Navid Barahmand, Esq. (Bar No. 340934)
BARAHMAND LAW GROUP
navid@barahmandlaw.com
23801 Calabasas Road, Suite 2034
Calabasas, California 91302
Tel: (818) 574-3355
Fax: (818) 574-3757

Attorneys for Plaintiff Kelly Acosta
and the Settlement Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

Kelly Acosta individually and on behalf of all similarly situated individuals,

Plaintiff,

vs.

Cityfront Terrace Homeowners Association, a California Corporation; and **Does 1-10**, inclusive;

Defendants.

CASE NO. 25CU033699C

[Assigned for all purposes to the Hon. Mark T. Cumba Dept. C-65]

CLASS ACTION

PLAINTIFF'S NOTICE OF MOTION AND MEMORANDUM IN SUPPORT OF MOTION FOR:

(1) PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;

(2) APPROVAL OF NOTICE TO CLASS MEMBERS AND RELATED MATERIALS; AND

(3) SETTING HEARING FOR FINAL APPROVAL OF SETTLEMENT

Date: March 26, 2027
Time: 8:30 a.m.
Dept.: C-65

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that, on March 26, 2027 at 8:30 a.m., or the earliest available date to be assigned by the Court, in Department C-65 of the San Diego County Superior Court for the State of California, located at 330 West Broadway, San Diego, California 92101, before the Honorable Mark T. Cumba pursuant to § 382 of the California Code of Civil Procedure, Plaintiff Kelly Acosta on behalf of herself individually and on behalf of all members of the Settlement Class as defined, hereby moves this Court for entry of an Order:

1. Certifying the Class for purposes of settlement;

2. Preliminarily appointing the Named Plaintiff, Kelly Acosta, as Class Representative for purposes of settlement;

3. Appointing Navid Barahmand of Barahmand Law Group as Class Counsel for purposes of settlement;

4. Preliminarily approving the Settlement as fair, adequate, and reasonable, based upon the terms set forth in the Joint Stipulation of Settlement and Release of Class Action ("Settlement Agreement" or "Settlement"), including payment by Defendant of the non-reversionary Maximum Settlement Amount ("MSA") of $195,000.00;

5. Preliminarily approving payment of reasonable attorneys' fees from the Maximum Settlement Amount in an amount of one-third of the Maximum Settlement Amount (*i.e.*, $65,000.00), plus reasonably incurred litigation costs of up to $25,000.00;

6. Preliminarily approving Class Representative enhancement payment to Named Plaintiff, Kelly Acosta, in an amount of up to $10,000.00, which is to be paid out of the Maximum Settlement Amount, to compensate her for the burden, responsibilities, time, effort, and risks involved in coming forward on behalf of the Class;

7. Preliminarily approving Phoenix Class Action Administration Solutions ("Phoenix") as Settlement Administrator and further approving the distribution of up to $15,000.00 from the Maximum Settlement Amount to cover the Settlement Administrator's expenses in administering this Settlement;

8. Preliminarily approving payment to the Labor and Workforce Development Agency ("LWDA") in the amount of $19,500.00 from the Maximum Settlement Amount;

9. Approving the proposed Notice of Proposed Class Action Settlement and Hearing Date for Court Approval ("Class Notice") and ordering that it be disseminated to the Class as provided in the Settlement Agreement; and

10. Setting a date for a final fairness hearing to determine, following dissemination of notice to the Class, whether to grant final approval of the Settlement.

This motion is based upon this Notice of Motion and Motion; the Memorandum of Points and Authorities in Support thereof; the declarations of Navid Barahmand and Kelly Acosta in Support thereof; the Joint Stipulation of Settlement and Release of Class Action; the proposed Notice of Proposed Class Action Settlement; the [Proposed] Order Preliminary Approving Class Action Settlement; the other records, pleadings, and papers filed in this action; and upon such other documentary and verbal evidence or argument as may be presented to the Court at the hearing of this motion.

Dated: April 29, 2026

Respectfully submitted,

BARAHMAND LAW GROUP

By: ______________________

Navid Barahmand
Attorneys for Plaintiff Kelly Acosta and the Settlement Class

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

TREATISES

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This motion seeks preliminary approval of a wage-and-hour class action settlement for approximately 57 hourly non-exempt employees of Defendant who worked at least one shift in the State of California from the period of June 26, 2021 through March 19, 2026 in the gross amount of $195,000.00—representing an approximate average individual gross recovery of $3,421.05 per Class Member.

If the Court grants preliminary and final approval to the settlement, the estimated Net Settlement Amount ("NSA") of $67,325.00—after deductions from the MSA for attorneys' fees (up to $65,000.00) and costs (currently expected to be $15,000, but up to $25,000), the Class Representative enhancement payment (up to $10,000), settlement administration costs (currently estimated at $6,000, but up to $15,000), and the LWDA's portion of the PAGA penalty payment ($12,675)—will be distributed to all Participating Class Members (*i.e.*, all those who do not exclude themselves from the Settlement following distribution of the Notice Packets), with *no* reversion of any settlement funds to Defendant. Defendant will also pay the applicable employer-side payroll taxes *in addition* to the MSA. Settlement Agmt., at ¶¶ 28, 50.

