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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

SAMUEL LIM, individually, and on behalf of all others similarly situated,

Plaintiff,

vs.

UPSIDE FOODS, INC., a Delaware Corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. 25CV145020
Related Case No. 25CV135070

PLAINTIFFS' 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 Samuel Lim, the Declaration of Plaintiff Kevaughn Freeman, the Declaration of Michael Nourmand, the Declaration of Administrator, and [Proposed] Preliminary Approval Order*]

PRELIMINARY APPROVAL HEARING:
Date: August 25, 2026
Time: 2:30 p.m.
Dept.: 512
Judge: Hon. Elizabeth Riles
Reserv. ID: 394918056136

Complaint Filed: June 3, 2025
FAC Filed: August 15, 2025
Trial Date: Not Set

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Attorneys for Plaintiff Kevaughn Freeman

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

PLEASE TAKE NOTICE that on August 25, 2026 at 2:30 p.m. in Department 512 of this Court located at 24405 Amador Street Hayward, California 94544, pursuant to Code of Civil Procedure section 382, California Rules of Court, rule 3.769 *et seq*., and this Court's June 17, 2026 OrdersPlaintiff Samuel Lim ("Plaintiff Lim") and Plaintiff Kevaughn Freeman ("Plaintiff Freeman") (together with Plaintiff Lim, "Plaintiffs") will, and hereby do, move the Court for an order in this Action and the related *Freeman v. Upside Foods, Inc*. action granting preliminary approval of the proposed class action settlement between Plaintiffs and Defendant The Upside Group, Inc. (f/k/a "Upside Foods, Inc.") ("Defendant").

Specifically, Plaintiffs move the Court for an order:

1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement;
2. Certifying a Class, for settlement purposes only;
3. Approving the Class Notice and plan for its distribution;
4. Appointing Plaintiffs as the Class Representatives, for settlement purposes only;
5. Appointing Kane Moon, Allen Feghali, H. Scott Leviant, and Sandy Pham of Moon Law Group, PC, and Michael Nourmand and James A. De Sario of The Nourmand Law Firm, APC, as Class Counsel, for settlement purposes only;
6. Appointing Phoenix Class Action Administration Solutions as the Administrator; and
7. Scheduling a joint Final Approval Hearing in this action and the related *Freeman* action no earlier than 130 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 of Kane Moon (and exhibits attached thereto), Michael Nourmand, and Plaintiffs, the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing.

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

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Respectfully submitted,

Dated: July 30, 2026 **MOON LAW GROUP, PC**

By: ______________________________

Kane Moon
Allen Feghali
H. Scott Leviant
Lilit Ter- Astvatsatryan
Sandy Pham

Attorneys for Plaintiff Lim

Dated: July 30, 2026 **THE NOURMAND LAW FIRM, APC**

By: /s/ *Michael Nourmand*

Michael Nourmand

Attorney for Plaintiff Freeman

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

OTHER AUTHORITIES

COURT RULES

TREATISES

STATE CASES

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Samuel Lim ("Plaintiff Lim") and Plaintiff Kevaughn Freeman ("Plaintiff Freeman") (together with Plaintiff Lim, "Plaintiffs") of the related action *Kevaughn Freeman v. Upside Foods, Inc.*, Case No. 25CV135070 (the "Freeman Action"), jointly seek preliminary approval of a proposed $450,000.00 non-reversionary, wage and hour Class Action and PAGA Settlement Agreement (the "Settlement") with Defendant The Upside Group, Inc. (f/k/a "Upside Foods, Inc.") ("Defendant") (together with Plaintiffs, the "Parties"). The Settlement, which is intended to resolve this action (the "Lim Action") and the Freeman Action, will provide substantial monetary payments to an estimated 124 Class Members who worked an estimated aggregate of 9,000 Workweeks, of which roughly 77 are Aggrieved Employees who worked an estimated aggregate of 1,769 PAGA Pay Periods. As set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, informal discovery, and negotiations between the Parties. The negotiations were at arm's-length and were facilitated through a mediation session by an experienced and neutral class action mediator, Steven Rottman, Esq. Accordingly, Plaintiffs request the Court preliminarily approve the Settlement, certify the proposed Class for settlement purposes only, approve the proposed Class Notice to Class Members, and set a Final Approval Hearing no earlier than 130 days from the date of preliminary approval.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Claims and Procedural History

