments  
4 in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class  
5 Representative Service Award, Class Counsel Fees Payment, Class Counsel Expenses Payment, and  
6 the Administration Expenses Payment. (*Id.* at ¶ 1.27.) The remainder is to be paid to Participating Class  
7 Members as Individual Class Payments. (*Id.*)

8 9. Individual Class Payments: means the Participating Class Member’s pro rata share of the  
9 Net Settlement Amount, calculated according to the dates of employment and the number of  
10 Workweeks he or she worked during the Class Period. (*Id.* at ¶ 1.23.) “Workweek” means any week in  
11 which a Class Member worked for Defendant for at least one day during the Class Period. (*Id.* at ¶  
12 1.43.)

13 10. Individual PAGA Payment: means the Aggrieved Employee’s pro rata share of 35% of the  
14 PAGA Penalties, calculated according to the number of PAGA Pay Periods he or she worked during  
15 the PAGA Period. (*Id.* at ¶ 1.24.) “PAGA Pay Period” means any pay period during which an Aggrieved  
16 Employee worked for Defendant for at least one day during the PAGA Period. (*Id.* at ¶ 1.30.)

17 11. Tax Treatment: Twenty percent (20%) of each Participating Class Member’s Individual  
18 Class Payment will be allocated to settlement of wage claims (the “Wage Portion”). (*Id.* at ¶ 3.2.3.b.)  
19 Eighty percent (80%) of each Participating Class Member’s Individual Class Payment will be allocated  
20 to settlement of claims for penalties and interest (the “Non-Wage Portion”). (*Id.*) Aggrieved Employees  
21 assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (*Id.* at  
22 ¶ 3.2.4.b.)

23 12. Released Parties: means Defendant and all of its present and former members, parent  
24 companies, subsidiaries, affiliates, joint venturers, and licensees, and all of their shareholders, officers,  
25 directors, employees, agents, and successors and assigns. (*Id.* at ¶ 1.40.)

26 13. Release by Participating Class Members: Effective on the date Defendant fully funds the  
27 entire Gross Settlement Amount and all employer payroll taxes owed on the Wage Portions of the  
28 Individual Class Payments, all Participating Class Members fully and finally release and discharge the

Released Parties from any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, damages, and causes of action that were alleged or that reasonably could have been alleged based on the facts alleged in the First Amended Class and Representative Action Complaint, and the facts ascertained or which could have been ascertained in the course of the Action, under federal, state, and/or local law. This release includes, without limitation, release of all claims alleged in the First Amended Class and Representative Action Complaint for alleged failure to pay minimum wages, failure to pay overtime compensation, failure to provide meal periods, failure to authorize and permit rest breaks, failure to indemnify necessary business expenses, failure to pay all unpaid wages at termination, failure to provide accurate itemized wage statements, and any violations of Business and Professions Code sections 17200, *et seq.*, and statutory penalties based on the foregoing (collectively, the "Released Class Claims"). (*Id.* at ¶ 5.2.) The Released Class Claims exclude claims not permitted by law and are limited to claims arising during the Class Period. (*Id.* at ¶ 5.2.1.)

14. Release by Aggrieved Employees: All Aggrieved Employees fully and finally release and discharge the Released Parties from any and all claims for civil penalties under PAGA that were alleged or that reasonably could have been alleged based on the facts alleged in the First Amended Class and Representative Action Complaint or PAGA Notice, and the facts ascertained or which could have been ascertained in the course of the Action, including, but not limited to, failure to pay minimum wages, failure to pay overtime compensation, failure to provide meal periods, failure to authorize and permit rest breaks, failure to indemnify necessary business expenses, failure to pay all unpaid wages at termination, and failure to provide accurate itemized wage statements (collectively, the "Released PAGA Claims"). (*Id.* at ¶ 5.3.) The Released PAGA Claims are limited to claims arising during the PAGA Period and do not release any Aggrieved Employees' claims for wages or statutory penalties. In light of the binding nature of a PAGA judgment on non-party employees under *Arias v. Sup. Ct. (Angelo Dairy)* (2009) 46 Cal.4th 969 and *Cardenas v. McLane Foodservice, Inc.* (2011) 796 F.Supp.2d 1246, individuals otherwise meeting the definition of an Aggrieved Employee who are eligible to receive an Individual PAGA Payment will be deemed to have released the Released PAGA Claims, regardless of whether his or her check for the Individual PAGA Payment is cashed or not, and regardless of whether he or she is a Non-Participating Class Member. (*Id.* at ¶ 5.3.1.)

