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Attorneys for Plaintiff Luigi Mendoza

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

LUIGI MENDOZA, individually, and on behalf of all others similarly situated,

Plaintiff,

vs.

THE LELAND STANFORD JUNIOR UNIVERSITY, a California corporation; TSE, INC., a California corporation dba TOTAL SUCCESS EVENT SERVICES; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 22CV407285

CLASS AND REPRESENTATIVE ACTION

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, the Declaration of Plaintiff, the Declaration of Y. Douglas Yang, the Declaration of Janet Soultanian, Declaration of Jodey Lawrence Regarding Settlement Administration, and [Proposed] Preliminary Approval Order*]

PRELIMINARY APPROVAL HEARING:
Date: November 5, 2026
Time: 1:30 p.m.
Dept.: 22
Judge: Honorable Beth McGowen

Action Filed: November 14, 2022
FAC Filed: January 13, 2023
Trial Date: Not set

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

PLEASE TAKE NOTICE that on November 5, 2026 at 1:30 p.m. in Department 22 of this Court located at 191 North First Street, San Jose, California 95113 pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 *et seq*., Plaintiff Luigi Mendoza ("Plaintiff") will, and hereby does, move the Court for an order granting preliminary approval of the proposed class action settlement between Plaintiff and Defendants The Leland Stanford Junior University and TSE, Inc. dba Total Success Event Services. Specifically, Plaintiff moves the Court for an order:

1. Granting preliminary approval of the Class, Collective, and PAGA Representative Action Settlement Agreement and Class Notice;
2. Certifying the Class, for settlement purposes only;
3. Approving the Class Notice and plan for its distribution;
4. Appointing Plaintiff as the Class Representative, for settlement purposes only;
5. Appointing Moon Law Group, PC as Class Counsel, for settlement purposes only;
6. Appointing Phoenix Class Action Administration Solutions as the Administrator; and
7. Scheduling a Final Approval Hearing no earlier than 120 days from the date of preliminary approval.

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

Respectfully submitted,

Dated: March 20, 2026

MOON LAW GROUP, PC

By:________________________________

Kane Moon
Allen Feghali
Lilit Ter-Astvatsatryan
Michael Citrin

Attorneys for Plaintiff Luigi Mendoza

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I. INTRODUCTION

Plaintiff Luigi Mendoza ("Plaintiff") seeks preliminary approval of a proposed $300,000.00 non-reversionary, wage-and-hour class action settlement (the "Settlement") with Defendants The Leland Stanford Junior University ("Stanford") and TSE, Inc. dba Total Success Event Services ("TSE") (collectively, "Defendants") (together with Plaintiff, the "Parties"). The Settlement will provide substantial monetary payments to an estimated 452 Class Members who worked an estimated aggregate of 15,335 Workweeks, of which roughly 395 are Aggrieved Employees who worked an estimated aggregate of 5,131 PAGA Pay Periods. As set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, informal discovery, and negotiations between the Parties. The negotiations were at arm's-length and were facilitated through private mediation by an experienced and neutral class action mediator, Marc Feder, Esq. Accordingly, Plaintiff requests the Court preliminarily approve the Settlement, certify the proposed Class, approve the proposed Class Notice to Class Members, and set a final approval hearing no earlier than 120 days from the date of preliminary approval.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims and Procedural History

This is a wage-and-hour class and representative action for alleged Labor Code violations and claims for civil penalties pursuant to the California Private Attorneys General Act, Labor Code sections 2698, *et seq.* ("PAGA"). (Declaration of Kane Moon in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Representative Action Settlement ["Moon Decl."], ¶ 2.) Plaintiff seeks to represent a class of all current and former non-exempt, hourly-paid, non-exempt employees of TSE placed or assigned to work at Stanford in California at any time during the Class Period, as set forth in the Class, Collective, and PAGA Representative Action Settlement Agreement and Class Notice (the "Settlement"). (*Id.*; Ex. 1)

Stanford is a private research university conducting business in numerous counties throughout California, including Santa Clara County. (*Id.,* at ¶ 3.) TSE is a catering company. (*Id.*)

Defendants employed Plaintiff and other non-exempt, hourly-paid employees during the Class Period. (*Id.*) Plaintiff worked for Defendants in a non-exempt, hourly-paid position from approximately February 2022 to May 2022 as an Assistant Chef. (Declaration of Plaintiff Luigi Mendoza in Support of Class Action and PAGA Settlement ["Plaintiff Decl."], ¶ 2.) Plaintiff contends he and his coworkers were subjected to the same unlawful labor practices, including failure to pay wages for all hours worked. (*Id.* at ¶ 6; Moon Decl., ¶ 3.)