This action and the Freeman Action are wage and hour class actions and representative actions 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 Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ["Moon Decl."], ¶ 2; Declaration of Michael Nourmand in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ["Nourmand Decl."], ¶ 6.) Plaintiffs seek to represent all individuals who were employed by Defendant in California as hourly paid, non-exempt employees at any time during the period of time from June 3, 2021, through the Class Period End Date[1] ("Class Period"), for various alleged violations of the California Labor Code. (*Id.*) Defendant is a food technology company that develops meat and other food products from animal cells. (*Id.*) Plaintiff Lim worked for Defendant from September 18, 2023, to approximately May 16, 2025 as a food production operator. (Declaration of Plaintiff Samuel Lim in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ["Lim Decl."], ¶ 2.) Plaintiff Freeman worked for Defendant from approximately May 2023 until approximately May 2025. (Declaration of Kevaughn Freeman in Support of Motion for Preliminary Approval ["Freeman Decl."], ¶ 3.) Throughout the time they worked for Defendant, Plaintiffs were employed in an hourly paid, non-exempt position. (Moon Decl., ¶ 2.) Plaintiffs contend they and their coworkers were subjected to the same unlawful labor practices, including failure to pay wages for all hours worked. (*Id.*)

Plaintiffs' claim for unpaid wages stems from Defendant's alleged failure to compensate Plaintiffs and Class Members for all hours worked, including off-the-clock work, rounding-related underpayments, and unpaid overtime, and Defendant's alleged failure to incorporate all remuneration into the regular rate of pay for purposes of paying overtime, meal period premiums, and sick pay. (Moon Decl., ¶ 3.) Plaintiffs also bring claims against Defendant for meal and rest period violations, failure to reimburse necessary business expenses, including personal cell phone, mileage, and work-from-home expenses, failure to provide sick leave, and derivative claims for waiting time penalties, wage statement violations, unfair business practices, and civil penalties under PAGA. (*Id.*)

On or about June 1, 2025, Plaintiff Lim sent a letter to Defendant and the California Labor and Workforce Development Agency ("LWDA") pursuant to Labor Code section 2699.3, subd.(a) providing notice of alleged California Labor Code violations and seeking PAGA penalties. (*Id.* at ¶ 4, Ex. 1.) In the notice, Plaintiff Lim alleged violations of Labor Code sections 201-204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 1174(d), 1174.5, 1194, 1197, 1198, and 2802. (*Id.*)

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[1] Paragraph 1.12 of the Settlement provides that the "Class Period End Date" shall mean Preliminary Approval, or other such date as determined by Defendant in accordance with Paragraph 9 of the Class Action and PAGA Settlement Agreement.

On June 3, 2025, Plaintiff Lim commenced the Lim Action by filing a Complaint against Defendant in the Superior Court of the State of California, County of Sacramento on behalf of himself and the Class. Plaintiff Lim's operative First Amended Complaint, filed on or around August 14, 2025, asserts that Defendant: (1) failed to pay minimum wages in violation of Labor Code sections 204, 1194, 1194.2, and 1197 and to keep adequate time records in violation of Labor Code section 1174(d); (2) failed to pay overtime compensation in violation of Labor Code sections 510, 1194, and 1198; (3) failed to provide meal periods in violation of Labor Code section 512 and to provide meal period premiums in violation of Labor Code section 226.7; (4) failed to authorize and permit rest breaks in violation of Labor Code section 512, the applicable Industrial Welfare Commission ("IWC") Wage Orders, and to provide rest period premiums in violation of Labor Code section 226.7; (5) failed to indemnify necessary business expenses in violation of Labor Code section 2802 and the IWC Wage Orders; (6) failed to timely pay final wages at termination in violation of California Labor Code sections 201-203; (7) failed to provide accurate itemized wage statements in violation of California Labor Code section 226; (8) violated California Business and Professions Code section 17200, et seq.; and (9) seeks PAGA penalties based on the underlying alleged violations of the Labor Code. (Moon Decl., ¶ 5.) The Lim Action was subsequently transferred to the Alameda Superior Court, where it is currently pending, and assigned case number 25CV145020. (*Id.*)

On or about August 1, 2025, Plaintiff Freeman provided a notice to the LWDA and to Defendant also alleging violations of the Labor Code and seeking penalties under PAGA. (*Id.* at ¶ 6.) In the notice, Plaintiff Freeman alleged violations of Labor Code sections 201- 204, 210, 226, 226.3, 226.7, 227.3, 230, 246, 246.5, 510, 512, 558, 1194, 1194.2, 1197, and1197.1. (*Id.*)

On August 5, 2025, Plaintiff Freeman commenced the Freeman Action by filing a Complaint against Defendant in the Superior Court of the State of California, County of Alameda, on behalf of himself and the Class. (*Id.* at ¶ 7.) The Freeman Action is assigned case number 25CV135070. Except for a claim for failure to reimburse business expenses, Freeman's operative First Amended Complaint, filed on October 6, 2025, alleges all of the same Labor Code and Business and Professions Code violations as alleged in the Lim Action, but includes a separate cause of action for failure to provide sick leave in violation of Labor Code sections 233, 246 and 246.5. (*Id.*)