1           15. Uncashed Settlement Checks: Settlement checks will be valid for 180 days after mailing  
2 by the Administrator. Any checks remaining uncashed after that period will be voided, and the funds  
3 represented by those checks will be transmitted to the Katharine & George Alexander Community Law  
4 Center of Santa Clara University School of Law, the designated Cy Pres Recipient. (*Id.* at ¶¶ 4.2.1,  
5 4.2.3.) The Administrator will also transmit to the Cy Pres Recipient funds represented by checks  
6 returned as undeliverable where no forwarding address can be located after reasonable efforts. (*Id.* at ¶  
7 4.2.3.)

8           16. PAGA Penalties: means the total amount of PAGA civil penalties (i.e., \$20,000.00) to be  
9 paid from the Gross Settlement Amount, allocated 35% to the Aggrieved Employees (i.e., \$7,000.00)  
10 and 65% to the LWDA (i.e., \$13,000.00) in settlement of the Released PAGA Claims. (*Id.* at ¶¶ 1.34,  
11 3.2.4.) On April 7, 2025, pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave written notice  
12 to Defendant and the LWDA of alleged Labor Code violations and Plaintiff's intent to seek civil  
13 penalties under California Labor Code § 2699, *et seq.* (Moon Decl., ¶ 5, Ex. 2.) Plaintiff's PAGA notice  
14 was submitted to the LWDA online and sent to Defendant by certified mail. (*Id.*) In compliance with  
15 Labor Code section 2699, Class Counsel submitted to the LWDA a notice of settlement and a copy of  
16 the proposed Settlement Agreement. (*Id.* at ¶ 13, Ex. 3.) To date, the LWDA has not indicated any  
17 intent to investigate the allegations, intervene in the litigation, or object to the proposed Settlement. (*Id.*  
18 at ¶ 13.)

19           17. Class Representative Service Award: means the court-approved payment allocated to the  
20 Class Representative for her services in support of the Action and General Release, not to exceed  
21 \$10,000.00. (Settlement, ¶ 1.14.) If the Court approves a Class Representative Service Award less than  
22 the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. (*Id.*  
23 at ¶ 3.2.1.)

24           18. Class Counsel Fees and Expenses Payments: The Settlement provides for a Class Counsel  
25 Fees Payment of up to one-third of the Gross Settlement Amount (currently estimated to be \$83,333.33)  
26 for Class Counsel's attorneys' fees, and a Class Counsel Expenses Payment of not more than  
27 \$20,000.00. (*Id.* at ¶ 3.2.2; Moon Decl., ¶ 14(c).) If the Court approves a Class Counsel Fees Payment  
28 and/or a Class Counsel Expenses Payment less than the amounts requested, the Administrator will

1 allocate the remainder to the Net Settlement Amount. (Settlement, ¶ 3.2.2.) As of September 4, 2026,  
2 Class Counsel had incurred \$11,855.70 in litigation costs. (Moon Decl., ¶ 14(c), Ex. 4.) Class Counsel  
3 intend to base the proposed award of fees on the percentage method. (*Id.* at ¶ 58.)

4 19. Administration Expenses Payment: The Parties jointly appoint APEX Class Action  
5 Administration (“APEX”) as the neutral entity to administer this Settlement. (Settlement, ¶ 1.1; Moon  
6 Decl., ¶ 14(d).) The Administrator will be paid from the Gross Settlement Amount in an amount up to  
7 \$6,350.00, for its fees and expenses in administering this Settlement, including receiving the Class Data  
8 and mailing the Class Notice, receiving and processing objections or opt-outs, and establishing and  
9 maintaining a website to post information of interest to Class Members, including the Final Approval  
10 Order and Judgment. (Settlement, ¶ 3.2.3.) To the extent actual expenses are less and/or the Court  
11 approves payment less than the requested amount, the Administrator will allocate the remainder to the  
12 Net Settlement Amount. (*Id.* at ¶ 3.2.3.) APEX has submitted a bid not to exceed \$6,350.00. (Moon  
13 Decl., ¶ 14(d), Ex. 5.)

