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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MIGUEL A. FLORES, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

CONTINENTAL FORGE COMPANY, LLC, a
limited liability company; and DOES 1 through
10, inclusive,

Defendants

Case No.: 23STCV07200

CLASS AND REPRESENTATIVE ACTION

[Assigned to Hon. Theresa M. Traber, Dept. 1]

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

*[Filed with the Declarations of Kane Moon,
Plaintiff Miguel A. Flores, and Jodey
Lawrence on Behalf of Phoenix Class Action
Administration Solutions, and [Proposed]
Order]*

PRELIMINARY APPROVAL HEARING:

Date: February 2, 2026

Time: 10:30 a.m.

Dept.: 1

Action Filed: April 3, 2023

Trial Date: Not set

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

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

2 PLEASE TAKE NOTICE that on February 2, 2025, at 10:30 a.m. in Department 1 of this
3 Court located at the Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012,
4 pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 *et seq.*,
5 Plaintiff Miguel A. Flores (“Plaintiff”) will, and hereby does, move the Court for an order granting
6 preliminary approval of the proposed class action settlement between Plaintiff and Defendant
7 Continental Forge Company, LLC.

8 Plaintiff will further move the Court for an order:

- 9 1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement
10 and Class Notice;
11 2. Certifying a Class, for settlement purposes only;
12 3. Approving the Class Notice and plan for its distribution;
13 4. Appointing Plaintiff as the Class Representative, for settlement purposes only;
14 5. Appointing Moon Law Group, PC as Class Counsel, for settlement purposes only;
15 6. Appointing Phoenix Settlement Administrators as the Settlement Administrator; and
16 7. Setting a Final Approval Hearing no earlier than 140 days from preliminary approval.

17 The motion will be based upon this notice, the attached memorandum of points and
18 authorities, the supporting Declarations of Kane Moon (and exhibits attached thereto) and Plaintiff,
19 the records and files in this action, and any other further evidence or argument that the Court may
20 properly receive at or before the hearing.

21 Respectfully submitted,

22 Dated: August 21, 2025

MOON LAW GROUP, PC

23
24 By: 

25 Kane Moon
26 Allen Feghali
27 Julie S. Oh
28 Jamie C. Osganian
Attorneys for Plaintiff

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FEDERAL CASES

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Leyva v. Medline Industries Inc. (9th Cir. 2013) 716 F.3d 510 26

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

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Vincent v. Hughes Air West, Inc. (9th Cir. 1977) 557 F.2d 759 19

OTHER AUTHORITIES

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

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Newberg, Newberg on Class Actions (3rd ed. 1992) § 11.51.....13

Newberg, Newberg on Class Actions (3rd ed. 1992) § 14.03.....20

STATE CASES

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Miguel A. Flores (“Plaintiff”) seeks preliminary approval of a proposed
4 \$392,500.00 non-reversionary, wage and hour class action settlement (the “Settlement”) with
5 Defendant Continental Forge Company, LLC (“Defendant” or “CFC”) (together with Plaintiff, the
6 “Parties”). The Settlement will provide substantial monetary payments to roughly 136 class
7 members who collectively worked an estimated total of 19,787 workweeks and 71 aggrieved
8 employees who collectively worked an estimated total of 8,170 pay periods during the statutory
9 period. As set forth more fully below, the proposed Settlement satisfies all the criteria for
10 settlement approval under California law. The Settlement was reached after extensive
11 investigation, informal discovery, and negotiations between the Parties. The negotiations were at
12 arm’s-length and were facilitated through a mediation session by experienced, neutral, class action
13 mediator Tripper Ortmann, Esq. Accordingly, Plaintiff requests the Court preliminarily approve
14 the proposed Settlement, certify the proposed Settlement Class, approve the proposed Notice to
15 Class Members, and set a final approval hearing no earlier than 140 days from the date of
16 preliminary approval.

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

18 **A. Plaintiff’s Claims**

19 This is a wage and hour class action and representative action for alleged Labor Code
20 violations and claims for civil penalties pursuant to the California Private Attorneys General Act,
21 Labor Code sections 2698, *et seq.* (“PAGA”). (Declaration of Kane Moon in Support of Plaintiff’s
22 Motion for Preliminary Approval of Class Action and PAGA Settlement [“Moon Decl.”], ¶ 2.)
23 Plaintiff seeks to represent a class of all current and former non-exempt employees of Defendant
24 who worked for Defendant in the State of California from April 3, 2019, through the date the
25 Court grants preliminary approval of the Settlement (“Class” or “Class Members”). (*Id.*)
26 Defendant Continental Forge Company, LLC is a manufacturer of aluminum forgings with its
27 principal place of business in Los Angeles County, California. (*Id.*)

28 Plaintiff’s claims for unpaid minimum wages stem from Defendant’s alleged failure to pay

1 for all time worked by employees to work off the clock, including unpaid time from off-the-clock
2 COVID screening. (Moon Decl., ¶ 3.) Moreover, Plaintiff’s meal and rest period claims are based
3 on allegations that due to the nature of their work, Class Members’ breaks were often short, late,
4 interrupted, and sometimes missed altogether. (*Id.*) Finally, Plaintiff brings claims for
5 unreimbursed necessary business expenses, and derivative claims for waiting time penalties, wage
6 statement violations, unfair business practices, and civil penalties under PAGA. (*Id.*)

7 Because of the foregoing alleged violations of various provisions of the Labor Code,
8 Plaintiff commenced a class action on April 3, 2023, by filing a complaint alleging the following
9 causes of action against Defendant: (1) Failure to Pay Minimum Wages [Cal. Lab. Code §§ 204,
10 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and
11 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to Authorize
12 and Permit Rest Breaks [Cal. Lab. Code § 226.7]; (5) Failure to Indemnify Necessary Business
13 Expenses [Cal. Lab. Code § 2802]; (6) Failure to Timely Pay Final Wages at Termination [Cal.
14 Lab. Code §§ 201-203]; (7) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab.
15 Code § 226]; and (8) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]. On
16 July 25, 2023, Plaintiff filed a first amended complaint, alleging an additional cause of action for
17 Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.]. (Moon Decl., ¶ 4.) Prior to bringing
18 a PAGA claim, Plaintiff sent to Defendant and the California Labor and Workforce Development
19 Agency (the “LWDA”) a PAGA notice of alleged Labor Code violations. (*Id.* at ¶ 9, Exh. 2.)
20 Plaintiff’s administrative exhaustion period under PAGA expired without the LWDA indicating
21 its intent to investigate the alleged violations. (*Id.*) Pursuant to Labor Code section 2699,
22 subdivision (1)(1), Plaintiff’s Counsel submitted a file-stamped copy of Plaintiff’s first amended
23 complaint that contained the Court-assigned case number to the LWDA. (*Id.*)

24 Defendant ardently opposes the merits of this case and denies Plaintiff’s factual allegations.
25 (Moon Decl., ¶ 5.) Defendant argues the putative Class was paid all minimum wages owed and
26 maintains compliance with all its meal and rest period obligations. (*Id.*) As for the unreimbursed
27 business expenses, Defendant maintains it reimbursed Class Members for all necessary business
28 expenses incurred. (*Id.*) To the extent Class Members received wage statements that were

