

Kane Moon (SBN 249834)
E-mail: kmoon@moonlawgroup.com
Allen Feghali (SBN 301080)
E-mail: afeghali@moonlawgroup.com
Mariam Ghazaryan (SBN 341119)
E-mail: mghazaryan@moonlawgroup.com
Mitchell H. Millet (SBN 356250)
E-mail: mmillet@moonlawgroup.com
MOON LAW GROUP, PC
725 S. Figueroa Street, 31st Floor
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff
Marleny Bautista Ambrocio

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

MARLENY BAUTISTA AMBROCIO,
individually, and on behalf of all others similarly
situated,

Plaintiff,

vs.

FAR WEST BREWING, LLC, a limited liability
company; and DOES 1 through 10, inclusive,

Defendants.

Case No. 25CV125258

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

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

PRELIMINARY APPROVAL HEARING:

Date: October 15, 2026
Time: 1:30 p.m.
Dept.: 18
Judge: Hon. Patrick McKinney
Reserv. ID: 650098656763

Complaint filed: June 3, 2025
FAC Filed: August 12, 2025
Trial Date: Not Set

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

2 PLEASE TAKE NOTICE that on October 15, 2026, at 1:30 p.m. in Department 18 of this Court
3 located at 1221 Oak Street, Oakland, California 94612, pursuant to Code of Civil Procedure section
4 382 and California Rules of Court, rule 3.769 et seq., Plaintiff Marleny Bautista Ambrocio (“Plaintiff”)
5 will, and hereby does, move the Court for an order granting preliminary approval of the proposed class
6 action settlement between Plaintiff and Defendant Far West Brewing, LLC.

7 Specifically, Plaintiff moves the Court for an order:

- 8 1. Granting preliminary approval of the Joint Stipulation of Class and Representative Action
9 Settlement Agreement;
- 10 2. Certifying a Class, for settlement purposes only;
- 11 3. Approving the Class Notice and plan for its distribution;
- 12 4. Appointing Plaintiff as the Class Representative, for settlement purposes only;
- 13 5. Appointing Kane Moon, Allen Feghali, Mariam Ghazaryan, and Mitchell H. Millet of
14 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. Setting a Final Approval Hearing at least 130 days from preliminary approval.

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

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

22 Respectfully submitted,

23 Dated: September 21, 2026

MOON LAW GROUP, PC

24 By: _____

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

1	2.	There Are Many Common Issues of Law and Fact Which Predominate	22
2	3.	Plaintiff’s Claims Are Typical of the Claims of the Settlement Class	22
3	4.	Plaintiff and Her Counsel Meet the Adequacy Requirement	23
4	5.	A Class Action Is Superior to a Multiplicity of Litigation	23
5	V.	THE PROPOSED CLASS NOTICE IS CONSTITUTIONALLY SOUND.....	24
6	A.	The Proposed Notice Plan Satisfies Due Process	24
7	B.	The Class Notice Is Accurate and Informative.....	24
8	VI.	CONCLUSION.....	25

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..... 19

Leyva v. Medline Industries Inc. (9th Cir. 2013) 716 F.3d 510..... 23

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 10

Rodriguez v. West Publishing Corp. (9th Cir. 2009) 563 F.3d 948..... 19

Tyson Foods, Inc. v. Bouaphakeo (2016) 577 U.S. 442 11

Van Vranken v. Atlantic Richfield Co. (N.D. Cal. 1995) 901 F.Supp. 294 17

Vincent v. Hughes Air West, Inc. (9th Cir. 1977) 557 F.2d 759 16

OTHER AUTHORITIES

Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*

(2006) 53 UCLA L. Rev. 1303 20

COURT RULES

California Rules of Court, rule 3.766(e), (f) 24

California Rules of Court, rule 3.769(f) 16

TREATISES

Newberg, *Newberg on Class Actions* (3rd ed. 1992) § 8.39 24

Newberg, *Newberg on Class Actions* (3rd ed. 1992) § 11.51 10

Newberg, *Newberg on Class Actions* (3rd ed. 1992) § 14.03 17

STATE CASES

Cartt v. Superior Court (1975) 50 Cal.App.3d 960..... 24

Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43 17

City and County of San Francisco v. Sweet (1995) 12 Cal.4th 105 16

Classen v. Weller (1983) 145 Cal.App.3d 27 23

1	<i>Clothesrigger, Inc. v. GTE Corp.</i> (1987) 191 Cal.App.3d 605	22
2	<i>Collins v. Rocha</i> (1972) 7 Cal.3d 232.....	21, 22
3	<i>Daar v. Yellow Cab Co.</i> (1967) 67 Cal. 2d 695.....	20
4	<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	9, 10, 11, 22
5	<i>Gentry v. Superior Court</i> (2007) 42 Cal.4th 443	19, 24
6	<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	10
7	<i>Laffitte v. Robert Half International Inc.</i> (2016) 1 Cal.5th 480.....	17
8	<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429	21
9	<i>Lubin v. The Wackenhut Corp.</i> (2016) 5 Cal.App.5th 926	12
10	<i>Mallick v. Superior Court</i> (1979) 89 Cal.App.3d 434	9
11	<i>McGhee v. Bank of America</i> (1976) 60 Cal.App.3d 442	23
12	<i>Miller v. Woods</i> (1983) 148 Cal.App.3d 862.....	21, 23
13	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399	10, 18
14	<i>Neary v. Regents of University of California</i> (1992) 3 Cal.4th 272	9
15	<i>Quinn v. State of California</i> (1975) 15 Cal.3d 162.....	16
16	<i>Richmond v. Dart Industries, Inc.</i> (1981) 29 Cal. 3d 462.....	21
17	<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	21
18	<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25	16
19	<i>Stamburgh v. Superior Court</i> (1976) 62 Cal.App.3d 231.....	10, 24
20	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224.....	23
21	<i>Wilner v. Sunset Life Insurance Co.</i> (2000) 78 Cal.App.4th 952	21
22	STATE STATUTES	
23	California Code of Civil Procedure § 382	20
24	California Labor Code § 90.5	19
25	California Labor Code § 218.5	18
26	California Labor Code § 226	18
27	California Labor Code § 1194	18
28	California Labor Code §§ 2698, <i>et seq.</i>	13