14 20. Class Data and Notice: Within 21 calendar days after the Court grants preliminary  
15 approval, Defendant will deliver the Class Data to the Administrator, who will thereafter have 14  
16 calendar days to mail the Class Notice to all Class Members. (Settlement, ¶¶ 6.2, 6.4.) The Settlement  
17 provides for a court-approved Class Notice in English and Spanish, substantially in the form identified  
18 as Exhibit A to the Settlement. (*Id.* at ¶¶ 1.11, 6.4.) The first page of the Class Notice will provide the  
19 estimates amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the  
20 recipient and identify the number of Workweeks and PAGA Pay Periods used to calculate those  
21 amounts. (*Id.* at ¶ 6.4.) Class Members will be notified of the proposed Settlement by first-class mail  
22 of the Class Notice. (*Id.*) Before mailing the Class Notices, the Administrator will update Class Member  
23 addresses using the National Change of Address database. (*Id.*) If a Class Notice is returned as  
24 undeliverable, the Administrator will re-mail it using any forwarding address provided by USPS. If no  
25 forwarding address is provided, the Administrator will conduct a Class Member Address Search and  
26 re-mail the Class Notice to the most current address obtained. (*Id.* at ¶¶ 1.10, 6.5.)

27 21. Response Deadline and Procedure for Disputing Workweeks and/or Pay Periods, Opting  
28 Out, or Objecting: Class Members will have 45 calendar days after the Administrator mails the Class

1 Notice to submit any (a) Requests for Exclusion from the Settlement, (b) written Objections to the  
2 Settlement, or (c) challenges to the calculation of Workweeks and/or PAGA Pay Periods in accordance  
3 with the Settlement. (*Id.* at ¶¶ 1.42, 6.13.1–6.13.3.) These deadlines will be extended by an additional  
4 14 calendar days for Class Members whose Class Notice is re-mailed. (*Id.* at ¶ 6.5.1.) The Settlement  
5 provides a procedure under which a Class Member and/or Aggrieved Employee can dispute the number  
6 of his or her individual Workweeks and/or PAGA Pay Periods stated in the Class Notice. (*Id.* at ¶  
7 6.13.2.) Additionally, Class Members may request exclusion, and Participating Class Members may  
8 submit a written objection or appear at the Final Approval Hearing and verbally object to the  
9 Settlement. (*Id.* at ¶¶ 6.13.1, 6.13.3.)

10       22. Funding of the Gross Settlement Amount: Defendant shall fully fund the Gross Settlement  
11 Amount of \$250,000.00 and the amounts necessary to fully pay Defendant’s share of payroll taxes by  
12 transmitting the funds to the Qualified Settlement Fund established by the Administrator no later than  
13 thirty (30) calendar days after entry of the Final Approval Order. (*Id.* at ¶ 4.1; Moon Decl., ¶ 15.)  
14 “Effective Date” means the date on which the Court’s order approving the Settlement Agreement and  
15 its entry of judgment become Final. (Settlement, ¶ 1.18.) “Final” means the latest of the following  
16 occurrences: (a) if no timely objections are filed or if all objections are withdrawn, the date upon which  
17 the Court enters the final judgment; (b) if an objection is filed and not withdrawn, the deadline for filing  
18 an appeal and no such appeal being filed; or (c) if any timely appeals are filed, the date of the resolution  
19 or withdrawal of any such appeal in a way that does not alter the terms of the Settlement. (*Id.*)

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

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

1 to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors  
2 is small.” (*Dunk*, 48 Cal.App.4th at p. 1802 [citing Newberg, Newberg on Class Actions (3rd ed. 1992)  
3 § 11.41].)

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

16 As discussed below, Class Counsel have provided information exceeding the threshold required  
17 to provide this Court with materials and information necessary to determine that the proposed  
18 Settlement is fair, adequate, and reasonable.

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

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

23 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless  
24 evidence to the contrary is offered; thus, there is a presumption here that the negotiations were  
25 conducted in good faith. (Newberg, Newberg on Class Actions (3rd ed. 1992) § 11.51.) Settlement is  
26 favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super. Ct.* (1976) 62  
27 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The fact that the plaintiff  
28

1 might have received more if the case had been fully litigated is no reason not to approve the  
2 settlement.”].)