No claim form will be required for Class Members to be eligible to receive an individual settlement payment, and all Class Members who do not opt-out will automatically receive individual settlement payments and be subject to the Release. Settlement Agmt., ¶ 25; *see also* Class Notice (Declaration of Navid Barahmand ("Barahmand Decl."), Exhibit (1)(A)).

As demonstrated below, the Settlement is a strong result for the Class and within the zone of reasonableness justifying approval.

II. RELEVANT FACTUAL BACKGROUND

A. The Parties and the Putative Class

Plaintiff seeks preliminary approval for a Settlement Class of *"All persons who worked at least one shift as a non-exempt employee of Defendant in the State of California from the period of June 26, 2021 through March 19, 2026."* Barahmand Decl., ¶ 22; *see also* Settlmt. Agmt., § 17 (Barahmand Decl., Exhibit (1)).

Based on Defendant's representations and the data produced in informal discovery, the

Settlement Class is estimated to be comprised of 57 Class Members who worked a combined 5,712 workweeks.[1] Barahmand Decl., ¶ 6.

Plaintiff Kelly Acosta ("Ms. Acosta") is a resident of the County of San Diego in the State of California. Declaration of Kelly Acosta ("Acosta Decl."), ¶ 3. Ms. Acosta was an hourly, non-exempt employee of Cityfront Terrace Homeowners Association from in or around May 2024 to on or around April 23, 2025. *Id.*

At all relevant times, Plaintiff and other non-exempt employees of Defendant in California were subject to the same policies, practices, and procedures governing the control and payment of wages earned and hours worked. Barahmand Decl., at ¶ 4; Acosta Decl., at ¶ 4.

Defendant Cityfront Terrace Homeowners Association ("Cityfront" or "Defendant") is a California Corporation. Barahmand Decl., at ¶ 5. Cityfront is a residential community located in downtown San Diego. *Id.* The community has 320 residential units, as well as 21,565 feet of common area. Between 2000 and 2003, all of the condominiums were sold to private individuals and is currently an owner-controlled association. *Id.*

B. Procedural History, Discovery, and Mediation

On May 5, 2025, Ms. Acosta gave notice to the LWDA and Defendant of her intent to file suit and bring claims for civil penalties under PAGA.[2] Barahmand Decl., ¶ 7, Ex. 2.

On June 26, 2025, Ms. Acosta filed her Complaint against Defendant in San Diego County Superior Court entitled *Kelly Acosta v. Cityfront Terrace Homeowners Association, et al.*, Case No. 25CU033699C. Barahmand Decl., ¶ 8. Ms. Acosta alleged class action claims for: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods or premium pay in lieu thereof; (4) failure to provide rest periods or premium pay in lieu thereof; (5) failure to provide and maintain accurate wage statements; (6) failure to reimburse necessary business expenses; and (7)

---

[1] Defendant's representations regarding the number of Class Members/workweeks are a material part of the Settlement and Plaintiff has secured an escalator clause in the Settlement protecting Class Members from dilution. *See* Settlement, § 83.

[2] Plaintiff also gave notice of the Settlement to LWDA on April 29, 2026. Barahmand Decl., ¶ 7l Ex. 3. As of the date of this Motion, Plaintiff have not received a response from the LWDA regarding the PAGA Notice or the Settlement. *Id.* Class Counsel also is serving a copy of this Motion on the LWDA contemporaneous with the filing. *See* Proof of Service.

Unlawful Business Practices, Cal. Bus. & Prof. Code §§ 17200, et seq. *Id.*

On July 10, 2025 Plaintiff filed a First Amended Complaint asserting an additional cause of action for PAGA penalties. *Id.*, at ¶ 9.

After the filing of the complaint and throughout the pendency of the litigation, Plaintiff's and Defendant's counsel engaged in comprehensive discussions regarding Plaintiff's claims. Barahmand Decl. ¶ 15. Defendant, through their counsel, at all times vigorously denied liability, denied the material allegations of Plaintiff's claims, and asserted various affirmative defenses to the legal claims set forth in the Complaint. *Id.*, at ¶ 16.

As part of these discussions, the Parties agreed to attend private mediation to be held on March 19, 2026 with Hon. Steven Denton (Ret.), a well-respected neutral experienced in wage and hour matters. *Id.*, at ¶¶ 17, 21.

Following the Parties' agreement to mediate, Defendant produced data and documents to Plaintiff's counsel through informal discovery, including a Class List containing the start and end dates of employment for all Class Members, a 20% sampling of time and payroll records for the Class, and all applicable policy documents in effect during the Class Period. Along with this production, Plaintiff's counsel engaged in extensive factual and legal investigation into the claims, which included (a) telephonic conferences with Plaintiff regarding her experiences at Defendant's locations and interpretation of the data provided; (b) inspection and analysis of numerous payroll and policy documents; (c) analysis of the legal positions taken by Defendant; (d) investigation into the viability of class treatment of the claims asserted in the operative Complaint; (e) analyses of potential class-wide damages, including information sufficient to understand Defendant's potential defenses to Plaintiff's class-wide and individual claims; (f) research of the applicable law with respect to the claims asserted in the operative Complaint and the potential defenses thereto; (g) assembly and analysis of data for calculating damages; and (h) hiring the services of an expert to analyze and prepare Defendant's exposure. Barahmand Decl. ¶ 18.