1	California Labor Code § 2699(e)(2)	13
2	California Labor Code § 2699(k)(1)	18
3	California Labor Code § 2802(d)	18

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Marleny Bautista Ambrocio (“Plaintiff” or “Named Plaintiff”) seeks preliminary
4 approval of a proposed \$1,580,000.00 non-reversionary, wage and hour class action settlement (the
5 “Settlement”) with Defendant Far West Brewing, LLC (“Defendant,” and together with Plaintiff, the
6 “Parties”). The Settlement will provide substantial monetary payments to an estimated 733 Class
7 Members who worked an estimated aggregate of approximately 42,000 Workweeks, of which roughly
8 316 are Aggrieved Employees who worked an estimated aggregate of 6,991 PAGA Pay Periods. As set
9 forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under
10 California law. The Settlement was reached after extensive investigation, informal discovery, and
11 negotiations between the Parties. The negotiations were at arm’s-length and were facilitated through a
12 mediation session by an experienced and neutral class action mediator, Brandon McKelvey, Esq.
13 Accordingly, Plaintiff requests the Court preliminarily approve the Settlement, certify the proposed
14 Settlement Class, approve the proposed Class Notice to Class Members, and set a Final Approval
15 Hearing no earlier than 130 days from the date of preliminary approval.

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

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

18 This is a wage and hour class action and representative action for alleged Labor Code violations
19 and claims for civil penalties pursuant to the California Private Attorneys General Act, Labor Code
20 sections 2698, et seq. (“PAGA”). (Declaration of Kane Moon in Support of Plaintiff’s Motion for
21 Preliminary Approval of Class and Representative Action Settlement [“Moon Decl.”], ¶ 2.) Plaintiff
22 seeks to represent all current and former hourly-paid or non-exempt employees of Defendant who
23 worked in California at any time during the period from June 3, 2021 through September 1, 2026,
24 subject to the escalator provision (“Class Period”), which may also include Aggrieved Employees, for
25 various alleged violations of the California Labor Code. (*Id.*) Defendant is a craft brewing company,
26 specializing in beer making, with locations in Berkeley, Corte Madera, Monterey, Napa, Sacramento,
27 San Leandro, San Mateo, and San Ramon. (*Id.*) Plaintiff worked for Defendant from approximately
28 June 2023 to August 2024 as a dishwasher. (Declaration of Plaintiff Marleny Bautista Ambrocio in

1 Support of Approval of Class and Representative Action Settlement [“Plaintiff Decl.”], ¶ 2.)
2 Throughout the time she worked for Defendant, Plaintiff was employed in an hourly-paid, non-exempt
3 position. (*Id.*) Plaintiff contends she and other employees were subjected to the same unlawful wage
4 and hour practices, including failure to compensate for all time worked and failure to provide legally
5 compliant meal periods, rest breaks, and reimbursements. (*Id.* at ¶¶ 3–6.)

6 Plaintiff’s claim for unpaid wages stems from Defendant’s alleged failure to compensate
7 Plaintiff and Class Members for off-the-clock work, and Defendant’s alleged failure to incorporate
8 non-discretionary bonuses or additional compensation into the regular rate of pay for purposes of
9 paying overtime, meal period premiums, and sick pay. (Moon Decl., ¶ 3.) Moreover, Plaintiff brings
10 claims against Defendant for meal and rest period violations, failure to reimburse necessary business
11 expenses, and derivative claims for waiting time penalties, wage statement violations, unfair business
12 practices, and civil penalties under PAGA. (*Id.*)

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

19 On May 26, 2025, Plaintiff gave written notice to the California Labor and Workforce
20 Development Agency (the “LWDA”) of the alleged Labor Code violations, with certified mail service
21 on Defendant, and paid the required filing fee. (*Id.* at ¶ 5, Ex. 2.)

22 On August 12, 2025, Plaintiff filed a First Amended Class Action and Representative Action
23 Complaint (the “Operative Complaint”) which added an additional cause of action for civil penalties
24 pursuant to Labor Code sections 2698, *et seq* (“PAGA”). (*Id.* at ¶ 6.) Plaintiff subsequently submitted
25 a copy to the LWDA in compliance with Labor Code section 2699, subd. (l)(1). (*Id.*) To date, the
26 LWDA has not indicated its intent to investigate the alleged violations or intervene in this Action. (*Id.*)

27 Defendant ardently opposes the merits of this case, denies Plaintiff’s factual allegations, and
28 maintains that Plaintiff faces substantial risk with respect to certifying her claims (for any purpose other

1 than settlement), proving liability for any of the alleged Labor Code violations or recovering any of the
2 penalties sought in connection with her derivative claims. (*Id.* at ¶ 7.) Defendant contends, among other
3 things, that Plaintiff and the Class Members have been paid proper wages and that its written policies
4 provided for legally compliant meal and rest periods. (*Id.*) With respect to Plaintiff’s meal period
5 claims, Defendant asserts a good-faith dispute defense, contending that any failure to provide meal
6 periods by the end of the fifth hour resulted from an honest mistake arising from a 2018 internal
7 memorandum issued by a non-managerial employee, that ownership was unaware of the deviation, and
8 that Defendant’s handbook contained the correct meal period policy. (*Id.*) Furthermore, to the extent
9 that Plaintiff received wage statements that were allegedly inaccurate, Defendant maintains that any
10 alleged violations were not knowing and intentional and disputes that Plaintiff suffered recoverable
11 injury or damages as a result. (*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.”].)

15 With respect to Plaintiff’s claim for waiting time penalties, Defendant alleged that its good-
16 faith belief that it paid all wages precluded the imposition of waiting time penalties since Plaintiff could
17 not prove that Defendant’s alleged failure to pay all final wages at the time of separation was
18 “willful.” (Moon Decl., ¶ 8; *see, e.g., Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012) No. ED CV
19 11–298 GHK (DTBx), 2012 WL 9506073, *5.) For these reasons, Defendant claimed that it did not
20 engage in any unfair business practices and denied liability under PAGA. (Moon Decl., ¶ 8.) Defendant
21 also disputes that Plaintiff’s claims are appropriate for class certification or other representative
22 treatment and reserves the right to contest certification of any class for any purpose other than
23 settlement. (*Id.*)

24 **B. Discovery and Investigation**

25 Following the filing of the Operative Complaint, the Parties met and conferred regarding an
26 agreement to mediate the claims. (*Id.* at ¶ 9.) In preparation for mediation, the Parties agreed to a
27 protocol for an informal exchange of documents and information before mediation. (*Id.*) Prior to
28 mediation, Plaintiff obtained from Defendant, through informal discovery, documents and data that