3 Class Counsel have conducted a thorough investigation into the facts of this case. (Moon Decl.,  
4 ¶ 16.) Based on the foregoing document and information exchange and on their own independent  
5 investigation and evaluation, Class Counsel are of the opinion that the proposed Settlement is fair,  
6 reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and circumstances, the risk of  
7 significant delay, trial risk, appellate risk, and the defenses that Defendant may assert both to  
8 certification and on the merits, the Settlement is in the best interests of the Class. (*Id.*)

9 Based on Plaintiff’s Counsel’s review of the time, payroll, and additional data provided by  
10 Defendant, on Plaintiff’s expert’s analysis of the sample records provided by Defendant, and on  
11 information from Plaintiff, Plaintiff’s Counsel evaluated the estimated maximum and risk-adjusted  
12 exposure that Defendant faced. (*Id.* at ¶ 17.) Specifically, based on the information provided for  
13 mediation, the total estimated **realistic recovery** (adjusted for risks at certification and proof on the  
14 merits) for the alleged claims, including penalties, is estimated to be **\$311,726.50**. (Moon Decl., ¶¶  
15 17, 23.)

16 **The \$250,000.00 gross settlement figure represents about 80% of the realistic (*risk-***  
17 ***adjusted*) recovery.** (*Id.* at ¶ 23.) This is an excellent result for the Class, particularly because, under  
18 the proposed Settlement Agreement, Class Members will receive timely, guaranteed relief and will  
19 avoid the risk of not being able to recover anything. (*Id.*).

20 **2. The Settlement Is Fair and Reasonable Considering the Parties’**  
21 **Respective Legal Positions**

22 A settlement is not judged against what a plaintiff might recover had he prevailed at trial, nor  
23 does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba*  
24 *v. Apple Comp., Inc.* (2001) 91 Cal.App.4th 224, 246, 250 [“Compromise is inherent and necessary in  
25 the settlement process . . . even if ‘the relief afforded by the proposed settlement is substantially  
26 narrower than it would be if the suits were to be successfully litigated,’ this is no bar to a class settlement  
27 because ‘the public interest may indeed be served by a voluntary settlement in which each side gives  
28

1 ground in the interest of avoiding litigation.”] [quoting *Air Line Stewards v. Am. Airlines, Inc.* (7th  
2 Cir. 1972) 455 F.2d 101, 109].)

3 Here, the Settlement obviates the significant risk that this Court may deny certification of all or  
4 some of Plaintiff’s claims. (Moon Decl., ¶ 26.) Furthermore, even if Plaintiff was able to pursue her  
5 claims on a class-wide basis and obtain certification of all or some of the claims, continued litigation  
6 would be expensive, involving a trial and possible appeals, and would substantially delay and reduce  
7 any recovery by the Class. (*Id.*) While Plaintiff is confident in the merits of her claims, a legitimate  
8 controversy exists as to each cause of action. (*Id.* at ¶ 24.) Plaintiff also recognizes that proving the  
9 amounts of wages owed to each Class Member would be an expensive, time-consuming, and uncertain  
10 proposition. (*Id.*)

11 Class Counsel are also of the opinion that because the issues here are fairly contested, there is  
12 a possibility of the Court not awarding the PAGA penalties even if Plaintiff prevailed on the merits due  
13 to the largely discretionary nature of awarding PAGA penalties. (*Id.* at ¶ 25.) Indeed, under Labor Code  
14 section 2699, subdivision (e)(2), a Court can reduce PAGA penalties “if, based on the facts and  
15 circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary  
16 and oppressive, or confiscatory.” (Lab. Code § 2699(e)(2).) In other words, were this matter to go to  
17 trial, any award granted would be at the discretion of the Court and subject to a substantial reduction.  
18 (Moon Decl., ¶ 25.)

19 Because of the proposed Settlement, Class Members will receive timely, guaranteed relief and  
20 will avoid the risk of not being able to recover anything. (Moon Decl., ¶ 23.) This Settlement avoids  
21 the risks, burdens, and the accompanying expense of further litigation. (*Id.* at ¶ 27.) The parties have  
22 engaged in a significant amount of investigation and informal discovery. (*Id.*) Moreover, preparation  
23 for class certification and a trial would remain for the Parties as well as the prospect of appeals in the  
24 wake of a disputed class certification ruling for Plaintiff and/or any summary judgment ruling. (*Id.*) As  
25 a result, the Parties would incur considerably more attorneys’ fees and costs through trial. (*Id.*)

26 The proposed settlement of \$250,000.00 therefore represents a substantial recovery when  
27 compared to the reasonably forecasted recovery of the Class. (*Id.* at ¶ 29.) When considering the risks  
28 of litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to

1 establish liability, and the probability of appeal, it is clear the Settlement amount of \$250,000.00 is  
2 within the “ballpark” of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*)