On March 19, 2026, the Parties and their counsel attended mediation with Hon. Steven Denton (Ret.), a well-respected mediator of wage and hour class actions and employment litigation. Barahmand Decl. ¶ 21. The Parties did *not* settle at mediation. *Id.* However, the mediator remained engaged and after several weeks, the Parties agreed to the principal terms of a class action and PAGA settlement, which is now before the Court for approval. *Id.*

Based on their own independent investigation and evaluation, Class Counsel believes that the Settlement confers substantial benefits on the Class, is in their best interests, and should be approved by the Court. *Id.* at ¶ 24.

III. SUMMARY OF THE PARTIES' CLAIMS AND DEFENSES

In the operative Complaint, Plaintiff alleged 9 causes of actions on behalf of herself and the Putative Class for: (1) Failure to Pay Minimum Wages (Cal. Lab. Code §§ 1182.12, 1194, 1197.1, 1198); (2) Failure to Pay Overtime Wages (Cal. Lab. Code §§ 510 and 1198); (3) Failure to Provide Meal Periods or Premium Pay in Lieu Thereof (Cal. Lab. Code §§ 226.7, 512, 558, 1198); (4) Failure to Provide Rest Periods or Premium Pay in Lieu Thereof (Cal. Lab. Code §§ 226.7, 512, 558, 1198); (5) Failure to Provide and Maintain Complete and Accurate Wage Statements (Lab. Code §§ 226, 1174); (6) Failure to Pay Wages When Due (Lab. Code §§ 201,-204, 210); (7) Failure to Reimburse Necessary Business Expenses (Lab. Code §§ 2802); (8) PAGA Penalties (Lab. Code §§ 558, 2698, et seq.); and (9) Unfair Competition (Cal. Bus. & Prof. Code §§ 17200, et seq.). Barahmand Decl., ¶¶ 8-9, 25.

Plaintiff's detailed claim-by-claim recitation, analysis, valuation, and risk discount, utilized to arrive at a fair valuation of Plaintiff's claims, is set forth in the Declaration of Navid Barahmand at Paragraphs 99-116. Class Counsel summarizes the factual and legal allegations that form the basis of the Classes' claims below for the Court's ease of reference:

First, Plaintiff alleged that Defendant failed to authorize or permit Class Members to take rest periods by a written requirement that required employees to remain on-premises for their rest breaks, and as a matter of policy and common practice, required employees to valet homeowners' vehicles, answer phone calls, or otherwise remain on duty during breaks due to inadequate staffing and scheduling practices that failed to provide sufficient coverage to allow employees to take uninterrupted rest periods. Barahmand Decl. ¶ 11.

Second, Plaintiff alleged that Defendant failed to authorize or permit Class Members to take meal periods as a matter of policy and common practice by requiring employees to valet homeowners' vehicles, answer phone calls, or otherwise remain on duty during breaks due to inadequate staffing and scheduling practices that failed to provide sufficient coverage to allow employees to take uninterrupted meal periods.

Barahmand Decl. ¶ 12.

Third, throughout the Class Period, Defendants have appeared to implement a time clock rounding policy whereby employee time punches were rounded to the nearest start or stop of their scheduled shifts and meal periods, which typically resulted in lost time for employees who clocked in early or clocked out late, or both. Regardless of the rounding interval, the policy was to the detriment of Class Members and resulted in Class Members being uncompensated for hundreds of net hours. Barahmand Decl. ¶ 13.

Finally, Plaintiff alleged that Defendant failed to reimburse employees' necessary business expenses for utilizing their personal cellphones for work-related purposes, including answering text messages and calls from their supervisors, scheduling and rescheduling future work, being assigned tasks, and general administrative matters. Barahmand Decl. ¶ 14.

A. Defendant's Denial of Liability and its Legal and Factual Defenses

Defendant denied and continue to deny generally the claims, contentions, and all material allegations made in the Complaint. Barahmand Decl., ¶ 16. Defendant also claimed various defenses against certification, liability, and damages. *Id.*, at ¶¶ 16, 57-85.

Defendant's defenses are detailed in depth—along with Class Counsel's risk assessment of these defenses—in the Barahmand Declaration at Paragraphs 57-116.

B. Fair Valuation of the Class's Claims

The Settlement was only entered into after Class Counsel determined its merits based on their damage calculations, risk assessment, and non-collusive negotiation with Defendant. Barahmand Decl., ¶ 110.