Defendant ardently opposes the merits of this case, denies Plaintiffs' factual allegations, and maintains that Plaintiffs face substantial risk with respect to certifying their claims (for any purpose other than settlement), proving liability for any of the alleged Labor Code violations or recovering any of the penalties sought in connection with his derivative claims. (*Id.* at ¶ 8.) Defendant contends, among other things, that Plaintiffs and the Class Members have been paid proper wages. (*Id.*) Moreover, Defendant argues that Plaintiffs and Class Members voluntarily relinquished or waived their right to enjoy rest and meal periods or, alternatively, there were exigent circumstances which prohibited such rest and meal periods. (*Id.*) Furthermore, to the extent that Plaintiffs received wage statements that were allegedly inaccurate, which Defendant denies, Defendant asserted that Plaintiffs 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 Plaintiffs' claim for waiting time penalties, Defendant alleged that its good-faith belief that it paid all wages precluded the imposition of waiting time penalties since Plaintiffs could not prove that Defendant alleged failure to pay all final wages at the time of separation was "willful." (Moon Decl., ¶ 9; *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, Defendant claimed that it did not engage in any unfair business practices and denied liability under PAGA. (Moon Decl., ¶ 9.) Defendant also disputes that Plaintiffs' claims are appropriate for class certification or other representative treatment due to the individualized nature of the claims. (*Id.*)

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

Following the filing of the Operative Complaint, the Parties met and conferred regarding an agreement to mediate the claims. (*Id.* at ¶ 10.) In preparation for mediation, the Parties agreed to a protocol for an informal exchange of documents and information before mediation. (*Id.*) Prior to mediation, Plaintiffs obtained from Defendant, through informal discovery, documents and data that were necessary and helpful to evaluate the claims asserted in this action. (*Id.*) Defendant produced the time and pay records for nearly all putative class members, Plaintiffs' personnel file, and Defendant's written policies. (*Id.*) Defendant 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, Class Counsel reviewed and analyzed all the information Defendant provided, including the sample records and documents regarding Defendant's wage and hour policies. (*Id.* at ¶ 10.) Class 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 37,517 actual shifts worked (representing roughly 98% of total shifts worked in the Class Period), which allowed Plaintiffs' expert to prepare an analysis with a reasonable degree of certainty. (*Id.*) In conjunction with their extensive factual investigation, Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly, Class Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum and realistic monetary exposure for all claims. (*Id.*) Thus, Plaintiffs' and their 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</u>

On March 3, 2026, the Parties participated in a full day of private mediation before Steven Rottman, a respected mediator of complex wage and hour actions. (*Id.* at ¶ 11.) 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.*) Through extended settlement discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses, the Parties reached a settlement. (*Id.*) The material terms of the settlement are set out in the Class Action and PAGA Settlement Agreement. (*Id.*, Ex. 2 [the "Settlement"].)

Class Counsel have conducted a thorough investigation into the facts of this case. (*Id.* at ¶ 18.) Based on the foregoing document and information exchange and on their own independent investigation and evaluation, Class Counsel are of the opinion that the proposed Settlement is fair, reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and circumstances, the risk of significant delay, trial risk, the risk of not certifying the Class, appellate risk, and the defenses that Defendant may assert both to certification and on the merits, the Settlement is in the best interest of the Settlement Class. (*Id.*; *see also id.* at ¶¶ 20–36.) **Indeed, the $450,000.00 gross settlement figure represents roughly 93.4% of the realistic recovery estimated to be $481,612.26.** (*Id.* at ¶ 37.)

D. Key Terms of the Proposed Settlement

Under the Settlement, Defendant will pay a non-reversionary, all-inclusive Gross Settlement Amount of $450,000.00 to resolve this action. (Settlement, ¶ 3.1.) The key terms include:

1. Class and Class Period: The proposed Class for purposes of the Settlement contains approximately 124 individuals and is defined as: all individuals who were employed by Defendant in California as hourly paid, non-exempt employees at any time during the period of time from June 3, 2021, through the Class Period End Date. (*Id.* at ¶ 1.5; Moon Decl., ¶ 2.) The "Class Period" is the period from June 3, 2021, through the Class Period End Date. (Settlement, ¶ 1.11.) "Class Period End Date" shall mean Preliminary Approval, or other such date as determined by Defendant in accordance with the Settlement Agreement's escalator clause. (*Id.* at ¶ 1.12.)

2. Aggrieved Employees and PAGA Period: There are an estimated 77 Aggrieved Employees, defined as: all individuals who were employed by Defendant in California as hourly paid, non-exempt employees at any time during the PAGA Period. (*Id.* at ¶ 1.4.) The "PAGA Period" is the period from June 1, 2024 through the Class Period End Date. (Settlement, ¶ 1.32.) Aggrieved Employees collectively worked an estimated 1,769 PAGA Pay Periods. (Moon Decl., ¶ 19.)

3. Non-reversionary Gross Settlement Amount: This amount is $450,000.00, subject to a potential increase under the escalator clause, and excludes Defendant's employer's share of payroll taxes. (Settlement, ¶ 3.1.) No portion will revert to Defendant. (*See id.*) Any amounts provided under the Settlement not approved by the Court will be allocated to the Net Settlement Amount to be distributed *pro rata* to Participating Class Members.)