Plaintiff's claim for unpaid minimum and overtime wages stem from allegations that Defendants failed to compensate Plaintiff and others for off-the-clock work. (Moon Decl., ¶ 4.) Plaintiff's meal and rest period claims are based on allegations that their breaks were often short, late, interrupted, and sometimes missed altogether, and that Defendants did not pay all premium wages for non-compliant breaks. (*Id.*) Plaintiff further brings a claim for unreimbursed necessary business expenses based on allegations that Class Members were required to purchase masks, tools, specific types of clothing, and for personal use of cellphones for work purposes without reimbursement from Defendants. (*Id.*) Finally, Plaintiff also brings derivative claims for waiting time penalties, wage statement violations, unfair business practices, and civil penalties under PAGA. (*Id.*)

Because of the foregoing alleged violations of various provisions of the Labor Code, Plaintiff filed a class action on November 14, 2022, which alleges Defendants systematically: (1) failed to pay minimum wages, (2) failed to pay overtime compensation, (3) failed to provide meal periods, (4) failed to authorize and permit rest periods, (5) failed to indemnify necessary business expenses, (6) failed to timely pay final wages at termination, (7) failed to provide accurate itemized wage statements, and (8) engaged in unfair business practices. (*Id.* at ¶ 5.)

Pursuant to PAGA, on November 5, 2022, Plaintiff gave written notice to the California Labor and Workforce Development Agency (the "LWDA") of the alleged Labor Code violations, with certified mail service on Defendants, and paid the required filing fee. (*Id.* at ¶ 6; Ex. 2 On January 13, 2023, Plaintiff timely filed a First Amended Class and Representative Action Complaint to add a ninth cause of action for civil penalties under PAGA (the "Operative Complaint"). (*Id.* at ¶ 6.) In compliance with Labor Code section 2699(s)(1), Plaintiff subsequently submitted to the LWDA a file-stamped copy of the Operative Complaint containing the Court-assigned case number. (*Id.*) To date, the LWDA has not indicated its intent to investigate the alleged violations or intervene in this Action. (*Id.*)

Defendants ardently oppose the merits of this case and deny Plaintiff's factual allegations. (*Id.* at ¶ 7.) Defendants assert they complied with all their compensation obligations, including compensating Class Members for any and all off-the-clock work and overtime work, and therefore, Plaintiff and other Class Members were paid all wages owed. (*Id.*) Defendants maintain compliance with all their meal and rest period obligations. (*Id.*) Defendants assert they complied with all reimbursement obligations, and that Plaintiff and other employees were compensated for any and all business expenses necessarily incurred. (*Id.*) To the extent employees received wage statements that were allegedly inaccurate, Defendants assert employees suffered no actual damage or harm as a result. (*Id.*; *see, e.g.*, *Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013, No. C 12–05860 CRB) 2013 WL 622032, at *10 ["A plaintiff must adequately plead an injury arising from an employer's failure to provide full and accurate wage statements, and the omission of the required information alone is not sufficient."].) With respect to Plaintiff's claim for waiting time penalties, Defendants allege their good-faith belief that they paid all wages precludes the imposition of waiting time penalties since Plaintiff cannot prove Defendants' alleged failure to pay all final wages at the time of separation was "willful." (Moon Decl., ¶ 7; *see, e.g.*, *Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012, No. ED CV 11–298 GHK (DTBx)) 2012 WL 9506073, *5.) For these reasons, among others, Defendants deny all of Plaintiff's claims and allegations, and further claim they did not engage in any unfair business practices and deny liability under PAGA. (Moon Decl., ¶ 7.) Defendants also maintain the claims are improper for class treatment, in part, due to the individualized and testimony-intensive nature of the wage claims that could bar class certification or significantly reduce Defendants' overall liability. (*Id.*)