1 allegedly inaccurate, Defendant asserts they suffered no actual damage or harm as a result. (See,
2 e.g., *Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013) No. C 12–05860 CRB, 2013 WL
3 622032, at *10 [“A plaintiff must adequately plead an injury arising from an employer’s failure
4 to provide full and accurate wage statements, and the omission of the required information alone
5 is not sufficient.”].) (Moon Decl., ¶ 5.) With respect to Plaintiff’s claim for waiting time penalties,
6 Defendant alleges its good-faith belief that they paid all wages precludes the imposition of waiting
7 time penalties since Plaintiff cannot prove Defendant’s alleged failure to pay all final wages at the
8 time of separation was “willful.” (See, e.g., *Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012)
9 No. ED CV 11–298 GHK (DTBx), 2012 WL 9506073, *5.) (Moon Decl., ¶ 5.) For these reasons,
10 Defendant claims it did not engage in any unfair business practices and denies liability under
11 PAGA. (Moon Decl., ¶ 5.) Defendant also maintains that, besides the existence of binding
12 arbitration agreements which would prevent Plaintiff and the putative Class from bringing a class
13 action, the claims are improper for class treatment due to the individualized and testimony-
14 intensive nature of the wage claims that could bar class certification or significantly reduce
15 Defendant’s overall liability. (*Id.*)

16 **B. Discovery and Investigation**

17 After this action was initiated, the Parties met and conferred and agreed to participate in
18 mediation. (Moon Decl., ¶ 6.) The Parties scheduled mediation for September 23, 2024 with Tripper
19 Ortmann, Esq., an experienced class and PAGA action mediator. (*Id.*) In preparation for mediation,
20 the Parties agreed to a protocol for an informal exchange of documents and information before the
21 mediation. (*Id.*) Prior to mediation, Plaintiff’s Counsel (“Class Counsel”) obtained from Defendant
22 information regarding the class and the PAGA group, including the number of employees,
23 workweeks, and pay periods during the relevant period and the Class Members’ average hourly rate
24 of pay, as well as Plaintiff’s personnel file and Defendant’s Employee Handbook. (*Id.*) Defendant
25 also informed Class Counsel that a large number of the putative Class Members signed a settlement
26 agreement releasing their claims against Defendant and produced the English and Spanish versions
27 of the individual settlement agreement and release. (*Id.*)

1 In preparation for mediation, Class Counsel reviewed and analyzed all the information
2 provided, including the documents provided by Plaintiff, Defendant's Employee Handbook, and
3 Plaintiff's personnel file. (Moon Decl., ¶ 7.) Based on information provided by Defendant, the
4 putative class is comprised of approximately 136 Class Members, who worked for 19,787 workweeks
5 in aggregate during the relevant time period. (*Id.*) In conjunction with their extensive factual
6 investigation, Class Counsel also investigated the applicable law regarding the claims and defenses
7 asserted in the litigation. (*Id.*) Accordingly, Class Counsel was able to evaluate the probability of
8 class certification, success on the merits, and Defendant's maximum and realistic monetary exposure
9 for all claims. (*Id.*) Thus, Plaintiff's and Class Counsel's familiarity with the facts of the case and the
10 legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement.
11 (*Id.*) Accordingly, Plaintiff's investigation and discovery are sufficient to satisfy the criteria for court
12 approval set forth in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802, as modified Sept.
13 30, 1996 (holding that in evaluating a class action settlement, "a presumption of fairness exists where:
14 (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are
15 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
16 litigation; and (4) the percentage of objectors is small.").

17 **C. Settlement Negotiations**

18 On September 23, 2024, the Parties mediated the instant action with Tripper Ortmann, Esq,
19 a professional and neutral class and PAGA action mediator. (Moon Decl., ¶ 8.) The settlement
20 negotiations were at arm's length and, although conducted in a professional manner, were
21 adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a
22 settlement of the dispute, but each side was also prepared to litigate their position through trial
23 and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions
24 regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties
25 reached a settlement, the material terms of which are encompassed within the Class Action and
26 PAGA Settlement Agreement and Class Notice. (*Id.*, Exh. 1 [the "Settlement Agreement" or
27 "Settlement"].) Class Counsel represent they are not aware of any related case that would be
28 extinguished or adversely affected by approval of this Settlement. (*Id.* at ¶ 10.) On August 21,

1 Plaintiff's Counsel submitted the proposed Settlement Agreement to the LWDA. (*Id.* at ¶ 11, Exh.
2 3.) To date, the LWDA has not indicated any objection to the proposed Settlement. (*Id.*)

3 Class Counsel has conducted a thorough investigation into the facts of this case. (Moon
4 Decl., ¶ 18.) Based on the foregoing document and information exchange and on their own
5 independent investigation and evaluation, Class Counsel is of the opinion that the proposed
6 Settlement is fair, reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and
7 circumstances, the risk of significant delay, trial risk, appellate risk, and the defenses that
8 Defendant may assert both to certification and on the merits, the Settlement is in the best interests
9 of the Class. (*Id.* at ¶¶ 18–31.) **Indeed, the \$392,500.00 gross settlement figure represents**
10 **roughly 74% of the realistic (*risk-adjusted*) recovery estimated to be \$530,552.70.** (*Id.* at ¶ 25.)

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

12 Under the Settlement, Defendant will pay a non-reversionary, all-inclusive amount of
13 \$392,500.00 to resolve this litigation, subject to an escalator clause. (Settlement, ¶ 1.21.)
14 Defendant's portion of the payroll taxes are not part of the Gross Settlement Amount and shall be
15 paid by Defendant separately. (*Id.* at ¶ 3.1.) The Settlement's key terms include:

16 1. **"Class"** means all persons employed by Defendant in California and classified as a
17 non-exempt hourly paid employee who worked for Defendant during the Class Period.
18 (Settlement, ¶ 1.5.)

19 2. **"Class Member" or "Settlement Class Member"** means a member of the Class, as
20 either a Participating Class Member or Non-Participating Class Member (including a Non-
21 Participating Class Member who qualifies as an Aggrieved Employee). (*Id.* at ¶ 1.9.)

22 3. **"Class Period"** means the period from April 3, 2019 to the date of preliminary
23 approval. (*Id.* at ¶ 1.12.)

24 4. **"Participating Class Member"** means a Class Member who does not submit a valid
25 and timely Request for Exclusion from the Settlement. (*Id.* at ¶ 1.34.)

26 5. **"PAGA Member"** means a person employed by Defendant in California and
27 classified as a non-exempt hourly paid employee who worked for Defendant during the PAGA
28 Period. (*Id.* at ¶ 1.4.)

1 6. **“PAGA Period”** means the period from April 3, 2022, to the date of preliminary
2 approval of the Settlement. (*Id.* at ¶ 1.31.)

3 7. **“Gross Settlement Amount”** means the total amount Defendant agrees to pay under
4 the Settlement Agreement, subject to a potential increase under the Escalator Clause. (*Id.* at ¶¶
5 1.21 and 3.1.1.) This amount is \$392,500.00 and excludes Defendant’s share of payroll taxes. (*Id.*)
6 No portion of the Gross Settlement Amount will revert to Defendant. (*Id.* at ¶ 3.1.1.)