3 Indeed, the Net Settlement Amount available for settlement payments is approximately  
4 **\$110,316.67** for an estimated Class size of **110 individuals**.<sup>4</sup> (*Id.* at ¶ 28.) As a result, the average  
5 Individual Class Payment is approximately **\$1,002.88** prior to tax withholdings on the wage portion of  
6 payments. (*Id.*) Additionally, it is estimated there are **52 Aggrieved Employees**, which results in an  
7 estimated average of **\$134.62** from the total Individual PAGA Payments of \$7,000.00. (*Id.*) The  
8 estimated **PAGA Pay Period value is \$1.86** based on an estimated **3,765 PAGA Pay Periods** during  
9 the PAGA Period. (*Id.*) The actual amounts to Participating Class Members and Aggrieved Employees  
10 will vary based on each individual’s Workweeks during the Class Period or PAGA Pay Periods during  
11 the PAGA Period, respectively; thus, those who worked more than the average number of Workweeks  
12 or PAGA Pay Periods will receive a benefit greater than the corresponding average estimated amount.  
13 (*Id.*) The high and low range of payments to Class Members will be calculated by the Administrator  
14 following preliminary approval and receipt and processing of the Class Data and will be provided to  
15 the Court in a motion for final approval. (*Id.*)

16 ///

### 17 **3. Class Counsel Have Extensive Experience in Class Action and PAGA** 18 **Litigation**

19 The Settlement negotiations were conducted by highly capable and experienced counsel. (*Id.* at  
20 ¶¶ 34–53.) Class Counsel have a strong record of vigorous and effective advocacy for their clients and  
21 are experienced in handling complex wage and hour class action litigation. (*Id.* at ¶¶ 34-53.) Although  
22 Plaintiff and her counsel were prepared to try the claims alleged in the litigation, they support the  
23 proposed Settlement as being in the best interest of the Class. (*Id.* at ¶¶ 11, 16.)

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24  
25  
26 <sup>4</sup> The Net Settlement Amount is at least \$250,000.00 less the following: \$10,000.00 for the  
27 Class Representative Service Award, \$6,350.00 for the Administration Expenses Payment,  
28 \$20,000.00 for the PAGA Penalties to the LWDA and to Aggrieved Employees, \$83,333.33 for Class  
Counsel’s attorneys’ fees, and up to \$20,000.00 for Class Counsel’s litigation costs. (Settlement, ¶¶  
1.27, 3.)

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

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

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

8           Subject to Court approval, the Settlement Agreement provides for attorneys’ fees payable to  
9 Class Counsel in an amount up to one-third of the Gross Settlement Amount (currently estimated to be  
10 \$83,333.33) for Class Counsel’s attorneys’ fees, plus reimbursement for out-of-pocket litigation costs  
11 not to exceed \$20,000.00. (Settlement, ¶ 3.2.2.) These amounts are disclosed to Class Members in the  
12 proposed Class Notice and are reasonable. (*Id.* at Ex. A.)

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

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

20           Class Counsel will seek an award of attorneys’ fees on the “percentage of recovery/common  
21 fund” theory. (Moon Decl., ¶ 58.) The purpose of this approach is to “spread litigation costs  
22 proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden  
23 alone.” (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of*  
24 *California* (1975) 15 Cal.3d 162, the California Supreme Court stated, “one who expends attorneys’  
25 fees in winning a suit which creates a fund from which others derive benefits, may require those passive  
26 beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in *City and County of*  
27 *San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the  
28

1 common fund doctrine has been applied “consistently in California when an action brought by one  
2 party creates a fund in which other persons[ ] are entitled to share.” (*Id.* at pp. 110–11 [pincite omitted].)

3 The California Supreme Court recently affirmed in *Laffitte v. Robert Half International Inc.*  
4 (2016) 1 Cal.5th 480 that, “when class action litigation establishes a monetary fund for the benefit of  
5 the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund,  
6 the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the  
7 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage  
8 method—including relative ease of calculation, alignment of incentives between counsel and the class,  
9 a better approximation of market conditions in a contingency case, and the encouragement it provides  
10 counsel to seek an early settlement and avoid unnecessarily prolonging the litigation[ ]—convince us  
11 the percentage method is a valuable tool that should not be denied our trial courts.” (*Id.* [internal  
12 citations omitted].) This line of legal authority supports a request for attorneys’ fees based on the  
13 percentage of recovery/common fund method.