1 were necessary and helpful to evaluate the claims asserted in this action. (*Id.*) Defendant produced time
2 and pay records covering substantial portions of the Class Period, including timekeeping data from
3 June 3, 2021 through April 30, 2025 and payroll data from June 15, 2021 through May 15, 2025, as
4 well as documents relating to Defendant’s policies, practices, and procedures regarding reimbursement
5 of business expenses, payment of non-exempt employees for all hours worked, meal and rest periods,
6 and other payroll, timekeeping, and operational policies. (*Id.*) Defendant also provided information
7 regarding the estimated number of current and formerly employed Class Members, Aggrieved
8 Employees, Workweeks, and PAGA Pay Periods (*Id.*)

9 In preparation for mediation, Class Counsel reviewed and analyzed all the information
10 Defendant provided, including the time and pay records and documents regarding Defendant’s wage
11 and hour policies. (*Id.* at ¶ 10.) Class Counsel retained a statistics expert to analyze the records and
12 prepare a damage analysis prior to the mediation. (*Id.*) The timekeeping records analyzed contained
13 38,420 actual shifts worked (representing approximately 26% of all shifts during the Class Period),
14 which allowed Plaintiff’s expert to prepare an analysis with a reasonable degree of certainty. (*Id.*) In
15 conjunction with their extensive factual investigation, Class Counsel also investigated the applicable
16 law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly, Class Counsel was
17 able to evaluate the probability of class certification, success on the merits, and Defendant’s maximum
18 and realistic monetary exposure for all claims. (*Id.*) Thus, Plaintiff’s and her Counsel’s familiarity with
19 the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in
20 negotiating the Settlement. (*Id.*)

21 C. Settlement Negotiations

22 On March 4, 2026, the Parties participated in a private mediation before Brandon McKelvey,
23 Esq., an experienced wage and hour mediator. (*Id.* at ¶ 11.) The negotiations were at arm’s length and,
24 although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the
25 mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared
26 to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) Through
27 extended settlement discussions regarding the strengths and weaknesses of Plaintiff’s claims and
28 Defendant’s defenses, the Parties reached a settlement. The material terms of the settlement are set out

1 in the Joint Stipulation of Class and Representative Action Settlement Agreement. (*Id.*, Ex. 1 [the
2 “Settlement”].)

3 Class Counsel have conducted a thorough investigation into the facts of this case. (*Id.* at ¶ 18.)
4 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, the risk of not certifying the Class, appellate risk, and the defenses that
8 Defendant may assert both to certification and on the merits, the Settlement is in the best interest of the
9 Settlement Class. (*Id.*; *see also id.* at ¶¶ 20–37.) **Indeed, the \$1,580,000.00 gross settlement figure**
10 **represents roughly 96% of the realistic recovery estimated to be \$1,646,330.53.** (*Id.* at ¶ 38.)

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

12 Under the Settlement, Defendant will pay a non-reversionary, Gross Settlement Amount of *no*
13 *less than* \$1,580,000.00 to resolve this action, subject to increase pursuant to the Escalator Clause.
14 (Settlement, ¶ 3.0.) The key terms include:

15 1. Class and Class Period: The proposed Class for purposes of the Settlement contains
16 approximately 733 individuals and is defined as: all current and former hourly-paid or non-exempt
17 employees of Far West Brewing, LLC in California employed during the Class Period, which for the
18 avoidance of doubt may also include Aggrieved Employees. (Settlement, ¶ 1.3; Moon Decl., ¶ 43.) The
19 “Class Period” is the period from June 3, 2021 through September 1, 2026. (Settlement, ¶ 1.11.)

20 2. Aggrieved Employees and PAGA Period: There are an estimated 316 Aggrieved
21 Employees, defined as: all current and former hourly-paid or non-exempt employees of Far West
22 Brewing, LLC in California employed during the PAGA Period. (Settlement, ¶ 1.31; Moon Decl., ¶
23 37.) The “PAGA Period” is the period from May 26, 2024 through September 1, 2026. (Settlement, ¶
24 1.29.) Aggrieved Employees collectively worked an estimated 6,991 PAGA Pay Periods. (Moon Decl.,
25 ¶ 37.)

26 3. Non-reversionary Gross Settlement Amount: This amount is \$1,580,000.00, subject to a
27 potential increase under the escalator clause, and excludes Defendant’s employer-side payroll taxes on
28 the Wage Portions of the Individual Class Payments, which Defendant will pay separately. (Settlement,

¶¶ 1.20, 3.0, 7.0.) No portion of the Gross Settlement Amount will revert to Defendant. (Settlement, ¶ 3.0.) Any amounts provided under the Settlement but not approved by the Court will remain in or be allocated to the Net Settlement Amount for distribution to Participating Class Members as provided by the Settlement. (See Settlement, ¶¶ 3.1.1–3.1.5.)

4. Escalator Clause: Defendant represented at the time of mediation that there were approximately 42,000 Workweeks Class Members worked during the Class Period. (Settlement, ¶ 7.0; Moon Decl., ¶ 19.) Accordingly, should the actual number of Workweeks during the Class Period increase by more than ten percent (10%) (i.e., exceed 46,200 Workweeks), then the Gross Settlement Amount shall increase proportionally by the amount by which the number of Workweeks exceeds the 10% threshold (i.e., if there is an 11% increase in the number of Workweeks during the Class Period, Defendant will increase the Gross Settlement Amount by 1%). (Settlement, ¶ 7.0; Moon Decl., ¶ 38.)

5. Net Settlement Amount: “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative Service Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments. (Settlement, ¶ 1.26.) The Net Settlement Amount is presently estimated to be no less than \$894,833.33. (Moon Decl., ¶ 43.)

6. Individual PAGA Payment: “Individual PAGA Payment” means an Aggrieved Employee’s pro rata share of 35% of the PAGA Settlement calculated according to the number of PAGA Pay Periods he or she worked during the PAGA Period and calculated solely and exclusively to effectuate Settlement of this Action. (Settlement, ¶ 1.22.) The Administrator will calculate each Individual PAGA Payment by dividing the Aggrieved Employees’ \$35,000.00 share of the PAGA Penalties by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and multiplying the result by each Aggrieved Employee’s PAGA Pay Periods. (*Id.* at ¶ 3.1.5.1.)

7. Individual Class Payment: “Individual Class Payment” means a Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of

1 Workweeks he or she worked during the Class Period, calculated solely and exclusively to effectuate
2 Settlement of this Action. (*Id.* at ¶ 1.21.) Each Individual Class Payment will be calculated by dividing
3 the Net Settlement Amount by the total number of Workweeks worked by all Participating Class
4 Members during the Class Period and multiplying the result by each Participating Class Member's
5 Workweeks. (*Id.* at ¶ 3.1.4; Moon Decl., ¶ 13.)