7 8. **“Uncredited Settlement Amount”** means \$300,000.00, which is the amount
8 remaining after \$92,500.00 from the Gross Settlement Amount is credited back to Defendant to
9 reflect the amount Defendant already paid to some members of the Class to resolve their
10 individual claims. (*Id.* at ¶¶ 1.21 and 3.1.1.) Accordingly, the actual amount Defendant will pay
11 under the Settlement is the remaining, uncredited amount of \$300,000.00, subject to Escalator
12 Clause. (*Id.*) None of the Uncredited Settlement Amount will revert to Defendant. (*Id.* at ¶ 3.1.1.)

13 9. **Escalator Clause.** The Gross Settlement Amount covers 19,787 Workweeks during
14 the Class Period, plus a 15% escalator. (*Id.* at ¶ 8.) In the event that the total Workweeks included
15 in the Class Period increases by more than 15% of the original estimate of 19,787, less the 213
16 Workweeks between 19,787 and 20,000 Workweeks Defendant already covered as a good faith
17 deposit, (*i.e.*, the total number of Workweeks is more than 22,542), Defendant shall have the
18 option to increase the Gross Settlement Amount by a proportionate amount (*i.e.*, \$19.62 per
19 workweek above 22,542) or end the Class and PAGA Period on the date on which the total number
20 of Workweeks reaches 22,542 (“Escalator Clause”). (*Id.*)

21 10. **“Class Representative Service Payment”** means the payment of \$5,000.00 to
22 Plaintiff, to be paid from the Uncredited Settlement Amount, for initiating the Action and
23 providing services in support of the Action. (*Id.* at ¶¶ 1.14 and 3.2.1.)

24 11. **“Class Counsel Fees Payment” and “Class Counsel Litigation Expenses**
25 **Payment”** mean the amounts allocated to Class Counsel for reimbursement of reasonable
26 attorneys’ fees and expenses, respectively, incurred to prosecute the Action. (*Id.* at ¶ 1.7.) The
27 Settlement Agreement provides for Class Counsel Fees Payment of not more than 33 and 1/3%,
28 of the Gross Settlement Amount, which is currently estimated to be \$130,833.33 and a Class

1 Counsel Litigation Expenses Payment of not more than \$18,000.00. (*Id.* at ¶ 3.2.2.) If the Court
2 approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less
3 than the amounts requested, the Administrator will allocate the remainder to the Net Settlement
4 Amount. (*Id.*) Plaintiff’s Counsel’s litigation costs are currently \$15,617.22. (Moon Decl., ¶ 14,
5 Exh 4.)

6 12. “**Administrator**” means Phoenix Class Action Administration Solutions
7 (“Phoenix”), the neutral entity the Parties have agreed to appoint administer the Settlement.
8 (Settlement, ¶ 1.2.) Phoenix is qualified and experienced in administering class action settlements
9 and has procedures in place to protect the security of class data, including insurance for errors
10 and omissions and cyber insurance. (Declaration of Jodey Lawrence on Behalf of Phoenix Class
11 Action Administration Solutions [“Admin. Decl.”], ¶¶ 5-11.)

12 13. “**Administration Expenses Payment**” means the payment to the Administrator from
13 the Uncredited Settlement Amount, in an amount up to \$6,000.00, for its reasonable fees and
14 expenses in administering the Settlement. (Settlement, ¶¶ 1.3 and 3.2.3.) Phoenix has submitted
15 a not-to-exceed bid for \$4,995.00. (Moon Decl., ¶ 16, Exh. 5; Admin. Decl., ¶ 16.) Given the size
16 of the Class, the experience and qualifications of Phoenix, and the administration costs of other
17 comparable third-party administrators, Phoenix’s bid is fair and reasonable. (*Id.*) To the extent
18 the Administration Expenses Payment is less or the Court approves payment less than \$6,000.00,
19 the Administrator will retain the remainder in the Net Settlement Amount. (Settlement, ¶¶ 1.3 and
20 3.2.3.)

21 14. “**PAGA Penalties**” means the total amount of PAGA civil penalties (\$20,000.00) to
22 be paid from the Gross Settlement Amount, allocated 25% to PAGA Members (\$5,000.00) and
23 75% to the LWDA (\$15,000.00) (“LWDA PAGA Payment”) in settlement of PAGA claims. (*Id.* at ¶
24 1.33.)

25 15. “**Net Settlement Amount**” means the Uncredited Settlement Amount, less the
26 following payments in the amounts approved by the Court: Individual PAGA Payments, the
27 LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment,
28 Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. (*Id.* at ¶

1 1.27.) The remainder, or the Net Settlement Amount, is to be paid to Participating Class Members
2 as Individual Class Payments. (*Id.*)

3 16. **“Individual Class Payment”** means the Participating Class Member’s pro rata share
4 of the Net Settlement Amount calculated according to the number of Workweeks worked during
5 the Class Period. (*Id.* at ¶ 1.22.)

6 17. **“Individual PAGA Payment”** means the PAGA Member’s pro rata share of 25% of
7 the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the
8 PAGA Period. (*Id.* at ¶ 1.23.)

9 18. **“Workweek”** means any week during which a Class Member worked for Defendant
10 for at least one day, during the Class Period. (*Id.* at ¶ 1.43.)

11 19. **“Pay Periods” or “PAGA Pay Periods”** means any pay period during which a
12 PAGA Member worked for Defendant for at least one day during the PAGA Period. (*Id.* at ¶ 1.29.)

13 20. **“Class Notice”** means the COURT APPROVED NOTICE OF CLASS ACTION
14 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to
15 Class Members in English with a Spanish translation in the form, without material variation,
16 attached as “Exhibit A” and incorporated by reference into the Settlement Agreement. (*Id.*, ¶¶
17 1.11 and 7.6.2, Exh. A.) The Class Notice sets forth, in plain terms, a statement of the case, the
18 terms of the Settlement, the scope of the release, the approximate amounts of attorneys’ fees,
19 costs, and service award to Plaintiff being sought, an explanation of how the individual payments
20 are calculated, the procedures for submitting objections, requests for exclusion, and workweek
21 disputes, and information regarding the hearing on the motion for final approval of the Settlement
22 (“Final Approval Hearing”). (*Id.*) No claim form is required to receive the settlement payment,
23 and the Class Notice provides that the Class Members do not have to do anything to participate
24 in the proposed Settlement and be eligible for their Individual Class Payment and/or Individual
25 PAGA Payment. (Settlement, Exh. A.)

26 21. **Tax Allocation of Settlement Payments.** 20% of each Participating Class Member’s
27 Individual Class Payment will be allocated to settlement of wage claims (the “Wage Portion”).
28 (*Id.* at ¶ 3.2.6.1.) The Wage Portions are subject to tax withholding and will be reported on an

1 IRS W-2 Form. (*Id.*) The remaining 80% of each Participating Class Member’s Individual Class
2 Payment will be allocated to settlement of claims for interest and penalties (the “Non-Wage
3 Portion”). (*Id.*) The Non-Wage Portions are not subject to wage withholdings and will be reported
4 on IRS 1099 Forms. (*Id.*) The Individual PAGA Payments are counted as penalties rather than
5 wages for tax purposes and therefore will be reported on IRS 1099 Forms. (*Id.* at ¶ 3.2.4.2.)
6 Participating Class Members and PAGA Members assume full responsibility and liability for any
7 taxes owed on their Individual Class Payment and/or Individual PAGA Payment. (*Id.* at ¶¶ 3.2.4.2
8 and 3.2.6.1.)