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

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

24 Here, Class Counsel request fees equal to one-third of the Gross Settlement Amount, which is  
25 in line with the prevailing guidelines established in California case law and academic literature and is  
26 consistent with awards in California. (*Compare Settlement*, ¶ 3.2.2, with *Chavez v. Netflix, Inc.* (2008)  
27 162 Cal.App.4th 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage method  
28 or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”].)

1 Accordingly, Plaintiff requests the Court preliminarily approve their counsel’s ability to request  
2 attorneys’ fees as negotiated by the Parties.

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

4 Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable  
5 fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(k)(1),  
6 2802(d).) Under these sections, Plaintiff would be permitted to recover her actual attorneys’ fees, even  
7 if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) This Settlement  
8 is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and  
9 resources facing Defendant while at the same time rewarding Class Counsel for their decision to assume  
10 risk by taking on this matter. (*See Moon Decl.*, ¶¶ 59-62.) In fact, prosecution of this action involved  
11 significant financial risk for Class Counsel as they undertook this matter solely on a contingent basis,  
12 with no guarantee of recovery. (*Id.* at ¶¶ 58–63.) Class Counsel have, and will continue to, vigorously  
13 represent the interests of the Class. (*Id.* at ¶ 57.)

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

15 As demonstrated by their past experience in pursuing class actions on behalf of consumers and  
16 employees, Class Counsel possess considerable expertise in litigating class actions. (*Id.* at ¶¶ 34–53,  
17 56.) Class Counsel have been involved as lead counsel or co-counsel in numerous class actions that  
18 resulted in millions in recovery. (*Id.* at ¶¶ 34-53.) Because it is reasonable to compensate Class Counsel  
19 commensurate with their skill, reputation, and experience, the requested fee award is supported here.

20 Class Counsel’s experience in wage and hour class actions was integral in evaluating the  
21 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement.  
22 (*Moon Decl.*, ¶ 56.) Practice in the narrow field of wage and hour litigation requires skill and knowledge  
23 concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of  
24 class action litigation. (*Id.* at ¶ 54.) Based on these and other factors, Class Counsel have frequently  
25 received fee awards of this percentage from the gross recovery for the class. (*See id.* at ¶¶ 38, 43, 48.)  
26 Therefore, the requested fee award is fair, reasonable, and adequate.

1           **D.       The Service Payment to Named Plaintiff Is Reasonable**

2           Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to  
3       compensate them for the expense or risk they have incurred in conferring a benefit on other members  
4       of the class.” (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Courts routinely grant approval of class action  
5       settlement agreements containing enhancements for the class representatives, which are necessary to  
6       provide incentive to represent the class and are appropriate given the benefit the class representatives  
7       help to bring about for the class. (*See Rodriguez v. W. Publ’g Corp.* (9th Cir. 2009) 563 F.3d 948, 958–  
8       59.)

9           Service awards are particularly important to plaintiffs in wage and hour cases because they  
10       promote the important public policies underlying the wage and hour laws. This strong policy is codified  
11       in California Labor Code section 90.5, which provides, “[i]t is the policy of this state to vigorously  
12       enforce minimum labor standards in order to ensure employees are not required or permitted to work  
13       under substandard unlawful conditions . . .” (Lab. Code § 90.5.) Nonetheless, the California Supreme  
14       Court has noted that “retaliation against employees for asserting statutory rights under the Labor Code  
15       is widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.*  
16       (2007) 42 Cal.4th 443, 460–61.) In this context, class representatives should be rewarded for assuming  
17       the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y.  
18       2005) 228 F.R.D. 174, 187.)

19           Under the Settlement here, subject to the Court’s approval, a Class Representative Service  
20       Award will be paid to Plaintiff in an amount up to \$10,000.00. (Settlement, ¶ 3.2.1.) This award is in  
21       recognition of Plaintiff’s services in support of the Action and General Release. (*Id.* at ¶ 1.14.) Plaintiff  
22       is also providing a general release of claims against Defendant, including a waiver of Plaintiff’s rights  
23       under California Civil Code section 1542. (*Id.* at ¶ 5.1.) Plaintiff participated in decisions concerning  
24       this action, assisted in preparation for the full-day mediation session, and provided Class Counsel with  
25       the names and contact information of potential witnesses in this action. (Moon Decl., ¶ 30.) Plaintiff  
26       also provided information and documents relating to her employment by Defendant. (*Id.*; Plaintiff  
27       Decl., ¶¶ 20–22.) The requested award is fair and reasonable, particularly considering the substantial  
28       benefits Plaintiff generated for all Class Members. (Moon Decl., ¶¶ 30–33.)