6 8. Tax Treatment: Twenty percent (20%) of each Participating Class Member's Individual
7 Class Payment will be allocated to settlement of wage claims (the "Wage Portion"), subject to tax
8 withholding and reported on an IRS W-2 Form. (*Id.* at ¶ 3.1.4.1.) Eighty percent (80%) of each
9 Participating Class Member's Individual Class Payment will be allocated to settlement of claims for
10 interest and penalties (the "Non-Wage Portion"), will not be subject to wage withholdings, and will be
11 reported on IRS 1099 Forms. (*Id.*) Aggrieved Employees assume full responsibility and liability for
12 any taxes owed on their Individual PAGA Payments. (*Id.* at ¶ 3.1.5.1.)

13 9. Administrator and Costs: "Administrator" means Phoenix Class Action Administration
14 Solutions, the neutral entity the Parties have agreed to appoint to administer the Settlement. (*Id.* at ¶
15 1.1.) The Parties mutually agreed upon Phoenix Class Action Administration Solutions as the neutral
16 entity to administer the Settlement, with administration costs payable from the Gross Settlement
17 Amount up to \$11,000.00. (*Id.* at ¶¶ 3.1.3, 6.0; Moon Decl., ¶ 16.) At this time, the Administrator
18 estimates costs will be \$11,000.00. (Moon Decl., ¶ 16, Ex. 5.)

19 10. Released Parties: "Released Parties" means Defendant Far West Brewing, LLC, and each
20 of its former, present, and/or future directors, officers, shareholders, owners, members, attorneys,
21 insurers, predecessors, successors, assigns, parents, subsidiaries, affiliates, agents, and any other
22 entities or persons acting by, through, under, or in concert with any of them that could be considered
23 to have jointly employed the Settlement Class Members or PAGA Group (including, without limitation,
24 any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future
25 officers, directors and employees)." (*Id.* at ¶ 1.40.)

26 11. Release by Participating Class Member. All Participating Class Members, on behalf of
27 themselves and their respective former and present spouses, representatives, agents, attorneys, heirs,
28 administrators, successors, and assigns, fully and finally release and discharge the Released Parties

1 from any and all claims, debts, liabilities, demands, obligations, penalties, costs, expenses, attorney's
2 fees, damages, and causes of action that were alleged or that reasonably could have been alleged based
3 on the facts alleged in the Operative Complaint arising during the Class Period. This release includes,
4 without limitation, a release of all claims alleged in the Operative Complaint for alleged failure to pay
5 minimum wages, failure to pay overtime compensation, failure to provide meal periods, failure to
6 authorize and permit rest breaks, failure to indemnify necessary business expenses, failure to pay all
7 unpaid wages at termination, failure to provide accurate itemized wage statements, violation of
8 California Business and Professions Code §§ 17200, *et seq.*, and statutory waiting time penalties based
9 on the foregoing (collectively, the 'Released Class Claims'). (*Id.* at ¶ 5.1.)

10 12. Release by Aggrieved Employees: All Aggrieved Employees, on behalf of themselves and
11 their respective former and present spouses, representatives, agents, attorneys, heirs, administrators,
12 successors, and assigns fully and finally release and discharge the Released Parties from any and all
13 claims for civil penalties, and attorneys' fees and costs, under PAGA that were alleged or that
14 reasonably could have been alleged based on the facts alleged in the Operative Complaint or Plaintiff's
15 PAGA Notice, including, but not limited to, failure to pay minimum wages, failure to pay overtime
16 compensation, failure to provide meal periods, failure to authorize and permit rest breaks, failure to
17 indemnify necessary business expenses, failure to pay all unpaid wages at termination, and failure to
18 provide accurate itemized wage statements (collectively, the 'Released PAGA Claims'), arising during
19 the PAGA Period. (*Id.* at ¶ 5.2).

20 13. Uncashed Settlement Checks: It is expressly understood and agreed that the checks for the
21 Individual Class Payments and Individual PAGA Payments will become void and no longer available
22 if not cashed within one hundred and eighty (180) calendar days after mailing. (Settlement, ¶ 4.1.1.)
23 For any Class Member whose Individual Class Payment check or any Aggrieved Employee whose
24 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall
25 transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund
26 in the name of the Class Member or Aggrieved Employee, thereby leaving no unpaid residue in
27 accordance with Code of Civil Procedure section 384, subdivision (b). (*Id.* at ¶ 4.1.3.)

1 14. Class Notice: The proposed Class Notice sets forth, in plain terms, a statement of the case,
2 the terms of the Settlement, the approximate amounts of attorneys’ fees, costs, PAGA penalties, and
3 the Class Representative Service Payment being sought, an explanation of how the Individual Class
4 Payments and Individual PAGA Payments are calculated, and the Final Approval Hearing information.
5 (Settlement, Ex. A.) Class Members will be notified of the proposed Settlement by first-class United
6 States Postal Service mail in English and Spanish. (*Id.* at ¶¶ 1.10, 6.3.) Before mailing the Class Notices,
7 the Administrator will update Class Member addresses using the National Change of Address database
8 and will re-mail Class Notices returned as undeliverable in accordance with the procedures set forth in
9 the Settlement. (*Id.* at ¶¶ 1.9, 6.3–6.4.)

10 15. Procedure for Disputing Workweeks and/or PAGA Pay Periods, Opting Out, or Objecting:
11 The Class Notice explains the procedure under which a Class Member and/or Aggrieved Employee can
12 challenge the number of Workweeks and/or PAGA Pay Periods allocated to them. (Settlement, ¶ 6.12.2,
13 Ex. A.) Additionally, the Class Notice explains how Class Members may, should they choose to do so,
14 request exclusion from the Class Settlement or object to the Settlement. (*Id.* at ¶¶ 6.12.1, 6.12.3, Ex.
15 A.) Class Members generally have forty-five (45) calendar days after the Administrator mails the Class
16 Notice, plus an additional ten (10) calendar days for Class Members whose Class Notice is re-mailed,
17 to exercise these options. (*Id.* at ¶¶ 6.12.1–6.12.3.)

18 16. Funding: Within fourteen (14) days of the Effective Date, Defendant shall remit to the
19 Administrator: (i) the Gross Settlement Amount of \$1,580,000.00, subject to increase pursuant to the
20 Escalator Clause; and (ii) all employer payroll taxes owed on the Wage Portions of the Individual Class
21 Payments. (Settlement, ¶¶ 3.0, 4.0, 7.0.)