9 22. **“Released Parties”** are CFC and each of its past, present and future agents,
10 employees, servants, officers, directors, partners, trustees, representatives, shareholders,
11 stockholders, investors, attorneys, parents, subsidiaries, equity sponsors, related
12 companies/corporations and/or partnerships (defined as a company/corporation and/or partnership
13 that is, directly or indirectly, under common control with CFC or any of their parents and/or
14 affiliates), divisions, assigns, predecessors, successors, insurers, consultants, joint ventures, any
15 actual or alleged joint employers, affiliates, and alter-egos, and all of their respective past, present
16 and future employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents,
17 subsidiaries, and assigns. (*Id.* at ¶ 1.39.)

18 23. **“Released Class Claims”** means the claims released by Participating Class Members
19 under the Settlement. (*Id.* at ¶¶ 1.37 and 5.2.) The Released Class Claims include, but are not
20 limited to, all claims that were alleged, or reasonably could have been alleged, based on the facts
21 stated in the Operative Complaint and ascertained in the course of the Action. (*Id.* at ¶ 5.2.) This
22 release excludes the release of claims not permitted to be released by law and the Released PAGA
23 Claims. (*Id.*) Participating Class Members will not release the Released PAGA Claims unless such
24 Participating Class Members are also PAGA Members. (*Id.*)

25 24. **“Released PAGA Claims”** means the claims released by PAGA Members under the
26 Settlement. (*Id.* at ¶¶ 1.38 and 5.3.) The Released PAGA Claims include, but are not limited to, all
27 claims for civil penalties under PAGA that were alleged, or reasonably could have been alleged,
28 based on the facts stated in the Operative Complaint, the PAGA Notice, and ascertained in the

1 course of the Action. (*Id.* at ¶ 5.3.) This release excludes the release of claims not permitted to be
2 released by law. (*Id.*) PAGA Members will release the Released PAGA Claims even if they request
3 exclusion from the Class and will be eligible for an Individual PAGA Payment. (*Id.* at ¶ 7.7.4.)

4 25. **“Class Data”** means Class Member identifying information in Defendant’s
5 possession including the Class Member’s name, last-known mailing address, Social Security
6 number, and number of Class Period Workweeks and PAGA Pay Periods. (*Id.* at ¶ 1.8.) Not later
7 than 30 days after the Court grants preliminary approval of the Settlement, Defendant will
8 simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel
9 spreadsheet. (Settlement, ¶ 7.4.)

10 26. **Mailing of Notice.** No later than 14 days after receiving the Class Data or after
11 Defendant makes its election pursuant to the Escalator Clause, the Administrator will send the
12 Class Notice to all Class Members identified in the Class Data, via first-class United States Postal
13 Service (“USPS”). (*Id.* at ¶ 7.6.2.) Prior to mailing the Class Notices, the Administrator will
14 update Class Member addresses using the National Change of Address database. (*Id.*) Within (3)
15 business days after the Administrator’s receipt of any Class Notice returned by the USPS as
16 undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided
17 by the USPS. (*Id.* at ¶ 7.6.3.) If the USPS does not provide a forwarding address, the Administrator
18 shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current
19 address obtained. (*Id.*)

20 27. **Settlement Website and Final Approval and Judgment.** The Administrator will
21 establish, maintain, and use an internet website (“Settlement Website”) to post information of
22 interest to Class Members including the date, time, and location for the Final Approval Hearing.
23 (*Id.* at ¶ 7.10.1.) The URL for the Settlement Website will be provided in the Class Notice. (*Id.*)
24 The Class Notice provides that the Final Approval Hearing may be rescheduled, and that Class
25 Members can check on the Settlement Website or contact Class Counsel for any change with
26 respect to the Final Approval Hearing. (Settlement, Exh. A.) The judgment entered by the Court
27 upon its order granting final approval of the Settlement (“Judgment”) will be posted on the
28 Settlement Website. (*Id.* at ¶ 7.10.1.) Class Members will be given notice of Judgment through

1 the Class Notice which provides that the Judgment can be viewed on the Settlement Website.
2 (Settlement, Exh. A.)

3 28. **Uncashed Settlement Checks.** All checks for Individual Class Payments and
4 Individual PAGA Payments will be valid for 180 calendar days after the date of mailing. (*Id.* at ¶
5 4.2.1.) For any Class Member whose Individual Class Payment check or Individual PAGA
6 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
7 funds represented by such checks to the California Controller's Unclaimed Property Fund in the
8 name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of
9 California Code of Civil Procedure Section 384 subd. (b). (*Id.* at ¶ 4.2.3.)

10 29. **"Response Deadline"** means 45 days after the Administrator mails Notice to Class
11 Members and PAGA Members, and shall be the last date on which Class Members may fax, email,
12 or mail Requests for Exclusion or Objection to the Settlement. Class Members to whom Notice
13 Packets are resent after having been returned undeliverable to the Administrator shall have an
14 additional 14 calendar days beyond the Response Deadline has expired. (*Id.*)

15 30. **"Request for Exclusion"** means a Class Member's written request to be excluded
16 from the class action components of the Settlement. (*Id.* at ¶ 1.40.) Class Members may opt out
17 of the Settlement by sending a Request for Exclusion to the Administrator, by fax, email, or mail
18 within the Response Deadline (plus an additional 14 days for Class Members whose Class Notice
19 is re-mailed). (*Id.* at ¶ 7.7.1.) Class Members are instructed to include their name, signature,
20 contact information, and a statement electing to opt out of the Settlement. (*Id.* at ¶ 7.7.1 and Exh.
21 A, Class Notice.) However, Administrator may not reject a Request for Exclusion as invalid
22 because it fails to contain all the information specified in the Class Notice as long as the
23 Administrator can reasonably ascertain the identity of the person as a Class Member and the Class
24 Member's desire to be excluded. (*Id.* at ¶ 7.7.2.)