The informal discovery conducted in this Action, Class Counsels' investigation and motion practice, and the information exchanged by the Parties before, after, and during the mediation, was sufficient to assess reliably the merits of the respective Parties' positions. Barahmand Decl. ¶¶ 5, 24, 88, 111.

Class Counsel's detailed claim-by-claim analysis and risk discount of Defendant's defenses, utilized to arrive at a fair valuation of Plaintiff's claims, is set forth in the Declaration of Navid Barahmand at Paragraphs 57-116.

In coming to a determination that this settlement is fair and reasonable and in the best interests of the Class, Class Counsel took into account the possibility of unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that would all take several more years to litigate; the risk of Plaintiff not prevailing on one or more of the underlying claims; the risk that a court may not award waiting time penalties, wage statement penalties, and/or PAGA penalties based on difficulties in establishing bad faith; and the costs of continued litigation. Barahmand Decl. ¶ 111.

If Defendant prevailed on any of their defenses, the claims of the Class would potentially be worth little to nothing. *Id.*, at ¶ 112. Class Counsel also took into account the value of an immediate and guaranteed settlement against the uncertainty and delay that would occur before the Class's claims could be heard at trial, extended by any potential appeals. *Id.* In considering these risks and others, as well as the time and expense of litigation, trial and appeals, Class Counsel determined that Settlement was appropriate, fair and reasonable. *Id.*, at ¶ 115.

To be clear, Class Counsel believes that the claims have merit, and that the Class would ultimately prevail at trial; however, Class Counsel is mindful of the risks inherent in continued litigation and the potential adverse outcomes to the Class by proceeding with litigation. Barahmand Decl., ¶ 113. In contrast, the Settlement will yield a *prompt*, *certain*, and *substantial* recovery for Class Members, which also benefits the parties and the Court. *Id.*, at ¶ 110. The Settlement takes those risks and others into account in arriving at the non-reversionary Maximum Settlement Amount of $195,000.00—which is a significant recovery of 77.13% of the value of Defendant's *risk-adjusted, realistic, maximum* damages (not including any discount for the time value of money). Barahmand Decl., ¶ 110.

The Settlement will result in meaningful recovery for each Class member, with Class Members being entitled to an average individual gross recovery of $3,421.05 and an estimated individual net recovery of $1,181.14. Barahmand Decl., ¶ 114. The Settlement is well within the "zone of reasonableness" justifying preliminary approval and notice dissemination to the Class—and meets or exceeds settlements in similar wage and hour cases based on the percentage of recovered damages or on average recovery. *Id.*, ¶ 116, fn. 8.

IV. SUMMARY OF THE PROPOSED SETTLEMENT AND CLAIMS PROCESS

The Settlement Agreement entered into by the parties is attached as **Exhibit 1** to the Declaration of Navid Barahmand and incorporated herein by reference in its entirety. The following is a summary of the principal terms of the Settlement Agreement:

A. The Settlement, Attorneys' Fees, Costs, and Enhancement Award

The non-reversionary Maximum Settlement Amount ("MSA") of $195,000.00 to be paid by Defendant in full settlement includes: (1) Class Counsels' attorney's fees in a sum of up to $65,000.00; (2) litigation costs of up to $25,000, but estimated at less than $15,000; (3) Class Representative's enhancement payment of up to $10,000.00; (4) settlement administration costs to Phoenix, currently estimated at $6,000, but up to $15,000.00; (5) PAGA penalties in the sum of $19,500.00, with $12,675.00 to be paid to the California Labor Workforce and Development Agency ("LWDA") and $6,825.00 to be paid to the Class. Settlement Agmt., at ¶¶ 50-55. Defendant will pay applicable employer-side payroll taxes *in addition* to the MSA. *Id.* ¶¶ 28 and 50.

B. Net Funds Available to Class Participants

Members of the Settlement Class who do not opt out of this Settlement will receive payment as consideration for the release of claims set forth in Settlement Agreement, in an amount determined by the Settlement Administrator based on a workweek analysis of their time working for Defendant. Settlement Agmt., ¶ 57.

After all Court-approved deductions from the non-reversionary MSA, it is estimated that a minimum of $67,325.00 (the "Net Settlement Amount" or "NSA") will be distributed to the Class Members. *Id.*, at ¶¶ 50-55. The individual settlement payment to each member of the Settlement Class will be based on their proportion of total weeks worked by the Class.

C. Release by Class and Plaintiff

Upon final approval, Named Plaintiff and all members of the Settlement Class, except those who make a timely and valid Request for Exclusion ("Participating Class Members"), will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged with respect to all of the Released Parties and any and all Released Claims during the Release Period. Settlement Agmt., ¶ 78.

"Released Claims" means those claims asserted in the Complaint or that reasonably could have been alleged based on the factual allegations contained in the operative complaint or LWDA letter. *Id*., ¶ 39. "Released Parties" shall mean Defendant Cityfront Terrace Homeowners Association, as well as and their past and present agents, officers, directors, employees, attorneys, parents, subsidiaries, agents, joint employers, affiliates, insurers, investors, shareholders and assigns. *Id*., ¶ 42. The "Release Period" is from June 26, 2021 through March 19, 2026. *Id*., ¶ 40.