B. <u>Discovery and Investigation</u>

The Parties agreed to mediate this action with Marc Feder, Esq., an experienced class and PAGA action mediator. (*Id.* at ¶ 8.) In preparation for mediation, the Parties agreed to a protocol for an informal production of documents and information before mediation. (*Id.*) Prior to mediation, Plaintiff obtained from Defendants, through informal discovery, documents and data that were necessary and helpful to evaluate the claims asserted in this action, including but not limited to TSE employee time and payroll records, records relating to Plaintiff, Defendants' policy documents, and the exchange of relevant data points pertaining to the Class and PAGA claims. (*Id.*) Defendants produced a statistically sound sample of time and pay records for the putative Class (25% of the Class), Plaintiff's personnel file and time and pay records, and Defendants' written employment policies in effect during the Class Period. (*Id.*) Defendants also provided information regarding the estimated number of current and formerly employed Class Members, Aggrieved Employees, and PAGA Pay Periods. (*Id.*)

In preparation for mediation, Plaintiff's Counsel reviewed and analyzed all the information Defendants provided, including the sample records and documents regarding Defendants' wage-and-hour policies. (*Id.* at ¶ 9.) Plaintiff's Counsel retained a statistics expert to analyze the sample records and prepare a damage analysis prior to the mediation. (*Id.*) The sample time and pay records analyzed contained the records of 50 Class Members (representing roughly 11% of the Class), which allowed Plaintiff's expert to prepare an analysis with a reasonable degree of certainty. (*Id.*) In conjunction with their extensive factual investigation, Plaintiff's Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly, Plaintiff's Counsel was able to evaluate the probability of class certification, success on the merits, and Defendants' maximum and realistic monetary exposure for all claims. (*Id.*) Thus, Plaintiff's and his Counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement. (*Id.*)

C. <u>Settlement Negotiations and Notice of Settlement to the LWDA</u>

On September 4, 2025, the Parties participated in a full day of private mediation with Marc Feder, Esq. (*Id.* at ¶ 10.) The negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After a full discussion regarding the strengths and weaknesses of Plaintiff's claims and Defendants' defenses and with the assistance of the mediator, the Parties reached a resolution. (*Id.*) The material terms of the settlement are set out in the Settlement. (*Id.* at ¶¶ 2, 10; Ex. 1.)

In compliance with Labor Code section 2699(s)(2), notice of settlement and a copy of the proposed Settlement has been submitted to the LWDA along with a copy of Plaintiff's preliminary approval motion and the hearing date. (*Id.* at ¶ 11.; Ex. 3) To date, the LWDA has not indicated any objection to the Settlement. (*Id.*)

D. Key Terms of the Proposed Settlement

Under the Settlement, Defendants, collectively, will pay a non-reversionary, all-inclusive amount of *no less than* **$300,000.00** ("GSA") to resolve this action. (Settlement, ¶ 3.a.) Other key terms of the Settlement are outlined in the counsel declaration submitted concurrently herewith. (Moon Decl., ¶¶ 12–29.) The proposed Settlement Administrator—Phoenix Class Action Administration Solutions—was jointly selected by the Parties based on its bid of $10,500.00. (*Id.* at ¶ 16, Ex. 5; Settlement, ¶ 1.b.)

The Settlement allocates $30,000.00 from the GSA for settlement of the Released PAGA Claims, which will be distributed 75% ($22,500.00) to the LWDA and 25% ($7,500.00) to Aggrieved Employees pursuant to PAGA law governing Plaintiff's claims.[1] (Settlement, ¶ 3.i.) Each Aggrieved Employee will be entitled to a pro rata share of the 25% share of the PAGA Penalties directly proportional to their number of PAGA Pay Periods. (*Id.* at ¶ 3.j.) This results in an average Individual PAGA Payment of roughly **$18.99** for each of the estimated 395 Aggrieved Employees ($7,500.00 / 395), and a PAGA Pay Period value of roughly **$1.46** for each of the 5,131 estimated Pay Periods in the PAGA Period ($7,500.00 / 5,131). (Moon Decl., ¶ 17.)

The Net Settlement Amount is the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation

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[1] On July 1, 2024, new legislation was enacted to amend PAGA in several respects, including as to the recovery split for civil penalties. (Stats. 2024, ch. 44 (Assem. Bill No. 2288), § 1, eff. Jul. 1, 2024.) As amended, PAGA now provides for a 65%-LWDA/35%-aggrieved employee split. (Lab. Code § 2699(m).) However, PAGA reform only applies to PAGA actions initiated on or after June 19, 2024. (*Id.* at § 2699(v)(1).)