25 31. **Objections to Settlement.** Participating Class Members may object to the class
26 action components of the Settlement by sending written objections to the Administrator, by fax,
27 email, or mail, within the Response Deadline (plus an additional 14 days for Class Members
28 whose Class Notice is re-mailed). (*Id.* at ¶¶ 7.9 and Exh. A, Class Notice.) In the alternative,

1 Participating Class Members may appear in Court (or hire an attorney to appear in Court) to
2 present verbal objections at the Final Approval Hearing. (*Id.*) Only Participating Class Members
3 have the right to object to the Settlement. (*Id.*)

4 **32. Workweek and/or Pay Period Disputes.** Class Members who wish to dispute the
5 number of Workweeks and/or PAGA Pay Periods allocated to the Class Member in the Class
6 Notice may do so by communicating with the Administrator via fax, email, or mail, within the
7 Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-
8 mailed). (*Id.* at ¶¶ 7.8 and Exh. A, Class Notice.) In the absence of any documentation submitted
9 by Class Member to support his or her challenge, the Administrator is entitled to presume that the
10 Workweeks contained in the Class Notice are correct so long as they are consistent with the Class
11 Data. (*Id.*)

12 **33. Settlement Funding.** Defendant shall fully fund the Uncredited Settlement Amount
13 and also fund the amounts necessary to fully pay Defendant’s share of payroll taxes by
14 transmitting the funds to the Administrator no later than 14 days after the Final Judgment. (*Id.* at
15 ¶ 4.1.) “Final Judgment” means the date by when both of the following have occurred: (a) the
16 Court enters a Judgment; and (b) the Judgment is final. (*Id.* at ¶ 1.18.) The Judgment is final as
17 of the latest of the following occurrences: (a) the day after the deadline for filing a notice of appeal
18 from the Judgment; or (b) if a timely appeal from the Judgment is filed, the day after the appellate
19 court affirms the Judgment and issues a remittitur. (*Id.*)

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

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

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

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

17 If the class action settlement includes a settlement of PAGA claims, the courts also review
18 the PAGA portion of the settlement to ensure that “any negotiated resolution is fair to those
19 affected.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76, quoting *Williams v. Superior*
20 *Court* (2017) 3 Cal.5th 531, 549.) The factors used to evaluate class action settlements “including
21 the strength of the plaintiff’s case, the risk, the stage of the proceeding, the complexity and likely
22 duration of further litigation” can be used to evaluate the fairness of a PAGA settlement. (*Id.* at p.
23 77.) However, when reviewing a PAGA settlement, a trial court’s inquiry is whether it is “fair in
24 view of PAGA’s purposes and policies,” which are “to remediate present labor law violations,
25 deter future ones, and to maximize enforcement of state labor laws.” (*Id.*; see also *Amaro v.*
26 *Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 542–543 [noting that the “civil
27 penalties recovered on the state’s behalf are intended to ‘remediate present violations and deter
28

1 future ones,’ not to redress employees’ injuries” in reviewing PAGA portion of class action
2 settlement to determine its fairness].)

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

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

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

10 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
11 evidence to the contrary is offered; thus, there is a presumption here that the negotiations were
12 conducted in good faith. (Newberg, Newberg on Class Actions (3rd ed. 1992) § 11.51.) Settlement
13 is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super. Ct.* (1976) 62
14 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The fact that the
15 plaintiff might have received more if the case had been fully litigated is no reason not to approve the
16 settlement.”].)

17 The proposed Settlement at issue here was reached following extensive negotiations and
18 discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses
19 with an experienced, professional and neutral mediator, Tripper Ortmann, Esq. (Moon Decl., ¶ 8.)
20 The settlement negotiations were at arm’s length and, although conducted in a professional manner,
21 were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a
22 settlement of the dispute, but each side was also prepared to litigate their position through trial and
23 appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions
24 regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses, the Parties
25 reached a settlement. (*Id.*)

26 Prior to mediation, Plaintiff’s Counsel (“Class Counsel”) obtained from Defendant
27 information regarding the class and the PAGA group, including the number of employees,
28 workweeks, and pay periods during the relevant period and the Class Members’ average hourly rate

1 of pay, as well as Plaintiff's personnel file and Defendant's Employee Handbook. (Moon Decl., ¶ 6.)
2 Defendant also informed Class Counsel that a large number of the putative Class Members signed a
3 settlement agreement releasing their claims against Defendant and produced the English and Spanish
4 versions of the individual settlement agreement and release. (*Id.*) In preparation for mediation,
5 Plaintiff's Counsel reviewed and analyzed all the information provided, including the documents
6 provided by Plaintiff, Defendant's Employee Handbook, and Plaintiff's personnel file. (*Id.* at ¶ 7.) In
7 particular, Class Counsel requested that Defendant produce a sample of time and corresponding
8 payroll records of the putative Class. (*Id.*) Based on information provided by Defendant, the putative
9 class is comprised of approximately 136 Class Members, who worked for 19,787 workweeks in
10 aggregate during the relevant time period. (*Id.*) In conjunction with their extensive factual
11 investigation, Class Counsel also investigated the applicable law regarding the claims and defenses
12 asserted in the litigation. (*Id.*) Accordingly, Class Counsel was able to evaluate the probability of
13 class certification, success on the merits, and Defendant's maximum and realistic monetary exposure
14 for all claims. (*Id.*) Thus, Plaintiff's and Class Counsel's familiarity with the facts of the case and the
15 legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement.
16 (*Id.*) Accordingly, Plaintiff's investigation and discovery are sufficient to satisfy the criteria for court
17 approval set forth in *Dunk v. Ford Motor Co.*, 48 Cal.App.4th at p. 1802. (*Id.*)

18 Furthermore, Class Counsel have considerable experience and demonstrated competence with
19 litigating wage and hour class actions. (Moon Decl., ¶¶ 36–53.) The experience of Class Counsel was
20 helpful in assessing the reasonableness of the Settlement at issue here, and from this experience Class
21 Counsel concluded that this litigation could not have been settled on better terms than provided under
22 the proposed Settlement. (*Id.* at ¶ 54.) Again, this supports the conclusion that the terms of the
23 Settlement are based on objective evidence that has been considered and weighed against the risks,
24 expenses, and time consumption to both sides of continued litigation of this action.

25 **2. The Settlement Is Fair and Reasonable Considering the Parties'**
26 **Respective Legal Positions**

27 A settlement is not judged against what a plaintiff might recover had he prevailed at trial, nor
28 does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba*

1 *v. Apple Comp., Inc.* (2001) 91 Cal.App.4th 224, 246, 250 [“Compromise is inherent and necessary
2 in the settlement process . . . even if ‘the relief afforded by the proposed settlement is substantially
3 narrower than it would be if the suits were to be successfully litigated,’ this is no bar to a class
4 settlement because ‘the public interest may indeed be served by a voluntary settlement in which each
5 side gives ground in the interest of avoiding litigation.’”] [quoting *Air Line Stewards v. Am. Airlines,*
6 *Inc.* (7th Cir. 1972) 455 F.2d 101, 109].)