1 When compared with the amounts awarded in typical class action cases, the amount requested  
2 here is particularly reasonable. A 2006 study examining the average incentive award given to class  
3 action plaintiffs from 1993 to 2002 found that the “average award per class representative was \$15,992  
4 and the median award per class representative was \$4357.” (Eisenberg & Miller, *Incentive Awards to*  
5 *Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L. Rev. 1303, 1307–08.) The same study  
6 found that named plaintiffs in employment discrimination class actions received an average award of  
7 \$69,850 and a median award of \$31,081, while named plaintiffs in other employment class actions  
8 received an average award of \$12,121 and a median award of \$13,059. (*Id.* at p. 1333.) The authors of  
9 the study found that higher awards in employment cases reflected the “courts’ wish to make  
10 representative plaintiffs whole by compensating them for the high costs of their service to the class,  
11 including risks of stigmatization or retaliation on the job.” (*Id.* at p. 1308.)

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

##### 13 **A. Legal Standard**

14 The proposed Settlement Class is well suited for class certification. All of the claims derive  
15 from a core set of alleged violations of California’s wage and hour laws and regulations. (Moon Decl.,  
16 ¶¶ 5-6.) For the reasons set forth more fully below, the Class, for purposes of Settlement, satisfies the  
17 prerequisites for certification under Code of Civil Procedure section 382. (Code Civ. Proc. § 382.)  
18 Section 382 provides that “when the question is one of a common or general interest, of many persons,  
19 or when the parties are numerous, and it is impracticable to bring them all before the court, one or more  
20 may sue or defend for the benefit of all.” (*Id.*) There are two requirements to section 382: “(1) there  
21 must be an ascertainable class[ ]; and (2) there must be a well defined community of interest in the  
22 questions of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow Cab Co.*  
23 (1967) 67 Cal. 2d 695, 704 [internal citations omitted].) To clarify these requirements, the California  
24 Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the community-of-  
25 interest requirement itself embodies three factors: “(1) predominant common questions of law or fact;  
26 (2) class representatives with claims or defenses typical of the class; and (3) class representatives who  
27 can adequately represent the class.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal. 3d 462, 470.)  
28

1 California law and policy favor the fullest and most flexible use of the class action device. (*Id.*  
2 at pp. 469–73.) Indeed, “Courts long have acknowledged the importance of class actions as a means to  
3 prevent a failure of justice in our judicial system” particularly where the rights of consumers are at  
4 issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434.) Any doubt as to the appropriateness of  
5 class treatment should be resolved in favor of certification. (*Richmond, supra*, 29 Cal.3d at pp. 473–  
6 75.)

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

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

9 When determining whether a class is ascertainable, California courts focus on the following  
10 three factors: “(1) the class definition, (2) the size of the class and (3) the means of identifying class  
11 members.” (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, the proposed Class that Plaintiff  
12 seeks to represent is ascertainable because (1) the Class definition is sufficiently precise, (2) the Class  
13 consists of approximately 110 individuals, and (3) Class Members can be readily identified by looking  
14 at Defendant’s records. (Settlement, ¶¶ 1.4, 1.8.) Plaintiff maintains there is an easily ascertainable  
15 Class, defined by objective and precise criteria. (*Id.*) Because Class Members are identified using  
16 specific criteria in the regular business records of Defendant—their employment by Defendant in  
17 California, non-exempt classification, and actual work during the Class Period—the Class is  
18 ascertainable. (*See Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 959–60 [class membership  
19 defined by ownership of product that is the subject of the lawsuit is sufficient to make the class  
20 ascertainable].)

21 “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a class  
22 action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981) 126  
23 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action may be  
24 maintained as a class action even where the parties are numerous and it is in fact practicable to join  
25 them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a class action.”  
26 (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a trust in an  
27 action for removal of the trustees.” (*Id.* [citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574]; *see also*  
28

1 *Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a class of 9 plaintiffs and 35 members].) Therefore,  
2 numerosity is plainly satisfied.

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

4 To satisfy the community of interest requirement, Parties must show (1) common questions of  
5 law and fact that predominate over individual issues, (2) class representatives have claims or defenses  
6 typical of the class, and (3) class representatives adequately represent the class. (*Dunk, supra*, 48  
7 Cal.App.4th at p. 1806.) This inquiry tests whether proposed classes are sufficiently cohesive to  
8 rationally warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987)  
9 191 Cal.App.3d 605, 611–12.)