Expenses Payment, and the Administration Expenses Payment. (*Id.* at ¶ 1.cc.) Accordingly, the Net Settlement Amount will be *no less than* **$137,000.00** for an estimated Class of **452 individuals**.[2] (Moon Decl., ¶ 18.) Each Class Member who does not opt-out will be entitled to a pro rata share of the Net Settlement Amount that is directly proportional to the number of Workweeks worked during the Class Period. (*Id.* at ¶ 3.f.) The estimated **$137,000.00** Net Settlement Amount results in an average Individual Class Payment of roughly **$303.10** for each of the estimated 452 Class Members ($137,000.00 / 452), [3] and a Workweek value of roughly **$8.93** for each of the 15,335 estimated Workweeks in the Class Period ($137,000.00 / 15,335). (Moon Decl., ¶ 20.)

The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement. (*Id.* at ¶ 2.g.; Moon Decl., ¶ 29.)

III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL

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

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[2] The Net Settlement Amount was calculated by deducting the following from the $300,000.00 GSA: $7,500.00 for the Class Representative Service Payment, up to $10,500.00 for the Administration Expenses Payment, $30,000.00 for the PAGA Penalties to the LWDA and Aggrieved Employees, $100,000.00 for the Class Counsel Fees Payment, and up to $15,000.00 for the Class Counsel Litigation Expenses Payment. (Settlement, ¶¶ 3, *et seq.*)

[3] At this time, the actual amounts to Class Members and/or Aggrieved Employees are unknown and will be calculated by the Administrator following preliminary approval and receipt and processing of the Class Data. (Settlement, ¶ 4.b.) The high and low range of payments will be provided to the Court in a motion for final approval. (Moon Decl., ¶ 20, n.3.)

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. <u>The Settlement is Fair, Reasonable, Adequate, and the Product of Investigation, Litigation, and Negotiation</u>

1. The Settlement is the Product of Discovery, Investigation, Informed and Non-Collusive Arm's-Length Negotiations, and Realistic Claims Analysis

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

Here, Plaintiff's Counsel has conducted a thorough investigation into the facts of this case. (Moon Decl., ¶ 30.) As previously noted, the Settlement at issue was reached through arms'-length negotiations, private mediation, and the assistance of a statistics expert. (*Id.*) Based on Defendants' informal class-wide discovery production, on Plaintiff's Counsel independent investigation and evaluation, and on counsel's extensive experience in wage-and-hour litigation, Plaintiff's Counsel are of the opinion that the proposed Settlement is fair, reasonable, and adequate. (*Id.*)

Based on Plaintiff's Counsel's review of the time, payroll, and additional data provided by Defendants, on Plaintiff's expert's analysis of the sample records provided by Defendants, and on information from Plaintiff, Plaintiff's Counsel evaluated the estimated maximum and risk-adjusted exposure that Defendants faced. (*Id.* at ¶ 31.) Specifically, based on the information provided for mediation, the total estimated **realistic recovery** (adjusted for risks at certification and proof on the merits) for the alleged claims, including penalties, is estimated to be **$474,234.01**. (Moon Decl., ¶ 31.) This amount was calculated as follows: **$12,672.53** (90% discount) for the off-the-clock work claim; **$176,649.84** (75% discount) for the meal period claim; **$103,326.24** (90% discount) for the rest period claim; **$9,730.00** (90% discount) for the unreimbursed business expenses claim; **$121,432.90** (95% discount) for the waiting time penalties claim; **$24,767.50** (95% discount) for the wage statement claim; and **$25,655.00** (95% discount) for the PAGA penalties claim. (*Id.* at ¶¶ 31–36.) The foregoing discounts were based on the evidence presented for mediation and arguments made during arm's-length settlement negotiations. (*Id.*)

The $300,000.00 gross settlement figure represents roughly 63.3% of the total realistic recovery. (*Id.* at ¶ 37.) This is an excellent result for the Class, particularly because, under the Settlement, Class Members will receive timely and guaranteed relief, avoiding the risk of not being able to recover anything. (*Id.*)