7 Here, the Settlement obviates the significant risk that this Court may deny certification of all
8 or some of Plaintiff’s claims. (Moon Decl., ¶ 28.) Furthermore, even if Plaintiff was able to pursue
9 his claims on a class-wide basis and obtain certification of all or some of the claims, continued
10 litigation would be expensive, involving a trial and possible appeals, and would substantially delay
11 and reduce any recovery by the Class. (*Id.*) While Plaintiff is confident in the merits of his claims, a
12 legitimate controversy exists as to each cause of action. (*Id.* at ¶ 26.) Plaintiff also recognizes that
13 proving the amounts of wages owed to each Class Member would be an expensive, time-consuming,
14 and uncertain proposition. (*Id.*) Class Counsel are also of the opinion that because the issues here are
15 fairly contested, there is a possibility of the Court not awarding the PAGA penalties even if Plaintiff
16 prevailed on the merits due to the largely discretionary nature of awarding PAGA penalties. (*Id.* at
17 ¶ 27.) In other words, were this matter to go to trial, any award granted would be at the discretion of
18 the Court and subject to a substantial reduction. (*Id.*)

19 Because of the proposed Settlement, Class Members will receive timely, guaranteed relief
20 and will avoid the risk of not being able to recover anything. (Moon Decl., ¶ 25.) This Settlement
21 avoids the risks, burdens, and the accompanying expense of further litigation. (*Id.* at ¶ 28.) Although
22 the Parties have engaged in a significant amount of investigation, informal discovery, and analysis,
23 they have not conducted formal, written discovery, expert discovery, or taken depositions. (*Id.*)
24 Moreover, preparation for class certification and a trial would remain for the Parties as well as the
25 prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or any
26 summary judgment ruling. (*Id.*) As a result, the Parties would incur considerably more attorneys’
27 fees and costs through trial. (*Id.*)

1 The proposed settlement of \$392,500.00 therefore represents a substantial recovery when
2 compared to the reasonably forecasted recovery of the Class. (Moon Decl., ¶ 31.) When considering
3 the risks of litigation, the uncertainties involved in continued litigation, the burdens of proof
4 necessary to establish liability, and the probability of appeal, it is clear the Settlement amount of
5 \$392,500.00 is within the “ballpark” of reasonableness, and that preliminary settlement approval is
6 appropriate. (*Id.*)

7 Indeed, the Net Settlement Amount available for settlement payments is *no less* than
8 **\$120,166.67¹** for an estimated Class size of 41 individuals². (Moon Decl., at ¶ 30.) As a result, it is
9 estimated each Participating Class Member is eligible to receive an average benefit of approximately
10 **\$2,930.89** prior to tax withholdings on the wage portion of payments. (*Id.*) In addition, the Settlement
11 provides PAGA Penalties in the amount of \$20,000.00, 75% (\$15,000.00) of which will be allocated
12 to the LWDA and 25% (\$5,000.00) to PAGA Members for settlement of PAGA claims. (*Id.*) As a
13 result, it is estimated that each PAGA Member will receive an average Individual PAGA Payment of
14 \$70.42 (\$5000 / 71 PAGA Members). (*Id.*)

15 This amount allocated for settlement of PAGA claims is fair to PAGA Members because here,
16 *all* PAGA Members will receive settlement payments for *both* the class portion and the PAGA portion
17 of the Settlement. (*Id.*) Moreover, the standard for evaluating a PAGA settlement is “whether it is
18 fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations,
19 deter future ones, and to maximize enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.*, 72
20 Cal.App.5th at p. 77.) In light of the strengths and weaknesses of Plaintiff’s claims and the risks
21 involved in further litigation, the amount allocated for PAGA Penalties is fair, adequate, and
22 reasonable to both the PAGA Members and the LWDA, as it remediates present labor law violations,

23
24 ¹ The Net Settlement Amount is at least \$392,500.00 less the following: \$92,500.00 to be
25 credited to Defendant to reflect the amount Defendant already paid to the Class to resolve individual
26 claims; \$5,000.00 for the Enhancement Award, up to \$4,995.00 for Settlement Administration
Costs, \$20,000.00 for the PAGA Penalties payments to the LWDA and to PAGA Members,
\$130,833.33, for Attorneys’ Fees, and up to \$18,000.00 for Attorneys’ Costs. (Settlement
Agreement, ¶¶ 1.28 and 3.1-3.2.5.2.)

27 ² Of the 136 Class Members, there are approximately 41 Class Members who have not
28 released their claims and who are therefore entitled to Individual Class Payments.

1 which otherwise may have gone unremedied, promotes the enforcement of California labor laws, and
2 deter future violations. (Moon Decl. ¶ 30.) The actual amounts to Participating Class Members and
3 PAGA Members will vary based on each individual's duration of work during the Class Period or
4 PAGA Period, respectively; thus, those who worked longer for Defendant during the relevant period
5 will receive a benefit greater than the average estimated amount. (*Id.*) The high and low range of
6 payments to Class Members will be calculated by the Administrator following preliminary approval
7 and receipt and processing of the Class Data and will be provided to the Court in a motion for final
8 approval. (*Id.*)

9 **3. Class Counsel Have Extensive Experience in Class Action Litigation**

10 The Settlement negotiations were conducted by highly capable and experienced counsel.
11 (Moon Decl., ¶¶ 36–53.) Class Counsel have a strong record of vigorous and effective advocacy for
12 their clients and are experienced in handling complex wage and hour class action litigation. (*Id.*) The
13 experience of Class Counsel was helpful in assessing the reasonableness of the Settlement at issue
14 here, and from this experience they concluded that this litigation could not have been settled on better
15 terms than provided under the Settlement. (*Id.* at ¶ 54.) Although Plaintiff and his counsel were
16 prepared to try the claims alleged in the litigation, they support the proposed Settlement as being in
17 the best interest of the Class based on objective evidence that has been considered and weighed
18 against the risks, expenses, and time consumption to both sides of continued litigation. (*Id.* at ¶ 18.)

19 **4. The PAGA Portion of the Settlement Is Fair, Reasonable, and** 20 **Adequate in View of PAGA's Purposes and Policies**

21 The Settlement allocates \$20,000.00 as PAGA civil penalties, 75% (\$15,000.00) of which
22 will be allocated to the LWDA and 25% (\$5,000.00) to PAGA Members for settlement of PAGA
23 claims. (Settlement, ¶ 3.2.4.) This amount allocated for settlement of PAGA claims is fair to PAGA
24 Members because the 25% share of PAGA Penalties will be shared by all PAGA Members. (*Id.* at ¶
25 3.2.4.1.) Moreover, here, *all* PAGA Members will receive settlement payments for *both* the class
26 portion and the PAGA portion of the Settlement. (Moon Decl., ¶ 30.) Both the Individual Class
27 Payments and Individual PAGA Payments are calculated proportionately based on each Class
28 Member's and PAGA Member's duration of work during the Class/PAGA Period. (*Id.*)

1 More importantly, PAGA civil penalties recovered on the state's behalf are intended to
2 "remediate present violations and deter future ones, not to redress employees' injuries." (*Amaro v.*
3 *Anaheim Arena Management, LLC*, 69 Cal.App.5th at p. 542.) Thus, the standard for evaluating a
4 PAGA settlement is not whether the employees are fully compensated for their injuries, but "whether
5 it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law
6 violations, deter future ones, and to maximize enforcement of state labor laws." (*Moniz v. Adecco*
7 *USA, Inc.*, 72 Cal.App.5th at p. 77.) Thus, the PAGA Penalties amount allocated to the LWDA under
8 the Settlement is also fair, reasonable, and adequate in view of the PAGA's purposes and policies, as
9 it furthers enforcement of California labor laws and thereby deterring future violations. (Moon Decl.,
10 ¶ 30.) As a result of the Settlement, Plaintiff has maximized the enforcement of state labor laws and
11 Defendant has to pay \$15,000.00 as civil penalties owed to the state. (*Id.*) Moreover, the PAGA
12 Penalties under the Settlement remedies labor law violations that otherwise may have gone
13 unremedied due to Defendant's vigorous defenses. (*Id.* at ¶¶ 5, 24.)