4. Escalator Clause: Based on its records, Defendant estimates that, as of the date of mediation, the number of Workweeks was approximately 9,000. (*Id.* at ¶ 9.) If the number of Workweeks increases by more than 10% (i.e., more than 900 additional workweeks such that the total final workweeks being released are greater than 9,900), the Gross Settlement Amount shall either be:

(i) increased proportionally by the workweeks in excess of 9,900, such that if the workweeks are 12% greater than the certified amount above, the Gross Settlement Amount will increase by 2%; or (ii) the Class Period End Date shall be modified such that the total final Workweeks be no more than 9,000, either of the two at Defendant's election. (*Id.*) This election must be made prior to the Preliminary Approval Hearing, so that the Court is informed of the correct Class Period and the Class Notice is distributed to the correct individuals. (*Id.*)

5. Net Settlement Amount: "Net Settlement Amount" means 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 Payments, Class Counsel Fees Payment, Class Counsel Litigation Costs Payment, and the Administration Expenses Payment. The Net Settlement Amount is to be paid to Participating Class Members as Individual Class Payments. (*Id.* ¶ 1.29.)

6. Individual PAGA Payment: "Individual PAGA Payment" means an Aggrieved Employee's pro rata share of 35% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period. (*Id.* at ¶ 1.24.)

7. Individual Class Payment: "Individual Class Payment" means a Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period. (*Id.* at ¶ 1.23.)

8. Tax Allocation of Individual Class Payment: 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). (*Id.* at ¶ 3.2.e.i.) The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form and its state and local equivalents. (*Id.*) The portion of each Participating Class Member's pro rata distribution amount prior to legal deductions to be reported as wages will be reduced by the amount of any required payroll-related deductions. (*Id.*) 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for non-wages, expense reimbursement, interest, and penalties (the "Non-Wage Portion"). (*Id.*) The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. (*Id.*) Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. (*Id.*)

9. Administrator and Administration Expenses Payment: The Parties mutually agreed upon Phoenix Class Administration Solutions as the Administrator, subject to approval by the Court. (*Id.* at ¶ 1.2.) At this time, the Administrator estimates costs will be $7,000.00. (Moon Decl., ¶ 16, Ex. 5.)

10. Released Parties: "Released Parties" means Defendant and all of its respective current and former parents, subsidiaries, predecessors and successors, and affiliated entities, and each of its respective officers, directors, employees, partners, shareholders, and agents, and any other successors, assigns, or legal representatives. (*Id.* at ¶ 1.42.)

11. Release of Claims. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Participating Class Members, Aggrieved Employees and the LWDA will release claims against all Released Parties as follows:

(a) Plaintiffs' Release. The Parties acknowledge and agree that there is a bona fide dispute between them concerning alleged violations of the California Labor Code by Defendant, and that this Agreement and its Release of Claims represent a good faith compromise and resolution of the disputed claims. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge the Released Parties from any and all claims, including but not limited to: any and all wage-and-hour claims arising under the laws of the State of California, including, without limitation, statutory, constitutional, contractual, and/or common law claims for wages, damages, restitution, unreimbursed expenses, equitable relief, penalties, liquidated damages, and/or punitive damages, including, without limitation, claims under any applicable Industrial Welfare Commission Wage Order, the California Private Attorneys General Act, or any other provision of the California Labor Code; Title VII of the Civil Rights Act of 1964; 42 U.S.C. § 1981; the Americans with Disabilities Act; Sections 503 and 504 of the Rehabilitation Act of 1973; the Family Medical Leave Act; the Fair Labor Standards Act; the Employee Retirement Income Security Act; the Occupational Safety and Health Act; the Worker Adjustment and Retraining Notification Act, as amended; the

California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 et seq.); the California Fair Employment and Housing Act; any state, civil, or statutory laws, including any and all human rights laws and laws against discrimination; any other federal, state, or local statutes, codes, or ordinances; any common law, contract law, or tort law cause of action; and any claims for interest, attorneys' fees, and/or costs and expressly waive the protections of California Civil Code section 1542. (Settlement, ¶ 6.1.).

1) Plaintiffs' Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of Section 1542 of the California Civil Code, which reads: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party." (*Id.* at ¶ 6.1.a.)

(b) Release by Participating Class Members: Defendant and Plaintiffs on behalf of the entire Class acknowledge and agree that there is a bona fide dispute between Defendant and the Class concerning alleged violations of the California Labor Code by Defendant, and that this Agreement and its Release of Claims represent a good faith compromise and resolution of the disputed claims. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, shall release Released Parties from the following "Released Claims": any and all federal and California state law wage-and-hour claims, rights, demands, liabilities, and/or causes of action of every nature and description, whether known or unknown, arising from or related to any and all claims that were asserted or could have been asserted based on the facts or theories alleged in the Lim or Freeman Actions, including, without limitation, statutory, constitutional, contractual, and/or common law claims for wages, reimbursements, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief. The Released Claims include, without limitation, Labor Code sections 201-204, 210, 226, 226.3, 226.7, 227.3, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2699, et seq., 2802 and any federal counterparts, and California Business and Professions Code section 17200, et seq. For the avoidance of doubt, if a Participating Class Member is also an Aggrieved Employee, the Participating Class Member is also subject to the release set forth in Section 6.3 of the Settlement. If the Participating Class Member is not an Aggrieved Employee, then the Participating Class Member is not subject to the release set forth in Section 6.3 of the Settlement. (Settlement, ¶ 6.2.)