The "Released PAGA Claims" means the release of claims for civil penalties under PAGA asserted in the LWDA letter, or that reasonably could have been asserted based on the factual allegations contained therein. *Id*., ¶ 41. The "PAGA Release Period" means the period from May 5, 2024 through March 19, 2026. *Id*., ¶ 33.

The Releases will only take effect upon the latter of the Effective Date and full funding of the MSA by Defendant. *Id*., ¶ 24.

D. Class Notice and Administration

Subject to Court approval, the Parties agree to engage Phoenix to administer the Settlement and to act as the Settlement Administrator to administer the settlement process, which includes but is not limited to distributing and responding to inquiries about the Notice Packet, determining the validity of any Workweek disputes and opt-outs, and calculating all amounts to be paid from the Net Settlement Amount. *See generally* Settlement Agmt.

Charges and expenses of the Settlement Administrator will be paid from the Maximum Settlement Amount. *Id*., at ¶ 47. If the actual Settlement Administrator fees are less than the Parties' estimation, the difference between the actual and estimated Settlement Administrator fees will be included in the Net Settlement Amount. *Id*., at ¶ 56.

Within five (5) calendar days following receipt of the Class List, which will be provided by Defendant within seven (7) calendar days of Preliminary Approval, the Settlement Administrator shall mail copies of the Notice Packet, containing the Class Notice, Exclusion Form, Objection Form, and individualized, populated Share Form, to all Class Members via First-Class U.S. Mail. *Id*., ¶¶ 62-63.

The Notice Packet shall include the Notice of Class Action Settlement and Challenge Form. *Id*., at ¶ 63; Ex. A. The Notice Packet shall provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's principal terms; (c) the Settlement Class definition; (d) each Class Member's estimated Individual Class Payment and the formula for calculating Individual Class Payments; (e) the dates which comprise the Class Period; (f) instructions on how to submit valid Requests for Exclusion or objections; (g) the deadlines by which the Class Member must fax or postmark Requests for Exclusions or file and serve objections to the Settlement; (h) the claims to be released, as set forth herein; and (i) the date for the Final Approval Hearing. *Id*., at ¶ 63; *see also* Class Notice.

E. Opportunity to be Excluded or Object

The Notice Packet shall enclose an Exclusion, Objection, and Share Form for Settlement Class Members to allow Class Members to more easily exercise their rights with respect to the Settlement. Settlement Agmt., at ¶ 63; *see also* Class Notice (Barahmand Decl., Exhibit (1)(A)). Class Members will have 30 calendar days from the date the Notice Packets (*i.e.,* the Notice of Class Action Settlement and Share Form) are mailed by the Settlement Administrator to postmark their request for exclusion or notice of objection. Settlement Agmt., at ¶¶ 43, 63, 66-67. The Share Form will identify the number of Individual Workweeks that she/he was employed and their estimated Individual Settlement Payment. *Id*., at ¶ 63; *see also* Class Notice (Barahmand Decl., Exhibit (1)(A)).

F. Payment of the Maximum Settlement Amount and Distributions

Within five (5) calendar days of the Effective Date, the Settlement Administrator will provide the Parties with an accounting of the amounts to be paid by Defendant pursuant to the terms of the Settlement. Settlement Agmt., ¶ 50.

Within thirty (30) days following receipt of the final accounting of funds by the Settlement Administrator, Defendant will make the required deposit of the MSA in the amount of $195,000.00. *Id.*

Within five (5) calendar days following receipt of the Maximum Settlement Amount, the Settlement Administrator shall, subject to Court approval, issue payments to: (a) the Class Representative; (b) Class Counsel; (c) Participating Class Members; (d) the Labor and Workforce Development Agency; (e) the Settlement Administrator. *Id*., at ¶ 51.

If a Class Member does not exclude themselves, they will be mailed a check no later than seven (7) calendar days after Defendant's deposit of payment.[3] Settlement Agmt., at ¶ 51. Any settlement checks

[3] Class Members who are also Aggrieved Employees shall receive two checks, one for their class payment and one for their PAGA penalties payment. Barahmand Decl., ¶ 134.

that remain uncashed for more than 180 calendar days after issuance shall be voided, and the Settlement Administrator will transmit the entire amount of each uncashed Net Settlement Payment to the Funds representing any uncashed checks within 180 days of the checks' issuance, plus any accrued interest, to the California Controller's Unclaimed Property Fund in the name of the Class Member or Aggrieved Employee. Settlement Agmt., at ¶ 71.

G. Tax Treatment

Twenty percent of all Individual Settlement Payments shall constitute unpaid wages in the form of back pay (and each Class Participant will be issued an IRS Form W-2 for such payment to him or her), and eighty percent shall constitute civil penalties, statutory penalties, and interest (and each Class Participant will be issued an IRS Form 1099 for such payment to him or her). *See* Settlement Agmt., at ¶ 73. Defendant will bear the cost of all employer-side payroll taxes, which shall not be paid from the Settlement Amount. *Id.*, ¶¶ 28, 50.

V. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage.

It is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co. 9* ("*Dunk*"), 48 Cal. App. 4th 1794, 1807 n.19 (1996).

Since no trial is anticipated in a settlement class, the case management issues inherent in determining if the class should be certified need not be confronted; and the trial court's fairness review of the settlement protects the interests of the non-representative class members. (*Id.*); *see also Officers for Justice*, 690 F.2d at 633 ("Th[e] relationship between the certification determination and the merits of the case is further attenuated within the context of the settlement evaluation process . . . . [C]ertification issues raised by class action litigation that is resolved short of a decision on the merits must be viewed in a different light."); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1987) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.").

A. Numerosity and Ascertainability

Numerosity is met if a proposed class is so large that joinder of all members in the litigation would be impracticable. *See* Cal. Code Civ. Proc. § 382. A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008). At the time of settlement, Defendant represented that the proposed Class consisted of approximately over 57 current and former employees—a sufficient number in the context of a Settlement Class. Barahmand Decl., ¶ 18; *see also* Settlement Agmt., ¶ 18.

B. Well-Defined Community of Interest

1. *Commonality*

The class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. *See Arenas v. El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Washington Mut. Bank v. Superior Court*, 24 Cal. 4th 906, 913 (2001). While the Parties dispute whether a class would be appropriate if the litigation were to continue, they agree, for the purposes of this Settlement only, that the Class is subject to a common policy regarding minimum wages, overtime compensation, meal and rest period policies and practices, and reimbursement of necessary business expenditures. Settlement Agmt., ¶ 49; *see Bluford v. v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864 (2013) (certification appropriate).

2. *Typicality*

Typicality "focuses on whether there exists a relationship between the plaintiff's claims and the claims alleged on behalf of the class." Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* ("*Newberg*"), § 3:13. Again, the Parties dispute whether Plaintiff's claims are typical of the Class for the purposes of any continued litigation of the Action, but agree for the purposes of this Settlement only, that Plaintiff assert claims regarding Defendant's policies and practices that are at the core of the lawsuit. Settlement Agmt., ¶ 49(c).

3. *Adequacy of Representation*

The proposed class representative must establish that he or she will adequately represent the proposed class. *See Barboza v. West Coast Digital GSM, Inc.*, 179 Cal. App. 4th 540, 546 (2009). Specifically, Named Plaintiff is adequate to represent the Class because she was employed by Defendant during the Class Period, experienced the same wage and hour practices as the rest of the Class, understands her duties as class representative, has been willing to undergo the risks of litigation, and has no conflicts of interest with the other Class Members. Barahmand Decl., ¶¶ 130-131; Acosta Decl., ¶¶ 8-11.

Adequacy may be established by the fact that counsel are experienced practitioners. *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001). The Class is well represented by counsel with extensive experience in wage-and-hour litigation, including numerous wage-and-hour class actions. Barahmand Decl., ¶¶ 122-126.

4. *Superiority*

Certification for settlement purposes is superior here because there will be a global resolution of all claims at once, which fosters judicial economy. *See* Settlement Agmt., ¶ 49. Class certification is also vastly superior to litigation of multiple individual claims because most, if not all, of the claims are too small to litigate outside of the class context. *Id.*

VI. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE

A. Class Action Settlements Are Subject to Judicial Review and Approval Under the California Rules of Court

The law favors settlements. *Bush v. Super. Ct*, 10 Cal. App. 4th 1374, 1382 (1992). This is particularly true in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. However, a class action may not be dismissed, compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules of Court set forth the procedures for court approval of a class action settlement: (1) the Court preliminarily approves the settlement; (2) class members receive notice as directed by the Court; and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed settlement. Cal. R. Ct. 3.769(c), (e)-(g).

The decision to approve or reject a proposed settlement lies within the Court's sound discretion. *See Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001). Nevertheless, in considering a potential settlement for approval, a court is not to turn the approval hearing "into a trial or rehearsal for trial on the merits . . . [or] to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute." *Officers for Justice v. Civil Serv. Comm'n*, 690 F.2d 615, 625 (9th Cir. 1982). The Court's ultimate duty is to determine whether the settlement is fair, adequate, and reasonable. *See Dunk,* 48 Cal. App. 4th at 1801 (setting forth the "fair, adequate, and reasonable" standard) (citing *Officers for Justice*, 690 F.2d at 625); *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742 43 (2009) (a trial court must approve a class action settlement agreement, but only after determining that it is "'fair, adequate and reasonable,'" considering factors such as the "'risk, expense, [and] complexity'" of continued litigation).

The Court enjoys broad discretion in making its fairness determination, and should consider factors including but not limited to: "[T]he strength of Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel . . . and the reaction of the class members to the proposed settlement." *Dunk*, 48 Cal. App. 4th at 1801 (setting forth a non-exhaustive list of factors for the court's consideration at final approval).