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

23 The law favors the settlement of lawsuits, particularly in class actions and other complex cases.
24 (*See, e.g., Neary v. Regents of Univ. of Cal.* (1992) 3 Cal.4th 272, 277–81.) To prevent fraud, collusion,
25 or unfairness to the class, the settlement of a class action requires court approval. (*Dunk v. Ford Motor*
26 *Co.* (1996) 48 Cal.App.4th 1794, 1800–01 [citing authority omitted].) To approve a settlement, the
27 Court must find “the settlement is fair, adequate, and reasonable.” (*Id.*) This Court has wide discretion
28 in making this determination. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness,

adequacy, and reasonableness are presumed, as here, when: “(1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Dunk*, 48 Cal.App.4th at p. 1802 [citing Newberg, Newberg on Class Actions (3rd ed. 1992) § 11.41].)

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

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

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

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

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

1 the plaintiff might have received more if the case had been fully litigated is no reason not to approve
2 the settlement.”].) Thus, there is a presumption here that negotiations were conducted in good faith.

3 The proposed Settlement at issue was reached following extensive negotiations and discussions
4 regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses with an
5 experienced and neutral class action mediator. (Moon Decl., ¶ 11.) At mediation, the Parties engaged
6 in intensive settlement discussions during which they debated their respective positions and exchanged
7 views regarding the strengths and weaknesses of the alleged claims. (*Id.*) With the assistance of the
8 mediator, the Parties were able to resolve the Action. (*Id.*)

9 Class Counsel also performed an extensive investigation into the facts, claims, and defenses at
10 issue, including by reviewing the governing law, analyzing Defendant’s written policies and sample of
11 time and pay data, and retaining a statistics expert to prepare a damage analysis regarding Defendant’s
12 potential liability. (*Id.* at ¶¶ 9-10.) In preparation for mediation, the Parties agreed to a protocol for an
13 informal exchange of extensive documents and information before mediation. (*Id.* at ¶ 9.) Plaintiff
14 obtained from Defendant, through informal discovery, documents and data that were necessary and
15 helpful to evaluate the claims asserted in this action. (*Id.*)

16 Courts typically assess the status of discovery in determining whether a class action settlement
17 agreement is fair, reasonable, and adequate. (*Dunk, supra*, 48 Cal.App.4th at p. 1801.) As discussed
18 above, the Parties engaged in extensive discovery prior to reaching a settlement. (Moon Decl., ¶¶ 9-
19 10.) Prior to the mediation, Defendant produced a sample of time and payroll records for the relevant
20 time period. (*Id.* at ¶ 10.) The Parties made efforts to ensure the sample included sufficient records of
21 the Class Members to ensure they could analyze the claims of the Class in a representative fashion.
22 (*Id.*)

23 Plaintiff contends that a sampling of records is statistically significant and reliable. (*See, e.g.,*
24 *Tyson Foods, Inc. v. Bouaphakeo* (2016) 577 U.S. 442 [holding statistical evidence was admissible to
25 prove liability and damages across a class, thereby allowing it to support class certification].) The
26 timekeeping data and payroll data produced for mediation were generated from uniform timekeeping
27 and payroll systems, which allowed Plaintiff’s expert to extrapolate his findings with confidence.
28 (Moon Decl., ¶ 10.) The employees in the sample were also subject to the same wage and hour policies

1 and procedures (e.g., non-exempt). (*See id.* at ¶¶ 9-10.) Given these circumstances, the sample can be
2 probative as to the experiences of all Settlement Class Members. (*See Lubin v. The Wackenhut Corp.*
3 (2016) 5 Cal.App.5th 926, 938.)

4 Defendant also provided information regarding the estimated number of current and formerly
5 employed Class Members, Aggrieved Employees, Workweeks, and PAGA Pay Periods. (Moon Decl.,
6 ¶ 9.) This extensive discovery and investigation allowed Plaintiff’s Counsel to perform a
7 comprehensive damages analysis and estimate Defendant’s potential liability. (*Id.* at ¶ 11.)

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

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

17 Based on Class Counsel’s review of the time, payroll, and additional data provided by
18 Defendant, on Plaintiff’s expert’s analysis of the sample records provided by Defendant, and on
19 information from Plaintiff, Class Counsel evaluated the estimated maximum and risk-adjusted
20 exposure that Defendant faced. (Moon Decl., ¶ 19.) Defendant represented at the time of mediation that
21 there were approximately 42,000 Workweeks Class Members worked during the Class Period. (*Id.*;
22 Settlement, § 7.0.) Additionally, there are an estimated: 733 Class Members, 337 former employees
23 falling within the three-year statute of limitations (“SOL”) period for waiting time penalties, 316
24 employees falling within the one-year SOL period for inaccurate wage statement penalties and PAGA
25 penalties, and 6,991 PAGA Pay Periods. (Moon Decl., ¶ 19.) Based on the information provided at
26 mediation, Defendant’s *realistic exposure* (adjusted for risks at certification and proof on the merits)
27 for the alleged claims, including penalties, is estimated to be **\$1,646,330.53**. (*Id.* at ¶¶ 19, 36.) This
28 amount was calculated as follows: **\$57,576.26** (90% discount) for the off-the-clock work claim;

1 **\$1,482.00** (70% discount) for the regular rate of pay claim; **\$1,280,966.90** (50% discount) for the meal
2 period claim; **\$154,486.12** (90% discount) for the rest period claim; **\$11,482.00** (90% discount) for the
3 unreimbursed business expenses claim; **\$71,217.25** (95% discount) for the waiting time penalties claim;
4 **\$34,165.00** (95% discount) for the wage statement claim; and **\$34,955.00** (95% discount) for the PAGA
5 penalties claim. (*Id.* at ¶¶ 19, 22–36.) The foregoing discounts were based on the evidence presented
6 and arguments made during arm’s-length settlement negotiations and account for the risks of prevailing
7 at class certification and on the merits. (*Id.* at ¶¶ 11, 19–36.) **The \$1,580,000.00 gross settlement**
8 **figure represents roughly 96% of the total realistic recovery.** (*Id.* at ¶ 36.) This is an excellent result
9 for the Class, particularly because, under the Settlement, Class Members will receive timely and
10 guaranteed relief, avoiding the risk of not being able to recover anything. (*Id.*)