(c) Release of PAGA Claims. Plaintiffs, on their own behalf and on behalf of the State of California, will be barred from asserting PAGA Claims against the Released Parties, including Defendant. Aggrieved Employees shall release and discharge the Released Parties from the following "Released PAGA Claims": any and all individual and representative claims that could have been assessed upon and collected from the Released Parties under California Labor Code section 2698, et seq., including any and all claims for unpaid wages or reimbursements of whatever kind or nature, whether known or unknown, based on the facts alleged in the Lim and Freeman Actions, and Plaintiffs' PAGA Notices to the LWDA, including but not limited to Labor Code sections 201-204, 210, 226, 226.3, 226.7, 227.3, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and any resulting claim for attorneys' fees and costs under PAGA. (Settlement, ¶ 6.3.)

12. Class Notice: The proposed Class Notice sets forth, in plain terms, a statement of case, the terms of the Settlement, the approximate amounts of attorneys' fees, costs, PAGA penalties, and awards to Plaintiffs being sought, an explanation of how the individual payments are calculated, and the Final Approval Hearing information. (Settlement, Ex. A.) The proposed method for providing notice of the proposed Settlement and distribution thereof is the one most likely to give actual notice to the greatest number, if not all, of the Class Members. (*Id.* at ¶ 5.2.) Class Members will be notified of the proposed

Settlement by first-class mail in English. (*Id.*) The Settlement Administrator will undertake its best efforts to ensure the Class Notice is provided to the current address of Class Members, including conducting a national change of address search and re-mailing the notice to updated addresses. (*Id.*)

13. Procedure for Disputing Workweeks, Opting Out, or Objecting: The Class Notice explains the procedure under which a Class Member can dispute the number of individual Workweeks credited to them. (Settlement, ¶ 8.4, Ex. A.) Additionally, the Class Notice explains how Settlement Class Members may, should they choose to do so, opt-out or otherwise object to the Settlement. (*Id.* at ¶ 8.5.)

14. Funding of the Gross Settlement Amount: Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 14 calendar days after the Effective Date. (*Id.* at ¶ 4.3.) Any funds remaining uncashed after 180 days from issuance will be transmitted to the California State Controller's Unclaimed property Fund in the name of each individual who failed to cash his or her check prior to the void date. (*Id.* at ¶¶ 5.2, 5.4.)

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 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, Class 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, and Informed and Non-Collusive Arm's-Length Negotiations

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

The proposed Settlement at issue was reached following extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses with an experienced and neutral class action mediator. (Moon Decl., ¶ 12.) At mediation, the Parties engaged in intensive settlement discussions during which they debated their respective positions and exchanged views regarding the strengths and weaknesses of the alleged claims. (*Id.*) With the assistance of the mediator, the Parties were able to resolve the Action. (*Id.*)

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

Courts typically assess the status of discovery in determining whether a class action settlement agreement is fair, reasonable, and adequate. (*Dunk, supra,* 48 Cal.App.4th at p. 1801.) As discussed above, the Parties engaged in extensive discovery prior to reaching a settlement. (Moon Decl., ¶¶ 10-11.) Prior to the mediation, Defendant produced a randomized 98% sample of time and payroll records for the relevant time period. (*Id.* at ¶ 11.) The Parties made efforts to ensure the sample included sufficient records of the Class Members to ensure they could analyze the claims of the Class in a representative fashion. (*Id.*)

Plaintiffs contend that a 98% sample of records is statistically significant and reliable. (*See, e.g.*, *Tyson Foods, Inc. v. Bouaphakeo* (2016) 577 U.S. 442 [holding statistical evidence was admissible to prove liability and damages across a class, thereby allowing it to support class certification].) The timekeeping data and payroll data produced for mediation were generated from uniform timekeeping and payroll systems, which allowed Plaintiffs' expert to extrapolate his findings with confidence. (Moon Decl., ¶ 11.) The employees in the sample were also subject to the same wage and hour policies and procedures (e.g., non-exempt). (*See id.* at ¶¶ 10-11.) Given these circumstances, the 98% sample can be probative as to the experiences of all Settlement Class Members. (*See Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 938.)

Defendant also produced information regarding the estimated number of current and former Class Members, Aggrieved Employees, and PAGA Pay Periods. (Moon Decl., ¶ 10.) This extensive discovery and investigation allowed Class Counsel to perform a comprehensive damages analysis and estimate Defendant's potential liability. (*Id.* at ¶ 11.)