2. The Class Settlement Is Fair Considering the Parties' Respective Positions and Significant Risks to Certification and Proof on the Merits

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

Here, considering all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, and the defenses Defendants may assert both to certification and on the merits, the Settlement is in the best interest of the Class and LWDA. (Moon Decl., ¶ 30.) While Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 40.) Plaintiff also recognizes that proving the amount owed to each Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id.*)

The Settlement obviates the significant risk that this Court may deny certification of all or some of Plaintiff's claims. (*Id.* at ¶ 41.) Plaintiff's Counsel took into account the risk of not prevailing at trial due to low or no participation by Class Members. (*Id.*) Indeed, the individualized and testimony-intensive nature of the claims could bar manageability of the representative claims or otherwise significantly reduce any recovery whatsoever. (*Id.*) For example, the rest period and unreimbursed expense claims are testimony-driven claims and assume a 100% violation rate, which would not likely be demonstrated at trial, as it assumes either the participation of all employees (which would be difficult given the reality that many, if not all, employees would be unwilling to participate due to fear of retaliation), or alternatively, the use of surveys or statistical data as a surrogate (which would still require the participation of a majority of employees to establish a sound representation of all non-exempts). (*Id.*) Even assuming employees would be willing to participate, obtaining declarations would potentially reveal that each individual employee had a different experience. (*Id.*)

Furthermore, even if Plaintiff was able to pursue his claims on a class-wide basis and obtain certification of all or some of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the Class. (*Id.* at ¶ 42.) Although the Parties have engaged in a significant amount of investigation, informal discovery, and class-wide data analysis, they have not conducted extensive formal discovery. (*Id.*) Moreover, preparation for class certification and a trial would remain for the Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or any summary judgment ruling. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through trial. (*Id.*) In sum, this Settlement avoids the risks, burdens, and the accompanying expense of further litigation. (*Id.*)

The proposed $300,000.00 Settlement therefore represents a substantial recovery when compared to the reasonably forecasted recovery for the Class. (*Id.* at ¶ 43.) When considering the risks of litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to establish liability, and the probability of appeal, it is clear the Settlement amount is within the "ballpark" of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*; (*Kullar*, *supra*, 168 Cal.App.4th at p. 133; *see Munoz*, *supra*, 186 Cal.App.4th at pp. 408–09.)

3. The PAGA Settlement is Fair Considering the Parties' Respective Positions and Significant Risks

With regard to the PAGA claims, the Settlement is a fair and reasonable resolution that satisfies PAGA's dual statutory purposes of deterrence and punishment, on the one hand, and providing Aggrieved Employees with genuine and meaningful relief, on the other. (Moon Decl., ¶ 38; Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendants have to hire legal counsel, engage in informal class-wide discovery, and participate in mediation. (Moon Decl., ¶ 38.) Defendants will also have to pay civil penalties to the LWDA under the Settlement, assuming final settlement approval is granted. (*Id.*) Not including its own attorneys' fees and costs as well as the employer's share of payroll taxes, Defendants will pay no less than $300,000.00 to resolve this matter—of which $30,000.00 is allocated toward the PAGA claims and will be distributed, in compliance with Labor Code section 2699 as 75% ($22,500.00) to the LWDA and 25% ($7,500.00) to Aggrieved Employees—and the release obtained under the Settlement does not preclude Aggrieved Employees from pursuing any individual claims they may have against Defendants or the other Released Parties. (*Id.*)

Moreover, Plaintiff's Counsel are of the opinion that because the issues here are fairly contested, there is a possibility of the Court not awarding the PAGA penalties even if Plaintiff prevailed on the merits due to the largely discretionary nature of awarding PAGA penalties. (*Id.*) Indeed, under PAGA, a Court can reduce penalties "if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (Lab. Code § 2699(e)(2).) In other words, were this matter to go to trial, any award granted would be at the discretion of the Court and subject to a substantial reduction. (Moon Decl., ¶ 38.) Further, Plaintiff's Counsel took into account the risk of not being able to proceed on a representative basis due to the potential manageability issues and that even if Plaintiff prevailed at trial, penalties would likely be limited due to the largely discretionary nature of awarding PAGA penalties and in light of other defenses available to Defendants. (*Id.* at ¶ 39.) Thus, it is entirely possible that even if Plaintiff would be successful at trial, assuming he is first able to certify the claims and defeat the manageability issues presented at litigation, Plaintiff could be awarded substantially less than what was obtained through the Settlement. (*Id.*)

In sum, the $30,000 PAGA Penalties allocation under the Settlement constitutes "genuine and meaningful" that is "consistent with the underlying purpose of the statute to benefit the public." (Moon Decl., ¶ 39; *see O'Connor v. Uber Tech., Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133–35 [denying settlement approval where allocation for PAGA claims was 0.1% of the estimated full worth].)