11 With regards to the PAGA claims, Plaintiff and her Counsel believe the Settlement is a fair and
12 reasonable resolution that satisfies PAGA’s dual statutory purposes of deterrence and punishment, on
13 the one hand, and providing Aggrieved Employees with genuine and meaningful relief, on the other.
14 (Moon Decl., ¶ 37; Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendant has had to hire
15 legal counsel, engage in informal discovery, and participate in mediation. Defendant is also now having
16 to pay civil penalties to the LWDA under the Settlement, assuming final settlement approval is granted.
17 (Settlement, ¶ 3.1.5.) Not including its own attorneys’ fees and costs as well as the employer’s share of
18 payroll taxes, Defendant will pay no less than \$1,580,000.00 to resolve this matter—of which
19 \$100,000.00 is allocated toward the PAGA claims and will be distributed, in compliance with Labor
20 Code section 2699, as 65% (\$65,000.00) to the LWDA and 35% (\$35,000.00) to Aggrieved Employees.
21 (Moon Decl., ¶ 37.) Further, the \$100,000.00 amount allocated for the Released PAGA Claims is
22 greater than the total realistic recovery for the alleged PAGA claims (\$34,955.00). (*Id.*) Moreover,
23 Class Counsel are of the opinion that because the issues here are fairly contested, there is a possibility
24 of the Court not awarding the PAGA penalties even if Plaintiff prevailed on the merits due to the largely
25 discretionary nature of awarding PAGA penalties. (*Id.*) Indeed, under Labor Code section 2699,
26 subdivision (e)(2), a Court can reduce PAGA penalties “if, based on the facts and circumstances of the
27 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
28 confiscatory.” (Lab. Code § 2699(e)(2).) In other words, were this matter to go to trial, any award

1 granted would be at the discretion of the Court and subject to a substantial reduction. (Moon Decl., ¶
2 37.)

3 While Plaintiff is confident in the merits of her claims, a legitimate controversy exists as to each
4 cause of action. (*Id.* at ¶ 38.) Plaintiff also recognizes that proving the amounts of wages owed to each
5 Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id.*) The Settlement
6 obviates the significant risk that this Court may deny certification of all or some of Plaintiff's claims.
7 (*Id.* at ¶ 39.) Furthermore, even if Plaintiff was able to pursue her claims on a class-wide basis and
8 obtain certification of all or some of the claims, continued litigation would be expensive, involving a
9 trial and possible appeals, and would substantially delay and reduce any recovery by the Class. (*Id.*)
10 This Settlement avoids the risks, burdens, and the accompanying expense of further litigation. (*Id.* at ¶
11 40.) Although the Parties have engaged in a significant amount of investigation, informal discovery,
12 and class-wide data analysis, they have not conducted extensive formal discovery. (*Id.*) Moreover,
13 preparation for class certification and a trial would remain for the Parties as well as the prospect of
14 appeals in the wake of a disputed class certification ruling for Plaintiff and/or any summary judgment
15 ruling. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through
16 trial. (*Id.*)

17 The Net Settlement Amount available for settlement payments is estimated to be *no less than*
18 **\$894,833.33** for an estimated Settlement Class of **733 individuals**.¹ (Settlement, ¶¶ 1.26, 3.1.) As a
19 result, a Participating Class Member will receive an average benefit of approximately **\$1,220.78**, prior
20 to tax withholdings on the wage portion of payments. (Moon Decl., ¶ 41.) Considering Class Members'
21 average rate is \$21.94, the average benefit is roughly **55.6 hours of work**. (*Id.*) The Net Settlement
22 Amount results in **an estimated Workweek value of roughly \$21.31** for the currently estimated
23 **42,000 Workweeks**. (*Id.*) Additionally, it is currently estimated there are **316 Aggrieved Employees**
24 who will receive an estimated average of approximately **\$110.76** from their \$35,000.00 total share of
25

26
27 ¹ The Net Settlement Amount is at least \$1,580,000.00 less the following: \$100,000.00 for the
28 PAGA Penalties, \$526,666.67 for Class Counsel Attorneys' Fees, \$40,000.00 for Class Counsel Costs,
\$11,000.00 for Administration Expenses Payment, and \$7,500.00 for the Class Representative Service
Payment to Plaintiff. (Settlement, ¶¶ 1.26, 3.1.)

1 the PAGA Penalties, which results in an estimated **pay period value of \$5.01** based on the currently
2 estimated **6,991 PAGA Pay Periods**. (*Id.*) The actual amounts to Participating Class Members and
3 Aggrieved Employees will vary based on each individual’s duration of work during the Class Period
4 or PAGA Period, respectively; thus, those who worked longer will receive a gross benefit greater than
5 the average estimated amount. (*Id.*) The high and low range of payments to Class Members will be
6 calculated by the Administrator following preliminary approval and receipt and processing of the Class
7 List and will be provided to the Court in a motion for final approval. (*Id.*)

8 The proposed Settlement of \$1,580,000.00 therefore represents a substantial recovery when
9 compared to Plaintiff’s reasonably forecasted recovery. (*Id.* at ¶ 44.) When considering the risks of
10 litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to establish
11 liability, and the probability of appeal, it is clear the Settlement amount of \$1,580,000.00 is within the
12 “ballpark” of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*)

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

15 The Settlement negotiations were conducted by highly capable counsel with considerable
16 experience and demonstrated competence with litigating wage and hour class actions. (*Id.* at ¶¶ 47–66.)
17 Class Counsel have a strong record of vigorous and effective advocacy for their clients and are
18 experienced in handling complex wage and hour class action litigation. (*Id.*) The experience of Class
19 Counsel was helpful in assessing the reasonableness of the Settlement at issue here, and from this
20 experience they concluded that this litigation could not have been settled on better terms than provided
21 under the Settlement. (Moon Decl., ¶ 69.) Although Plaintiff and her counsel were prepared to litigate
22 the claims alleged in the Action through trial and appeal if a settlement had not been reached, they
23 support the proposed Settlement as being in the best interest of the Class considering all known facts
24 and circumstances, the risk of significant delay, trial risk, the risk of not certifying the Class, appellate
25 risk, and the defenses that Defendant may assert both to certification and on the merits. (*Id.* at ¶¶ 11,
26 18, 36–40.)

1 **B. The Proposed Class Notice 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 the Court’s approval, the Settlement provides a fee application not to exceed one-
9 third of the GSA for Class Counsel’s attorneys’ fees, plus reimbursement for actual litigation costs not
10 to exceed \$40,000.00. (Settlement, ¶ 3.1.2.) These amounts are disclosed to Settlement Class Members
11 in the proposed Class Notice and are reasonable. (*Id.* at Ex. A.)