2. The Settlement Is Fair Considering the Parties' Respective Positions

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].)

Based on Class Counsel's review of the time, payroll, and additional data provided by Defendant, on Plaintiffs' expert's analysis of the sample records provided by Defendant, and on information from Plaintiff, Class Counsel evaluated the estimated maximum and risk-adjusted exposure that Defendant faced. Defendant represented at the time of mediation that there were approximately 9,000 Workweeks Class Members worked during the Class Period. (*Id.* at ¶ 20.) Additionally, there were an estimated: 124 Class Members, 62 former employees falling within the three-year statute of limitations ("SOL") period for waiting time penalties, 77 employees falling within the one-year SOL period for inaccurate wage statement penalties and PAGA penalties, and 1,769 PAGA Pay Periods. (Moon Decl., ¶ 20.) Based on Class Counsel's review of the time, payroll, and additional data provided by Defendant, on Plaintiffs' expert's analysis of the sample records provided by Defendant, and on information from Plaintiffs, Class Counsel evaluated the estimated maximum and risk-adjusted exposure that Defendant faced. (*Id.*) Based on the information provided at mediation, Defendant's ***realistic* exposure** (adjusted for risks at certification and proof on the merits) for the alleged claims, including penalties, is estimated to be **$481,612.26**. (*Id.* at ¶¶ 20, 37.) This amount was calculated as follows: **$2,381.50** (50% discount) for the regular rate of pay claim; **$50,726.95** (85% discount) for the off-the-clock work claim; **$195,317.40** (50% discount) for the meal period claim; **$103,945.41** (85% discount) for the rest period claim; **$9,110.10** (85% discount) for the unreimbursed expenses claim; **$85,055.90** (90% discount) for the waiting time penalties claim; **$17,385.00** (90% discount) for the wage statement claim; and **$17,690.00** (90% discount) for the PAGA penalties claim.

(*Id.* at ¶¶ 20–36.) The foregoing discounts were based on the evidence presented and arguments made during arm's-length settlement negotiations. (*Id.* at ¶¶ 11, 20–36.) **The $450,000.00 gross settlement figure represents roughly 93.4% 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.*)

With regards to the PAGA claims, Plaintiffs and their Counsel believe 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, Defendant has had to hire legal counsel, engage in extensive discovery, and participate in mediation. Defendant is also now having to pay civil penalties to the LWDA under the Settlement, assuming final settlement approval is granted. (Settlement, ¶ 1.35.) Not including its own attorneys' fees and costs as well as the employer's share of payroll taxes, Defendant will pay $450,000.00 to resolve this matter—of which $43,000.00 is allocated toward the PAGA claims and will be distributed, in compliance with Labor Code section 2699 as 65% ($28,000.00) to the LWDA and 35% ($15,000.00) to Aggrieved Employees. (Moon Decl., ¶ 38.) Further, the $43,000.00 amount allocated for the PAGA Released Claims is greater than the total realistic recovery for the alleged PAGA claims ($17,690.00). (*Id.*) Moreover, Class 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 Plaintiffs prevailed on the merits due to the largely discretionary nature of awarding PAGA penalties. (*Id.*) Indeed, under Labor Code section 2699, subdivision (e)(2), a Court can reduce PAGA 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.)

While Plaintiffs are confident in the merits of their claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 39.) Plaintiffs also recognize that proving the amounts of wages 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

Plaintiffs' claims. (*Id.* at ¶ 40.) Furthermore, even if Plaintiffs were able to pursue their 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.*) This Settlement avoids the risks, burdens, and the accompanying expense of further litigation. (*Id.* at ¶ 41.) 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 Plaintiffs and/or any summary judgment ruling. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through trial. (*Id.*)

The Net Settlement Amount available for settlement payments is estimated to be *no less than* **$195,000.00** for an estimated Settlement Class of **124 individuals**.[2] (Settlement, ¶ 4.1.) As a result, a Participating Class Member will receive an average benefit of approximately **$1,572.58**, prior to tax withholdings on the wage portion of payments. (Moon Decl., ¶ 42.) Considering Class Members' average rate is $36.70, the average benefit is roughly **42.85 hours of work**. (*Id.*) The Net Settlement Amount results in **an estimated Workweek value of roughly $21.67** for the currently estimated **9,000 Workweeks**. (*Id.*) Additionally, it is currently estimated there are **77 Aggrieved Employees** who will receive an estimated average of approximately **$194.81** from their $15,000.00 total share of the PAGA Payment, which results in an estimated **Pay Period value of $8.48** based on the currently estimated **1,769 PAGA Pay Periods**. (*Id.*) The actual amounts to Participating Class Members and Aggrieved Employees will vary based on each individual's duration of work during the Class Period or PAGA Period, respectively; thus, those who worked longer will receive a gross benefit greater than the average estimated amount. (*Id.*) The high and low range of payments to Class Members will be calculated by the Administrator following preliminary approval and receipt and processing of the Class List and will