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

The Settlement negotiations were conducted by highly capable counsel with considerable experience and demonstrated competence with litigating wage-and-hour class actions. (Moon Decl., ¶¶ 48–70.) Plaintiff's Counsel have a strong record of vigorous and effective advocacy for their clients and are experienced in handling complex wage-and-hour class action litigation. (*Id.*) Their experience was helpful in assessing the reasonableness of the Settlement at issue here, and from this experience they concluded that this litigation could not have been settled on better terms than provided under the Settlement. (*Id.* at ¶ 71.) Although Plaintiff and his counsel were prepared to try the claims alleged in the litigation, they support the proposed Settlement as being in the best interest of the Class based on objective evidence that has been considered and weighed against the risks, expenses, and time consumption to both sides of continued litigation. (*Id.* at ¶¶ 10, 30.)

B. The Proposed Attorneys' Fees and Costs are Reasonable

Subject to the Court's approval, the Settlement provides a fee application of one-third of the GSA for Class Counsel's attorneys' fees, plus reimbursement for out-of-pocket litigation costs not to exceed $15,000.00.[4] (Settlement, ¶ 3.d.) These amounts are disclosed to Class Members in the proposed Class Notice and are reasonable. (*Id.* at Ex. A.)

1. Counsel Request a Fees Award Based On the "Common Fund" Method

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

Plaintiff's Counsel seek an award of attorneys' fees on the "percentage of recovery/common fund" theory. (Moon Decl., ¶ 73.) The purpose of this approach is to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1975) 15 Cal.3d 162, the California Supreme Court stated, "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons[ ] are entitled to share." (*Id.* at pp. 110–11 [pincite omitted].)

The California Supreme Court 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

[4] Plaintiff's Counsel's current litigation costs are $13,117.80, and they anticipate incurring additional costs up to final approval. (Moon Decl., ¶ 78, Ex. 4.)

method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation[ ]—convince us the percentage method is a valuable tool that should not be denied our trial courts." (*Id.* [internal citations omitted].) This line of legal authority supports a request for attorneys' fees based on the percentage of recovery/common fund method.

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

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

Here, Plaintiff's Counsel's fees request for one-third of the GSA 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.d., *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 the attorneys' fees as negotiated by the Parties.

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

Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(k)(1), 2802(d).) Under these sections, Plaintiff would be permitted to recover his actual attorneys' fees, even if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) This Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Plaintiff's Counsel for their decision to assume risk by taking on this matter on a contingent basis with no guarantee of recovery. (Moon Decl., ¶¶ 74–77.) In fact, prosecution of this action involved significant financial risk for Plaintiff's Counsel. (*Id.*) Once Plaintiff's Counsel undertook this litigation, they committed to pursue it to its conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶ 76.)

4. Counsel's Experience, Reputation, and Ability Support the Fees Request

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Plaintiff's Counsel possess considerable expertise in litigating class actions. (*Id.* at ¶¶ 48–70.) Plaintiff's Counsel have been involved as lead counsel or co-counsel in numerous class actions that resulted in millions in recovery. (*Id.*) As noted above, their 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 ¶ 71.) Practice in the narrow field of wage-and-hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal) as well as the procedural law of class action litigation. (*Id.* at ¶ 69.) Based on these and other factors, Plaintiff's Counsel have frequently received fee awards of this percentage from the gross recovery for the class. (*See id.* at ¶¶ 52, 57, 63.) Because it is reasonable to compensate counsel commensurate with their skill, reputation, and experience, the requested fee award is supported here.