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

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

19 Plaintiff’s Counsel will seek an award of attorneys’ fees on the “percentage of
20 recovery/common fund” theory. (Moon Decl., ¶ 71.) The purpose of this approach is to “spread
21 litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear
22 the entire burden alone.” (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn*
23 *v. State of California* (1975) 15 Cal.3d 162, the California Supreme Court stated, “one who expends
24 attorneys’ fees in winning a suit which creates a fund from which others derive benefits, may require
25 those passive beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in *City*
26 *and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized
27 that the common fund doctrine has been applied “consistently in California when an action brought by
28

one party creates a fund in which other persons[] are entitled to share.” (*Id.* at pp. 110–11 [pincite omitted].)

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

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

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

Here, Class Counsel will request fees equal to one-third of the Gross Settlement Amount, which is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. (*Compare Settlement*, ¶ 3.1.2, with *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the

recovery.”].) Accordingly, Plaintiff requests the Court preliminarily approve her counsel’s ability to request attorneys’ fees as negotiated by the Parties.

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

Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(k)(1), 2802(d).) Under these sections, Plaintiff would be permitted to recover her actual attorneys’ fees, even if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) This Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Class Counsel for their decision to assume risk by taking on this matter. (*See* Moon Decl., ¶¶ 39-40.) In fact, prosecution of this action involved significant financial risk for Class Counsel. (*Id.* at ¶¶ 67-70.) Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.* at ¶¶ 67-70.) Once Plaintiff’s Counsel undertook this litigation on behalf of the Class, they committed to pursue it to its conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶ 68.)

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

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possess considerable expertise in litigating class actions. (*Id.* at ¶¶ 47-66.) Class Counsel have been involved as lead counsel or co-counsel in numerous class actions that resulted in millions in recovery. (*Id.*) Class Counsel’s experience in wage and hour litigation was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. (*Id.* at ¶ 67.) Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal) as well as the procedural law of class action litigation. (*Id.*) Based on these and other factors, Class Counsel have frequently received fee awards of this percentage from the gross recovery for the class. (*See id.* at ¶¶ 51, 56, 61.)

D. The Service Payment to Plaintiff Is Reasonable

Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Courts routinely grant approval of class action

1 settlement agreements containing enhancements for the class representatives, which are necessary to
2 provide incentive to represent the class and are appropriate given the benefit the class representatives
3 help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 958–
4 59.) Service awards are particularly important to plaintiffs in wage and hour cases because they promote
5 the important public policies underlying the wage and hour laws. This strong policy is codified in
6 California Labor Code section 90.5, which provides, “[i]t is the policy of this state to vigorously enforce
7 minimum labor standards in order to ensure employees are not required or permitted to work under
8 substandard unlawful conditions . . .” (Lab. Code § 90.5.) Nonetheless, the California Supreme Court
9 has noted that “retaliation against employees for asserting statutory rights under the Labor Code is
10 widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.*
11 (2007) 42 Cal.4th 443, 460–61.) In this context, class representatives should be rewarded for assuming
12 the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y.
13 2005) 228 F.R.D. 174, 187.)

14 Under the Settlement here, subject to the Court’s approval, Defendant agrees to pay a Class
15 Representative Service Payment of up to \$7,500.00 to Plaintiff, which will be in addition to any
16 Individual Class Payment and Individual PAGA Payment she is entitled to receive under the
17 Settlement. (Settlement, ¶ 3.1.1; Moon Decl., ¶ 15; Plaintiff Decl., ¶ 13.) The Class Representative
18 Service Payment is fair compensation to Plaintiff for initiating and helping to prosecute this case, for
19 her effort and time, for the substantial risks she undertook in agreeing to serve as the named Plaintiff,
20 including the potential negative impact on her future employability, and for providing a broader general
21 release of claims against Defendant and the Released Parties. (Plaintiff Decl., ¶ 14.) Plaintiff has
22 devoted substantial time and effort assisting counsel in the case, including providing information
23 regarding her hours worked, duties performed, meal and rest periods, potential witnesses, and
24 documents relating to her employment, participating in decisions concerning the Action, and assisting
25 in preparation for mediation. (Moon Decl., ¶ 43.) In total, Plaintiff estimates that she has spent
26 approximately 30 hours of her personal time assisting with this Action. (Plaintiff Decl., ¶ 15.) In
27 addition, Plaintiff has agreed to a general release of claims against Defendant, including claims under
28 the California Fair Employment and Housing Act that are not alleged in the Action, and a waiver of

1 her rights under Civil Code section 1542. (Settlement, ¶¶ 5.0–5.0.3; Plaintiff Decl., ¶ 16.) The requested
2 Class Representative Service Payment is fair and reasonable, particularly considering Plaintiff’s efforts,
3 the risks she undertook, and the substantial benefits generated for the Class. (Moon Decl., ¶¶ 43–45.)

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

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

16 **A. Legal Standard**

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

1 (2) class representatives with claims or defenses typical of the class; and (3) class representatives who
2 can adequately represent the class.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal. 3d 462, 470.)

3 California law and policy favor the fullest and most flexible use of the class action device. (*Id.*
4 at pp. 469–73.) Indeed, “Courts long have acknowledged the importance of class actions as a means to
5 prevent a failure of justice in our judicial system” particularly where the rights of consumers are at
6 issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 434.) Any doubt as to the appropriateness of
7 class treatment should be resolved in favor of certification. (*Richmond, supra*, 29 Cal.3d at pp. 473–
8 75.)

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

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

11 When determining whether a class is ascertainable, California courts focus on the following
12 three factors: “(1) the class definition, (2) the size of the class and (3) the means of identifying class
13 members.” (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, Plaintiff maintains there is an
14 easily ascertainable Class, defined by objective and precise criteria. (Settlement, ¶¶ 1.3, 1.11.) The
15 proposed Class that Plaintiff seeks to represent is ascertainable because (1) the Class definition is
16 sufficiently precise, (2) the Class consists of approximately 733 individuals, and (3) the Class Members
17 can be readily identified by looking at Defendant’s records. (*Id.*) Because Class Members are identified
18 using specific criteria in the regular business records of Defendant—their employment by Defendant
19 in California, non-exempt classification, and actual work during the Class Period—the Class is
20 ascertainable. (*See Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 959–60 [class membership
21 defined by ownership of product that is the subject of the lawsuit is sufficient to make the class
22 ascertainable].) “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties
23 to a class action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981)
24 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action may
25 be maintained as a class action even where the parties are numerous and it is in fact practicable to join
26 them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a class action.”
27 (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a trust in an
28 action for removal of the trustees.” (*Id.* [citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574]; *see also*