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[2] The Net Settlement Amount is at least $450,000.00 less the following: $43,000.00 for the PAGA Penalties, $150,000.00 for Class Counsel Fees Payment, $40,000.00 for Class Counsel Costs, $7,000.00 for Administration Expenses Payment, and $15,000.00 for the Class Representative Service Payments to Plaintiffs ($7,500.00 each). (Settlement, ¶ 1.29.)

be provided to the Court in a motion for final approval. (*Id.*)

The proposed Settlement of $450,000.00 therefore represents a substantial recovery when compared to Plaintiffs' reasonably forecasted recovery. (*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 of $450,000.00 is within the "ballpark" of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*)

3. Class 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. (*Id.* at ¶¶ 48–70; Nourmand Decl., ¶ 5.) Class 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. (Moon Decl., ¶¶ 48–70; Nourmand Decl., ¶ 5.) The experience of Class Counsel 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. (Moon Decl., ¶ 71.) Although Plaintiffs and their 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 ¶¶ 12, 19, 39-41.)

B. <u>The Proposed Class Notice Should Be Approved</u>

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

C. <u>The Proposed Attorneys' Fees and Costs Are Reasonable</u>

Subject to the Court's approval, the Settlement provides a fee application not more than thirty-three and one third percent (33 1/3%) of the GSA for Class Counsel Fees Payment, plus reimbursement for out-of-pocket litigation costs not to exceed $40,000.00. (Settlement, ¶ 3.2.b.) These amounts are disclosed to Class Members in the proposed Class Notice and are reasonable. (*Id.* at Ex. A.) Pursuant to a Joint Prosecution and Fee Split Agreement between Class Counsel, and as consented to in a signed writing by Plaintiffs, the firms will split the award for attorneys' fees with 60% going to Moon Law Group, PC and 40% going to the Nourmand Law Firm, APC, regardless of the amount awarded or whether the award is based on a common fund or lodestar analysis. (Moon Decl., ¶ 76.)

1. Counsel Will 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.)

Class Counsel will seek an award of attorneys' fees on the "percentage of recovery/common fund" theory. (Moon Decl., ¶ 75.) 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 recently affirmed in *Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480 that, "when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." (*Id.* at p. 503.) The court explained: "The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation[ ]—convince us the percentage method is a valuable tool that should not be denied our trial courts." (*Id.* [internal citations omitted].) This line of legal authority supports a request for attorneys' fees based on the percentage of recovery/common fund method.

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

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

Here, Class Counsel will request fees equal to one-third of the Gross Settlement Amount, which is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. (*Compare* Settlement, ¶ 3.2.b, *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, Plaintiffs request the Court preliminarily approve his counsel's ability to request attorneys' fees as negotiated by the Parties.

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

Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(k)(1), 2802(d).) Under these sections, Plaintiffs 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 Class Counsel for their decision to assume risk by taking on this matter. (*See* Moon Decl., ¶¶ 40-41.) In fact, prosecution of this action involved significant financial risk for Class Counsel. (*Id.* at ¶¶ 75-78.) Their Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.* at ¶¶ 75-78.) Once Class Counsel undertook this litigation on behalf of the Class, they committed to pursue it to its conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶ 76.)

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

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possess considerable expertise in litigating class actions. (*Id.* at ¶¶ 48-70; Nourmand Decl., ¶ 5.) Class Counsel have been involved as lead counsel or co-counsel in numerous class actions that resulted in millions in recovery. (Moon Decl., ¶¶ 48-70; Nourmand Decl., ¶ 5.) Class Counsel's experience in wage and hour litigation was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. (Moon Decl., ¶ 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 ¶ 72.) Based on these and other factors, Class Counsel have frequently received fee awards of this percentage from the gross recovery for the class. (*See id.* at ¶¶ 52, 57, 59, 68; Nourmand Decl., ¶ 5.)

D. <u>The Service Payments to Plaintiffs Are Reasonable</u>

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, Defendant agrees to pay Class Representative Service Payments to Plaintiffs in an amount not to exceed $7,500.00 to each Plaintiff, totaling $15,000.00, which will be in addition to the amounts they will receive as Class Members. (Settlement, ¶ 3.2.a.) "Class Representatives Service Payments" means the service payments made to the Plaintiffs as Class Representatives in order to compensate for initiating the Actions, performing services in support of the Actions, undertaking the risk of liability for Defendant's expenses, and for the general release of all claims by the Plaintiffs. (*Id.* at ¶ 1.14.) Plaintiffs have devoted a great deal of time and work assisting counsel in the case and communicated with counsel frequently for litigation and to prepare for the mediation session. (Moon Decl., ¶¶ 44-47; Lim Decl., ¶¶ 9–16; Freeman Decl. ¶ 6.) The requested awards are fair and reasonable, particularly considering the substantial benefits Plaintiffs generated for all Class Members. (Moon Decl., ¶¶ 37–47.)