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

Under the Settlement here, subject to the Court's approval, a Class Representative Enhancement Award of $7,500.00 will go to Plaintiff, in addition to his amount as a Class Member. (Settlement, ¶ 3.c.) This award is for initiating the Action and providing services in support of the Action. (*Id.* at ¶ 1.n.) Plaintiff has devoted a great deal of time and work assisting counsel in the case and communicated with counsel frequently for litigation and to prepare for mediation. (Moon Decl., ¶¶ 44–47; Plaintiff Decl., ¶¶ 19–22.) The requested award is fair and reasonable, particularly considering the substantial benefits Plaintiff generated for all Class Members. (Moon Decl., ¶ 47.)

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

IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

A. Legal Standard

The proposed Settlement Class is well suited for class certification. The claims all derive from a core set of alleged violations of California's wage and hour laws and regulations. (Moon Decl., ¶¶

3–4.) For the reasons set forth more fully below, the Class, for purposes of Settlement, satisfies the prerequisites for certification under Code of Civil Procedure section 382. (Code Civ. Proc. § 382.) Section 382 provides that "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all." (*Id.*) There are two requirements to section 382: "(1) there must be an ascertainable class[ ]; and (2) there must be a well defined community of interest in the questions of law and fact involved affecting the parties to be represented." (*Daar v. Yellow Cab Co*. (1967) 67 Cal. 2d 695, 704 [internal citations omitted].) To clarify these requirements, the California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the community-of-interest requirement itself embodies three factors: "(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Richmond v. Dart Indus., Inc*. (1981) 29 Cal. 3d 462, 470.)

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

B. <u>The Criteria for Class Certification Are Satisfied</u>

1. The Class Is Ascertainable and Numerous

When determining whether a class is ascertainable, California courts focus on the following three factors: "(1) the class definition, (2) the size of the class and (3) the means of identifying class members." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, Plaintiff maintains there is an easily ascertainable Class, defined by objective and precise criteria. (Settlement, ¶¶ 1.e, 1.l.) The proposed Class that Plaintiff seeks to represent is ascertainable because (1) the Class definition is sufficiently precise, (2) the Class consists of about 452 individuals, and (3) Class Members can be readily identified by Defendants' records. (*Id.* at ¶¶ 1.e, 1.l, 1.h, 4.a.) Because Class Members are identified using specific criteria in the regular business records of Defendants—their employment by Defendants in California, non-exempt classification, hourly wage, and actual work during the Class Period—the Class is ascertainable. (*See Wilner v. Sunset Life Ins. Co*. (2000) 78 Cal.App.4th 952, 959–60 [class membership defined by ownership of product that is the subject of the lawsuit is sufficient to make the class ascertainable].) "The requirement of Code of Civil Procedure section 382 that there be 'many' parties to a class action suit is indefinite and has been construed liberally." (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934.) "Where a question is of common interest to 'many' persons, an action may be maintained as a class action even where the parties are numerous and it is in fact practicable to join them all." (*Id.*) "No set number is required as a matter of law for the maintenance of a class action." (*Id.*) "Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a trust in an action for removal of the trustees." (*Id.* [citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574]; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a class of 9 plaintiffs and 35 members].) Therefore, numerosity is plainly satisfied.

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

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

Here, Plaintiff's claims satisfy all three requirements. The employment practices at issue include whether Defendants: paid employees all minimum and overtime pay wages owed; reimbursed employees for necessary business expenses; provided employees with and authorize meal and rest periods or paid premiums for non-compliant breaks; paid all final wages to employees at the time of termination; intentionally failed to pay all final wages; provided inaccurate itemized wage statements and whether Class Members were harmed; engaged in unfair business practices; and violated civil penalty provisions under PAGA. (Moon Decl., ¶¶ 3–4.) Plaintiff contends the factual and legal issues are the same for all Class Members, and further that all Class Members suffered from and seek redress for the same alleged injuries. (Plaintiff Decl., ¶¶ 3–6.) Considering Class Members would need to prove the same issues of law and fact to prevail, and their legal remedies are identical, it would be preferable to resolve all claims through a settlement than to force each Class Member to litigate their own individual claims. Thus, the Court should grant conditional class certification for settlement purposes because common questions of law and fact predominate over any individual questions within the Class.