In doing so, the Court must give "[due] regard to what is otherwise a private consensual agreement between the parties." *Id.; see also In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006) (same). The inquiry must be limited "to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." *Id.*

At the preliminary approval stage, the Court need only determine that the settlement falls within the "range of possible judicial approval," so that notice to the class and the scheduling of the fairness hearing are worthwhile. *See Newberg*, § 11:25 (4th ed. 2002); *see also Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal. 2016) ("At the preliminary approval stage, the court "evaluate[s] the terms of the settlement to determine whether they are within a range of possible judicial approval."). The Court should grant preliminary approval when there are no "grounds to doubt its fairness or other obvious deficiencies . . . and [the settlement] appears to fall within the range of possible approval." *Manual For Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal. App. 4th at 1802.

A "presumption of fairness exists where: (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 1802 (citing *Newberg*, § 11:41); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723. As shown below, the Settlement falls well within the range of approval and there are no grounds to doubt its fairness.

B. The Settlement Is The Result Of Serious, Informed, Non-Collusive Negotiations and Reflects a Fair Compromise of Claims

The Settlement reached is the product of substantial effort by the Parties and their counsel—and only occurred after significant litigation activity, including informal discovery. *Id.*; *see generally*, Barahmand Decl. The Settlement was reached only after the Parties engaged in extensive, arm's length negotiation and after an unsuccessful mediation utilizing a professional and well-respected third-party neutral. Barahmand Decl., ¶¶ 21. The Settlement was based on Class Counsel's informed calculations, risk assessment, and non-collusive negotiation; it takes the risks identified above and others into account in arriving at the non-reversionary amount of $195,000. Barahmand Decl., ¶ 110.

C. The Extent Of The Discovery And Investigation Was Sufficient To Permit Preliminary Approval Of The Settlement

Class Counsel thoroughly investigated and evaluated the factual and legal strengths and weaknesses of this case before reaching the Settlement. As described above, the Settlement was reached only after significant litigation and case investigation including informal discovery, and production of documents, and Class Counsels' thorough factual investigation, and expert damages assessments—all of which was sufficient to evaluate Defendant's liabilities and defenses. Barahmand Decl., ¶ 110.

D. The Risks Inherent in Continued Litigation Are Significant

To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also should consider "[t]he strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, [and] the risk of maintaining class action status." *See Dunk*, 48 Cal. App. 4th at 1801. As described above and detailed in the Barahmand Declaration, Defendant have asserted various defenses to Plaintiff's claims, which create a real possibility that the claims might not all be certified and/or might fail on the merits. Barahmand Decl., ¶¶ 57-85. Another risk inherent in continued litigation is the risk of non-certification and maintaining class action status through trial, and appeal. There was risk that Defendant could defeat class certification or merits as to unpaid minimum wages, overtime wages, and meal and rest period claims and a very real possibility that the Court reduce the value available discretionary penalties, which comprise a significant portion of the value of the Class's claims. *Id.*

In considering these risks, Class Counsel's analysis strongly militated towards the Settlement. Barahmand Decl., ¶¶ 86-116. Proceeding with litigation would impose a significant risk of substantially lower recovery as well as ongoing, substantial additional expenditures of time and resources. If settlement were not achieved, continued litigation of the claims would take a substantial amount time and possibly confer less benefit to Class Members. *Id.*

By contrast, the Settlement will yield a *prompt*, *certain*, and *substantial* recovery for the Class, which also benefits the Parties and the Court. *Id.* The Settlement is a significant recovery for the Class, constituting of <u>77.13%</u> of the value of Defendant's *risk-adjusted, realistic, maximum* damages with Class Members receiving an average individual gross recovery of $3,421.05 and estimated average individual net recovery of $1,181.14. *Id.*, ¶¶ 110, 114.

E. The Class Notice Plan Conforms To All Applicable Statutes

The proposed Class Notice should be approved as it fully informs the Class Members of the nature of the lawsuit and each Class Member's rights under the terms of the Settlement and applicable law. *See* Settlement Agmt., Exhibit A.

The notice plan and the Class Notice satisfy the requirements of Rule of Court 3.766 and afford Settlement Class Members with all due process protections required by the United States Constitution. Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because the Notice includes, without limitation (1) a detailed explanation of the case, including the basic contentions or denials of the parties; (2) a statement that the court will exclude the member from the class if the member so requests by a specified date; (3) a procedure for the member to follow in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) a statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel. *See* Settlement Agmt., Exhibit A. The 30-calendar day response deadline for Class Members to exclude themselves, object, or challenge their

Workweeks is reasonable, as it provides Class Members with ample time to do so and, if they so choose, to seek independent legal advice in the interim. The manner in which the Class Notice shall be disseminated, as outlined above, will ensure that all or nearly all of the Class Members will be properly notified of the proposed Settlement. *Id.*

F. Class Counsel Are Experienced In Wage-And-Hour Litigation.

The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (court must take into account "the experience and view of counsel."). Class Counsel is experienced wage-and-hour practitioners and litigators and have been certified as adequate and competent class counsel in numerous other wage-and-hour class actions. Barahmand Decl., ¶¶ 122-126. Class Counsel believe that this Settlement is fair and reasonable in light of the nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class certification and litigation. *Id.* The Settlement is also consistent with other settlements that receive approval, both those where Class Counsel represented the Class and otherwise. Barahmand Decl., ¶ 130.