14 In light of the PAGA's purposes and considering the strengths and weaknesses of Plaintiff's
15 claims and the risks involved in further litigation, the amount allocated for PAGA penalties is fair,
16 adequate, and reasonable to both the PAGA Members and the LWDA, as it remedies present labor
17 law violations, which otherwise may have gone unremedied, promotes the enforcement of California
18 labor laws, and deter future violations, while providing a genuine and meaning relief to PAGA
19 Members. (Moon Decl., ¶¶ 24, 30.) Thus, the amount allocated as PAGA penalties is fair, reasonable,
20 and adequate to the PAGA Members and the LWDA, consistent with the statutory purpose of PAGA.

21 **B. The Proposed Class Notice Should Be Approved**

22 The proposed Class Notice, in the form attached to the Settlement as Exhibit A, should be
23 approved for dissemination to the Class. The Class Notice informs the Class of the terms of the
24 Settlement, including the claims being released, each Class Member's anticipated individual
25 settlement payment amount, how that amount was calculated, the amount of fees and expenses
26 requested by Class Counsel, the amount requested for the class representative incentive award, and
27 of Class Members' rights to be excluded from or object to the Settlement as well as the procedures
28 for requesting exclusion or making objections. (Settlement, Exh. A.) The Class Notice will also

1 provide the date and place for the Final Approval Hearing. (*Id.*) Accordingly, the proposed Class
2 Notice meets all the requirements of Rule 3.769(f) of the California Rules of Court. (Cal. Rules of
3 Court, rule 3.769(f).)

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

5 The Settlement Agreement provides for attorneys’ fees payable to Class Counsel in an amount
6 up to 33 and 1/3% of the Gross Settlement Amount, which unless increased pursuant to the Escalator
7 Clause, is currently estimated to be \$130,833.33, subject to Court approval, plus reimbursement for
8 out-of-pocket litigation costs not to exceed \$18,000.00. (Settlement, ¶ 3.2.2.) These amounts are
9 disclosed to Class Members in the proposed Class Notice and are reasonable. (*Id.* at Exh. A.)

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

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

17 Plaintiff’s Counsel will seek an award of attorneys’ fees on the “percentage of
18 recovery/common fund” theory. (Moon Decl., ¶ 56.) The purpose of this approach is to “spread
19 litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear
20 the entire burden alone.” (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn*
21 *v. State of California* (1975) 15 Cal.3d 162, the California Supreme Court stated, “one who expends
22 attorneys’ fees in winning a suit which creates a fund from which others derive benefits, may require
23 those passive beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in
24 *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court
25 recognized that the common fund doctrine has been applied “consistently in California when an
26 action brought by one party creates a fund in which other persons[] are entitled to share.” (*Id.* at pp.
27 110–11 [pincite omitted].)

1 The California Supreme Court recently affirmed in *Laffitte v. Robert Half International Inc.*
2 (2016) 1 Cal.5th 480 that, “when class action litigation establishes a monetary fund for the benefit of
3 the class members, and the trial court in its equitable powers awards class counsel a fee out of that
4 fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage
5 of the fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the
6 percentage method—including relative ease of calculation, alignment of incentives between counsel
7 and the class, a better approximation of market conditions in a contingency case, and the
8 encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging
9 the litigation[]—convince us the percentage method is a valuable tool that should not be denied our
10 trial courts.” (*Id.* [internal citations omitted].) This line of legal authority supports a request for
11 attorneys’ fees based on the percentage of recovery/common fund method.

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

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

22 Here, Class Counsel will request fees equal to 33 1/3% of the Gross Settlement Amount,
23 which is in line with the prevailing guidelines established in California case law and academic
24 literature and is consistent with awards in California. (*Compare* Settlement Agreement, ¶ 3.2.2, *with*
25 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 [“Empirical studies show that, regardless
26 whether the percentage method or the lodestar method is used, fee awards in class actions average
27 around one-third of the recovery.”].) Accordingly, Plaintiff requests that the Court preliminarily
28 approve his counsel’s ability to request attorneys’ fees as negotiated by the Parties.

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

2 Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable
3 fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(g)(1),
4 2802(d).) Under these sections, Plaintiff would be permitted to recover his actual attorneys’ fees,
5 even if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) This
6 Settlement is beneficial in that it limits the risk of continued expenses and consumption of time,
7 energy, and resources facing Defendant while at the same time rewarding Class Counsel for their
8 decision to assume risk by taking on this matter. (See Moon Decl., ¶¶ 29 and 59-62.) In fact,
9 prosecution of this action involved significant financial risk for Class Counsel. (*Id.* at ¶¶ 59-62.)
10 Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*)
11 Once Class Counsel undertook this litigation on behalf of the Class, they committed to pursue it to
12 its conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶ 62.)

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

14 As demonstrated by their past experience in pursuing class actions on behalf of consumers
15 and employees, Class Counsel possess considerable expertise in litigating class actions. (Moon Decl.,
16 ¶¶ 36–53.) Class Counsel have been involved as lead counsel or co-counsel in numerous class actions
17 that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate Class Counsel
18 commensurate with their skill, reputation, and experience, the requested fee award is supported here.

19 Class Counsel’s experience in wage and hour class actions was integral in evaluating the
20 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. (*Id.*
21 at ¶ 54.) Practice in the narrow field of wage and hour litigation requires skill and knowledge
22 concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of
23 class action litigation. (*Id.* at ¶ 52.) Based on these and other factors, Class Counsel have frequently
24 received fee awards of this percentage from the gross recovery for the class. (See *id.* at ¶¶ 39, 43, 47,
25 51.) Therefore, the requested fee award is fair, reasonable, and adequate.

26 **D. The Enhancement Award to Named Plaintiff Is Reasonable**

27 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
28 compensate them for the expense or risk they have incurred in conferring a benefit on other members

1 of the class.” (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Courts routinely grant approval of class
2 action settlement agreements containing enhancements for the class representatives, which are
3 necessary to provide incentive to represent the class and are appropriate given the benefit the class
4 representatives help to bring about for the class. (See *Rodriguez v. W. Publ’g Corp.* (9th Cir. 2009)
5 563 F.3d 948, 958–59.)

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

16 Under the Settlement Agreement here, subject to the Court’s approval, Defendants agree to
17 pay a Class Representative Service Payment to Plaintiff in the amount of \$5,000.00. (Settlement, ¶
18 3.2.1.) This award is in recognition of Plaintiff’s effort and work in prosecuting the Action on behalf
19 of the Class Members and State of California with respect to Aggrieved Employees. (*Id.* at ¶ 1.14.)
20 Plaintiff has devoted a great deal of time and work assisting counsel in the case and communicated
21 with counsel frequently for litigation and to prepare for the mediation session, while risking his future
22 employment. (Moon Decl., ¶¶ 32–35; Declaration of Plaintiff Miguel A. Flores in Support of
23 Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement [“Plaintiff
24 Decl.”], ¶¶ 14, 18–21.) The requested award is fair and reasonable, particularly considering the
25 substantial benefits Plaintiff generated for all Class Members. (Moon Decl., ¶ 35.)