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

The typicality requirement does not focus on the individual characteristics or circumstances of the representative plaintiff compared to those of the remainder of the class, but rather, upon the typicality of the proposed representative's claims as they relate to the defendant's conduct and activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["The only requirements are [sic] that common questions of law and fact *predominate* and that the class representative be *similarly* situated" vis-à-vis the class.] [emphasis in original].) A representative plaintiff's claims are typical of the class if they arise from the same event, practice, or course of conduct, and if the claims rest on the same legal theories. (*Id.*) That is precisely the case here. Plaintiff is a former employee of Defendants and alleges he was subject to the same policies and practices as other similarly situated employees. (Plaintiff Decl., ¶¶ 2–7.)

4. Plaintiff and Her Counsel Meet the Adequacy Requirement

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

Here, all requirements are met. Plaintiff retained counsel with extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Moon Decl., ¶¶ 48–70.) Based on their experience, Plaintiff's Counsel unquestionably are "qualified, experienced and generally able to conduct the proposed litigation." (*Miller*, *supra*, 148 Cal.App.3d at p. 874.) Plaintiff has, with counsel, litigated this case and diligently reviewed the settlement terms, showing dedication, and with full knowledge and acceptance of duties, he has committed to his role as Class Representative. (Plaintiff Decl., ¶¶ 11–22.) In addition, Plaintiff and his Counsel have no conflicts with one another, other Class Members, or the proposed Administrator. (*Id.* at ¶¶ 8–10; Moon Decl., ¶ 72.)

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

Finally, in making its class certification decision, the Court must determine that a class action would be superior to alternative means for the fair and efficient adjudication of the litigation. (*See Leyva v. Medline Indus. Inc.* (9th Cir. 2013) 716 F.3d 510, 514–15.) By consolidating many potential individual actions into a single proceeding, this Court's use of the class action device enables it to manage this litigation in a manner that serves the economics of time, effort, and expense for the litigants and the judicial system. (*Id.*) Absent class treatment, similarly situated employees with small, but nevertheless meritorious, claims for damages would, as a practical matter, have no means of redress because of the time, effort, and expense required to prosecute individual actions. (*Id.* at p. 515; *Gentry*, *supra*, 42 Cal.4th at pp. 457–62.) Moreover, in the context of settlement, the superiority concerns are essentially non-existent. (*See generally, e.g.*, *Stamburgh*, *supra*, 62 Cal.App.3d.)

V. <u>THE PROPOSED CLASS NOTICE IS CONSTITUTIONALLY SOUND AND SATISFIES RULES OF COURT</u>

Class Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court, rule 3.766(e)–(f), rule 3.769(f).) Here, the proposed Class Notice, in English and Spanish, substantially in the form attached to the Settlement as **Exhibit A**, meets all the requirements of California Rules of Court. The Class Notice summarizes the proceedings to date and the terms and conditions of the proposed Settlement in an informative and coherent manner. (Settlement, ¶ 8.b.; Ex. A.) It also states that the final approval decision has yet to be made, and provides the date, time, and location of the Final Approval Hearing. (*Id.*) It explains the right and procedures to opt-out or submit any written objections and/or arrange to appear at the Final Approval Hearing and verbally state any objections. (*Id.*) It makes clear the Settlement does not constitute an admission of liability by Defendants, who denies all liability, and it recognizes that this Court has not ruled on the merits of the action. (*Id.*) Thus, the proposed Class Notice meets all the requirements of California Rule of Court 3.769(f). (Cal. Rules of Court, rule 3.769(f).)

The Class Notice also fulfills the requirement of neutrality in class notices. (Newberg, Newberg on Class Actions (3rd ed. 1992) § 8.39.) Accordingly, the Notice complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

California law vests the Court with broad discretion in fashioning an appropriate notice program. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 970, 973–74.) There is no statutory or due process requirement that all class members receive actual notice, but in this matter, Class Members will receive direct mailed notice, which is the best possible form of notice under the circumstances. (Settlement, ¶ 8.b.) As the Court of Appeals has explained, "[t]he notice given should have a reasonable chance of reaching a substantial percentage of the Class Members . . ." (*Cartt*, 50 Cal.App.3d at p. 974.)

VI. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiff respectfully requests the Court grant this motion, enter the proposed order submitted herewith regarding preliminary approval, and set a final approval hearing no earlier than 120 days from the preliminary approval order.

Respectfully submitted,

Dated: March 20, 2026 **MOON LAW GROUP, PC**

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