G. The Attorneys' Fees Under the Settlement Agreement Are Fair

Under the terms of the Settlement Agreement, Class Counsel is requesting one-third (1/3) of the $195,000.00 Maximum Settlement Amount in attorneys' fees, or $65,000.00. Barahmand Decl., ¶ 116. As the California Supreme Court has made clear, one-third of the common fund is a reasonable percentage for a trial court to award as attorneys' fees in a class action where a common fund was generated as a result of the case. *See Laffitte v. Robert Half International* (2016), I Cal. 5th 480, 506 (Cal. Aug. 11, 2016) ("We therefore agree with the Court of Appeal below that 'the percentage of fund method survives in California class action cases, and the trial court did not abuse its discretion in using it, in part, to approve the fee request [of one-third of the common fund] in this class action"). The California Supreme Court further clarified that trial courts "have discretion to conduct a lode-star cross check on a percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross check and use other means to evaluate the reasonableness of a requested percentage fee."[4] *Id.*

The Court should preliminarily approve the requested award of attorneys' fees of one-third of the common fund as reasonable. Once the Court grants preliminary approval to the settlement and authorizes the dissemination of notice of the settlement to the class, Class Counsel anticipates filing a Motion for Attorneys' Fees, Costs, and Incentive Award that will be scheduled to be heard concurrently (or will be part of) the Motion for Final Approval and Fairness Hearing. In connection with the filing of the Motion for Attorneys' Fees and Costs, Class Counsel will submit updated information in the form of a sworn declaration setting forth a summary of their lodestar hours and costs incurred in the litigation, as well as their billing records. Barahmand Decl., ¶ 128.

H. The Class Representative Enhancement Award is Appropriate

The Parties request payment of an Enhancement Award from the Maximum Settlement Amount to the Class Representative in the amount of $10,000.00.

The proposed Enhancement Award is reasonable compensation given the time and effort that the named Plaintiff devoted to this case; the valuable assistance she provided to Class Counsel. Barahmand Decl., at ¶ 131. Plaintiff provided invaluable assistance to Class Counsel and the Class in this case, including providing factual background for mediation and the Class Complaint; reviewing the relevant documents, and Complaint; participating in phone calls with Class Counsel to discuss litigation and settlement strategy; remaining on-call and available during mediation, and reviewing the settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal benefit. Acosta Decl., ¶¶ 8-11.

Plaintiff also agreed to undertake the financial risk of serving as Class Representative and exposed herself to the risk of negative publicity by anyone who opposed this case. Barahmand Decl., ¶ 131; Acosta Decl., ¶¶ 8-11. Moreover, the requested $10,000.00 Enhancement Payment for the Named Plaintiff falls within the range of incentive payments typically awarded to Class Representatives in similar class actions. *See e.g. Bond v. Ferguson Enterprises, Inc.*, No. 1:09–cv–1662 OWW MJS, 2011 WL 2648879 (E.D. Cal. June

[4] "With regard to expenditure of judicial resources, we note that trial courts conducting lodestar cross-checks have generally not been required to closely scrutinize each claimed attorney-hour, but have instead used information on attorney time spent to focus on the general question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys." *Laffitte*, 1 Cal. 5th at 505.

30, 2011) (approving $11,250 service award to each of the two class representatives in a trucker meal break class action; *Ross v. US Bank National Association*, No. C 07-02951 SI, 2010 WL 3833922, at *2 (N.D. Cal. Sept. 29, 2010) (approving $20,000 enhancement award to Class Representative in California wage-and-hour class action settlement).

Additionally, Plaintiff entered a general release that is broader than any other Aggrieved employee and includes any of her potential claims arising out of her termination with Defendant. Settlement Agreement § 91.

VII. PHOENIX SHOULD BE APPROVED AS ADMINISTRATOR

Class counsel proposes that the Court appoint Phoenix to serve as the Settlement Administrator. Barahmand Decl., ¶ 132. Phoenix is experienced in administering class action settlements. Phoenix has administered thousands of class actions and is qualified to administer this Settlement. *Id.* Phoenix provided a discounted quote of $6,000 to administer this Settlement with notice in both English and Spanish. *Id.*, at ¶ 132; Ex. 5.

VIII. THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING

Class Counsel requests that the Court schedule a hearing for final approval of the settlement, including Plaintiff's request for attorneys' fees, costs and the service award, on the earliest date convenient for the Court on or after August 1, 2027.

IX. CONCLUSION

Plaintiff respectfully request that the Court grant preliminary approval of the Parties' Settlement, order dissemination of notice to the Class, and set a hearing date for final approval.

Dated: April 29, 2026

Respectfully submitted,

BARAHMAND LAW GROUP

By: ______________________

Navid Barahmand
Attorneys for Plaintiff Kelly Acosta and the Settlement Class