10 Here, Plaintiff's claims satisfy all three requirements. The employment practices at issue  
11 include whether Defendant: had legally compliant policies and practices to pay employees all minimum  
12 and overtime wages owed; had legally compliant policies and practices to provide employees with and  
13 authorize meal and rest periods; had legally compliant policies to reimburse employees for all necessary  
14 expenditures or losses incurred by employees in direct consequence of the discharge of their duties;  
15 paid all wages to employees during employment and at the time of termination; intentionally failed to  
16 pay all final wages; provided inaccurate itemized wage statements; engaged in unfair business  
17 practices; and violated civil penalty provisions recoverable under PAGA. (Moon Decl., ¶¶ 5-6.)  
18 Plaintiff contends the factual and legal issues are the same for all Class Members, including Plaintiff,  
19 and further, that all Class Members suffered from and seek redress for the same alleged injuries.  
20 (Plaintiff Decl., ¶¶ 3–8.) Considering Class Members would need to prove the same issues of law and  
21 fact to prevail, and their legal remedies are identical, it would be preferable to resolve all claims through  
22 a settlement agreement than to force each Class Member to litigate their own individual claims. Thus,  
23 the Court should grant conditional class certification for settlement purposes because common  
24 questions of law and fact predominate over any individual questions within the Class.

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

26 The typicality requirement does not focus on the individual characteristics or circumstances of  
27 the representative plaintiff compared to those of the remainder of the class, but rather, upon the  
28 typicality of the proposed representative's claims as they relate to the defendant's conduct and

activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 [“The only requirements a re [sic] that common questions of law and fact *predominate* and that the class representative be *similarly* situated” vis-à-vis the class.] [emphasis in original].) A representative plaintiff’s claims are typical of the class if they arise from the same event, practice, or course of conduct, and if the claims rest on the same legal theories. (*Id.*) That is precisely the case here. Plaintiff is a former employee of Defendant; as such, she alleges she was subject to the same policies and practices as other similarly situated employees. (Plaintiff Decl., ¶¶ 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., ¶¶ 34–53.) With their experience, Class Counsel unquestionably are “qualified, experienced and generally able to conduct the proposed litigation.” (*Miller, supra*, 148 Cal.App.3d at p. 874.) 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*,

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

3 **V. THE PROPOSED CLASS NOTICE IS CONSTITUTIONALLY SOUND**

4 **A. The Proposed Class Notice Plan Satisfies Due Process**

5 Class Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,  
6 rule 3.766(e)–(f).) California law vests the Court with broad discretion in fashioning an appropriate  
7 notice program. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 970, 973–74.) There is no statutory or  
8 due process requirement that all class members receive actual notice, but in this matter, the Class  
9 Members will receive direct mailed notice. (Settlement, ¶ 6.4.) As the Court of Appeals has explained,  
10 “[t]he notice given should have a reasonable chance of reaching a substantial percentage of the Class  
11 Members . . .” (*Cartt*, 50 Cal.App.3d at p. 974.) In this case, notice of the proposed Settlement will be  
12 provided by direct mailing, the best possible form of notice under the circumstances. (Settlement, ¶  
13 6.4.)

14 **B. The Class Notice Is Accurate and Informative**

15 The proposed Class Notice should be approved. It will be disseminated through direct U.S. first-  
16 class mail to the current address for each Class Member. (*Id.* at ¶ 6.4.) It informs the Class Members  
17 of the terms of the Settlement and their right to be excluded from the Settlement. (*Id.* at ¶¶ 6.4, 6.13.1,  
18 Ex. A.) And if there are Participating Class Members who wish to object to the proposed Settlement,  
19 they will have the opportunity to submit written objections and/or be heard at the Final Approval  
20 Hearing. (*Id.* at ¶ 6.13.3.)

21 The Class Notice also fulfills the requirement of neutrality in class notices. (Newberg, Newberg  
22 on Class Actions (3rd ed. 1992) § 8.39.) It summarizes the proceedings to date and the terms and  
23 conditions of the Settlement in an informative and coherent manner. (Settlement, Ex. A.) It makes clear  
24 the Settlement does not constitute an admission of liability by Defendant, who denies all liability, and  
25 it recognizes that this Court has not ruled on the merits of the action. (*Id.*) It also states that the final  
26 approval decision has yet to be made, and provides the date, time, and location of the Final Approval  
27 Hearing. (*Id.*) Accordingly, the Class Notice complies with the standards of fairness, completeness, and  
28 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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