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. Plaintiffs Maintain that the Criteria for Class Certification Are Satisfied

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, Plaintiffs maintain there is an easily ascertainable Class, defined by objective and precise criteria. (Settlement, ¶ 9.) The proposed Class that Plaintiffs seek to represent is ascertainable because (1) the Class definition is sufficiently precise, (2) the Class consists of about 124 individuals, and (3) the Class Members can be readily identified by looking at Defendant's records. (*Id.*) Because Class Members are identified using specific criteria in the regular business records of Defendant—their employment by Defendant in California, non-exempt classification, 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, Parties 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, Plaintiffs' claims satisfy all three requirements. The employment practices at issue include whether Defendant: provided legally compliant meal periods to the Settlement Class, or paid meal period premiums in lieu thereof; provided legally compliant paid rest periods to the Class, or paid rest period premiums in lieu thereof; paid proper overtime compensation to the Class; timely paid final compensation upon separation of employment to Class Members who are former employees; timely paid wages to Class Members throughout Class Members' employment; provided accurate itemized wage statements to the Class; engaged in unlawful or unfair business practices affecting the Class in violation of California Business and Professions Code §§ 17200-17208; and reimbursed Class Members for all reasonably incurred business expenses. (Settlement, ¶ 3.2.b; Moon Decl., ¶¶ 3–4.) Plaintiffs contend 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. (Lim Decl., ¶¶ 2-5; Freeman Decl., ¶ 3.) 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. Plaintiffs' Claims Are Typical of the Claims of the Settlement 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 a re [sic] that common questions of law and fact *predominate* and that the class representative be *similarly* situated" vis-à-vis the class.] [emphasis in original].) A representative plaintiff's claims are typical of the class if they arise from the same event, practice, or course of conduct, and if the claims rest on the same legal theories. (*Id.*) That is precisely the case here. Plaintiffs are former employees of Defendant; as such, they allege they were subject to the same policies and practices as other similarly situated employees. (Lim Decl., ¶ 6.; Freeman Decl., ¶ 3.)

4. Plaintiffs and Their 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. Plaintiffs retained counsel with extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Moon Decl., ¶¶ 48–70.) With their experience, Class Counsel unquestionably are "qualified, experienced and generally able to conduct the proposed litigation." (*Miller*, *supra*, 148 Cal.App.3d at p. 874.) Further, Plaintiffs have, with counsel, litigated this case and diligently reviewed the settlement terms, showing dedication, and with full knowledge and acceptance of duties, they have committed to their role as Class Representative. (Lim Decl., ¶¶ 9–16; Freeman Decl., ¶ 5.)

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. THE PROPOSED CLASS NOTICE IS CONSTITUTIONALLY SOUND

A. The Proposed Notice Plan Satisfies Due Process

Class notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court, rule 3.766(e)–(f).) California law vests the Court with broad discretion in fashioning an appropriate notice program. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 970, 973–74.) There is no statutory or due process requirement that all class members receive actual notice, but in this matter, the Class Members will receive direct mailed notice. (Settlement, ¶ 8.4.) As the Court of Appeals has explained, "[t]he notice given should have a reasonable chance of reaching a substantial percentage of the Class

Members . . ." (*Cartt*, 50 Cal.App.3d at p. 974.) In this case, notice of the proposed Settlement will be provided by direct mailing, the best possible form of notice under the circumstances. (Settlement, ¶ 5.2.)

B. The Class Notice Is Accurate and Informative

The proposed Notice Packet should be approved. It will be disseminated through direct U.S. first-class mail to the current address for each Settlement Class Member. (*Id.*) It informs the Settlement Class of the terms of the Settlement and the right to be excluded. (*Id.* at ¶ 8.4.b, Ex. A.) If there are Class Members who wish to object to the proposed Settlement, they are informed of their right to submit written objections and/or be heard at the Final Approval Hearing. (*Id.* at ¶ 8.4.b, Ex. A.)

The Class Notice also fulfills the requirement of neutrality in class notices. (Newberg, Newberg on Class Actions (3rd ed. 1992) § 8.39.) It summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner. (Settlement, Ex. A.) It makes clear the Settlement does not constitute an admission of liability by Defendant, who denies all liability. (*Id.*) It also states that the final approval decision has yet to be made, and provides the date, time, and location of the Final Approval Hearing. (*Id.*) Accordingly, the Class Notice complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court grant this motion, enter in the Lim and Freeman Actions the proposed order submitted herewith regarding preliminary approval, and set a Final Approval Hearing in the Lim and Freeman Actions no earlier than 130 days from the date of preliminary approval.

Respectfully submitted,

Dated: July 30, 2026 **MOON LAW GROUP, PC**

By: ______________________________

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Dated: July 30, 2026 **THE NOURMAND LAW FIRM, APC**

By: */s/ Michael Nourmand*
Michael Nourmand

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