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: provided legally compliant meal periods to the Settlement Class, or paid
12 meal period premiums in lieu thereof; provided legally compliant paid rest periods to the Class, or paid
13 rest period premiums in lieu thereof; paid proper overtime compensation to the Class; timely paid final
14 compensation upon separation of employment to Class Members who are former employees; timely
15 paid wages to Class Members throughout Class Members' employment; provided accurate itemized
16 wage statements to the Class; engaged in unlawful or unfair business practices affecting the Class in
17 violation of California Business and Professions Code §§ 17200-17208; and reimbursed Class
18 Members for all reasonably incurred business expenses. (Moon Decl., ¶¶ 3–4.) Plaintiff contends the
19 factual and legal issues are the same for all Class Members, and further that all Class Members suffered
20 from and seek redress for the same alleged injuries. (Plaintiff Decl., ¶¶ 2-5.) Considering Class
21 Members would need to prove the same issues of law and fact to prevail, and their legal remedies are
22 identical, it would be preferable to resolve all claims through a settlement than to force each Class
23 Member to litigate their own individual claims. Thus, the Court should grant conditional class
24 certification for settlement purposes because common questions of law and fact predominate over any
25 individual questions within the Class.

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

27 The typicality requirement does not focus on the individual characteristics or circumstances of
28 the representative plaintiff compared to those of the remainder of the class, but rather, upon the

1 typicality of the proposed representative’s claims as they relate to the defendant’s conduct and
2 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 [“The only requirements a re [sic] that
3 common questions of law and fact *predominate* and that the class representative be *similarly* situated”
4 vis-à-vis the class.] [emphasis in original].) A representative plaintiff’s claims are typical of the class
5 if they arise from the same event, practice, or course of conduct, and if the claims rest on the same legal
6 theories. (*Id.*) That is precisely the case here. Plaintiff is a former employee of Defendant; as such, she
7 alleges she was subject to the same policies and practices as other similarly situated employees.
8 (Plaintiff Decl., ¶ 6.)

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

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

14 Here, all requirements are met. Plaintiff retained counsel with extensive experience in
15 prosecuting complex class actions, including similar class actions that previously settled. (Moon Decl.,
16 ¶¶ 47–66.) With their experience, Class Counsel unquestionably are “qualified, experienced and
17 generally able to conduct the proposed litigation.” (*Miller, supra*, 148 Cal.App.3d at p. 874.) In
18 addition, Plaintiff and her Counsel have no conflicts with one another, other Class Members, or the
19 proposed Administrator. (Plaintiff Decl., ¶ 7; Moon Decl., ¶ 70.) Further, Plaintiff has, with counsel,
20 diligently litigated this case and reviewed the Settlement terms, demonstrating her dedication to the
21 Class, and, with full knowledge and acceptance of her duties, has committed to her role as Class
22 Representative. (Plaintiff Decl., ¶¶ 8–12.)

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

24 Finally, in making its class certification decision, the Court must determine that a class action
25 would be superior to alternative means for the fair and efficient adjudication of the litigation. (*See*
26 *Leyva v. Medline Indus. Inc.* (9th Cir. 2013) 716 F.3d 510, 514–15.) By consolidating many potential
27 individual actions into a single proceeding, this Court’s use of the class action device enables it to
28 manage this litigation in a manner that serves the economics of time, effort, and expense for the litigants

1 and the judicial system. (*Id.*) Absent class treatment, similarly situated employees with small, but
2 nevertheless meritorious, claims for damages would, as a practical matter, have no means of redress
3 because of the time, effort, and expense required to prosecute individual actions. (*Id.* at p. 515; *Gentry*,
4 *supra*, 42 Cal.4th at pp. 457–62.) Moreover, in the context of settlement, the superiority concerns are
5 essentially non-existent. (*See generally, e.g., Stamburgh, supra*, 62 Cal.App.3d.)

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

7 **A. The Proposed Notice Plan Satisfies Due Process**

8 Class notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,
9 rule 3.766(e)–(f).) California law vests the Court with broad discretion in fashioning an appropriate
10 notice program. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 970, 973–74.) There is no statutory or
11 due process requirement that all class members receive actual notice, but in this matter, the Class
12 Members will receive direct mailed notice. (Settlement, ¶¶ 6.3.) As the Court of Appeals has explained,
13 “[t]he notice given should have a reasonable chance of reaching a substantial percentage of the Class
14 Members . . .” (*Cartt*, 50 Cal.App.3d at p. 974.) In this case, notice of the proposed Settlement will be
15 provided by direct mailing in both English and Spanish, the best possible form of notice under the
16 circumstances. (Settlement, ¶ 6.3.)

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

18 The proposed Class Notice should be approved. It will be disseminated through direct U.S. first-
19 class mail to the current address for each Class Member. (Settlement, ¶¶ 1.10, 6.3.) It informs the Class
20 Members of the terms of the Settlement and their right to be excluded from the Class Settlement. (*Id.*
21 at ¶ 6.12.1, Ex. A.) And if there are Class Members who wish to object to the proposed Settlement,
22 they are informed of their right to submit written objections and/or appear at the Final Approval
23 Hearing. (*Id.* at ¶ 6.12.3, Ex. A.)

24 The Class Notice also fulfills the requirement of neutrality in class notices. (Newberg, Newberg
25 on Class Actions (3rd ed. 1992) § 8.39.) It summarizes the proceedings to date and the terms and
26 conditions of the Settlement in an informative and coherent manner. (Settlement, Ex. A.) It makes clear
27 the Settlement does not constitute an admission of liability by Defendant, who denies all liability. (*Id.*)
28 It also states that the final approval decision has yet to be made, and provides the date, time, and location

1 of the Final Approval Hearing. (*Id.*) Accordingly, the Class Notice complies with the standards of
2 fairness, completeness, and neutrality required of a combined settlement-certification class notice.

3 **VI. CONCLUSION**

4 For the foregoing reasons, Plaintiff respectfully requests the Court grant this motion, enter the
5 proposed order submitted herewith regarding preliminary approval, and set a Final Approval Hearing
6 no earlier than 130 days from the date of preliminary approval.

7 Respectfully submitted,

8 Dated: September 21, 2026

MOON LAW GROUP, PC

9 By: _____

10 Kane Moon
11 Allen Feghali
12 Mariam Ghazaryan
13 Mitchell H. Millet
14 *Attorneys for Plaintiff*
15
16
17
18
19
20
21
22
23
24
25
26
27
28