26 When compared with the amounts awarded in typical class action cases, the amount requested
27 here is particularly reasonable. A 2006 study examining the average incentive award given to class
28 action plaintiffs from 1993 to 2002 found that the “average award per class representative was

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

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

10 **A. Legal Standard**

11 The proposed Settlement Class is well suited for class certification. All of the claims derive
12 from a core set of alleged violations of California’s wage and hour laws and regulations. (Moon
13 Decl., ¶¶ 3–4.) For the reasons set forth more fully below, the Class, for purposes of Settlement,
14 satisfies the prerequisites for certification under Code of Civil Procedure section 382. (Code Civ.
15 Proc. § 382.) Section 382 provides that “when the question is one of a common or general interest,
16 of many persons, or when the parties are numerous, and it is impracticable to bring them all before
17 the court, one or more may sue or defend for the benefit of all.” (*Id.*) There are two requirements to
18 section 382: “(1) there must be an ascertainable class[]; and (2) there must be a well defined
19 community of interest in the questions of law and fact involved affecting the parties to be
20 represented.” (*Daar v. Yellow Cab Co.* (1967) 67 Cal. 2d 695, 704 [internal citations omitted].) To
21 clarify these requirements, the California Supreme Court has looked to Federal Rule of Civil
22 Procedure 23 to explain that the community-of-interest requirement itself embodies three factors:
23 “(1) predominant common questions of law or fact; (2) class representatives with claims or defenses
24 typical of the class; and (3) class representatives who can adequately represent the class.” (*Richmond*
25 *v. Dart Indus., Inc.* (1981) 29 Cal. 3d 462, 470.)

26 California law and policy favor the fullest and most flexible use of the class action device.
27 (*Id.* at pp. 469–73.) Indeed, “Courts long have acknowledged the importance of class actions as a
28 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. Plaintiff Maintains 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, the proposed Class that Plaintiff seeks to represent is ascertainable because (1) the Class definition is sufficiently precise, (2) the Class consists of about 136 individuals, and (3) Class Members can be readily identified by looking at Defendant’s records. (Settlement, ¶ 1.5.)

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

1 defenses typical of the class, and (3) class representatives adequately represent the class. (*Dunk,*
2 *supra*, 48 Cal.App.4th at p. 1806.) This inquiry tests whether proposed classes are sufficiently
3 cohesive to rationally warrant adjudication by representation. (See, e.g., *Clothesrigger, Inc. v. GTE*
4 *Corp.* (1987) 191 Cal.App.3d 605, 611–612.)

5 Here, Plaintiff’s claims satisfy all three requirements. The employment practices at issue
6 include whether Defendant: had legally compliant policies and practices to pay employees all
7 minimum and overtime wages owed; had legally compliant policies and practices to provide
8 employees with and authorize meal and rest periods; had legally compliant policies to reimburse
9 employees for all necessary expenditures or losses incurred by employees in direct consequence of
10 the discharge of their duties; paid all final wages to employees at the time of termination; intentionally
11 failed to pay all final wages; provided inaccurate itemized wage statements; engaged in unfair
12 business practices; and violated civil penalty provisions recoverable under PAGA. (Moon Decl., ¶¶
13 3–4.) Plaintiff contends the factual and legal issues are the same for all Class Members, including
14 Plaintiff, and further, that all Class Members suffered from and seek redress for the same alleged
15 injuries. (Plaintiff Decl., ¶¶ 3–6.) Considering Class Members would need to prove the same issues
16 of law and fact to prevail, and their legal remedies are identical, it would be preferable to resolve all
17 claims through a settlement agreement than to force each Class Member to litigate their own
18 individual claims. Thus, the Court should grant conditional class certification for settlement purposes
19 because common questions of law and fact predominate over any individual questions within the
20 Class.

21 3. Plaintiff’s Claims Are Typical of the Claims of the Class

22 The typicality requirement does not focus on the individual characteristics or circumstances
23 of the representative plaintiff compared to those of the remainder of the class, but rather, upon the
24 typicality of the proposed representative’s claims as they relate to the defendant’s conduct and
25 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 [“The only requirements a re [sic] that
26 common questions of law and fact *predominate* and that the class representative be *similarly* situated”
27 vis-à-vis the class.] [emphasis in original].) A representative plaintiff’s claims are typical of the class
28 if they arise from the same event, practice, or course of conduct, and if the claims rest on the same

1 legal theories. (*Id.*) That is precisely the case here. Plaintiff is a former employee of Defendant; as
2 such, he alleges he was subject to the same policies and practices as other similarly situated
3 employees. (Plaintiff Decl., ¶ 6.)

4 **4. Plaintiff and His Counsel Meet the Adequacy Requirement**

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

9 Here, all requirements are met. Plaintiff retained counsel with extensive experience in
10 prosecuting complex class actions, including similar class actions that previously settled. (Moon
11 Decl., ¶¶ 36–53.) With their experience, Class Counsel unquestionably are “qualified, experienced
12 and generally able to conduct the proposed litigation.” (*Miller, supra*, 148 Cal.App.3d at p. 874.)
13 Class Counsel also does not have any conflicts of interest with Plaintiff, the Class, or the
14 Administrator. (*Id.* at ¶ 55.) In addition, Plaintiff has no conflicts, and Plaintiff has, with counsel,
15 litigated this case and diligently reviewed the settlement terms, showing dedication. (Plaintiff Decl.,
16 ¶¶ 10–20.) Plaintiff’s willingness to serve as the representative demonstrates his serious commitment
17 to bringing about the best results possible for the Class. (*Id.*)

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

19 Finally, in making its class certification decision, the Court must determine that a class action
20 would be superior to alternative means for the fair and efficient adjudication of the litigation. (See
21 *Leyva v. Medline Indus. Inc.* (9th Cir. 2013) 716 F.3d 510, 514–15.) By consolidating many potential
22 individual actions into a single proceeding, this Court’s use of the class action device enables it to
23 manage this litigation in a manner that serves the economics of time, effort, and expense for the
24 litigants and the judicial system. (*Id.*) Absent class treatment, similarly situated employees with
25 small, but nevertheless meritorious, claims for damages would, as a practical matter, have no means
26 of redress because of the time, effort, and expense required to prosecute individual actions. (*Id.* at p.
27 515; *Gentry, supra*, 42 Cal.4th at pp. 457–62.) Moreover, in the context of settlement, the superiority
28 concerns are essentially non-existent. (See generally, *Stamburgh, supra*, 62 Cal.App.3d.)

1 **V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND**

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

3 Class Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,
4 rule 3.766(e)–(f).) California law vests the Court with broad discretion in fashioning an appropriate
5 notice program. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 970, 973–74.) There is no statutory
6 or due process requirement that all class members receive actual notice, but in this matter, the Class
7 Members will receive direct mailed notice. (Settlement, ¶ 7.6.2.) As the Court of Appeals has
8 explained, “[t]he notice given should have a reasonable chance of reaching a substantial percentage
9 of the Class Members . . .” (*Cartt*, 50 Cal.App.3d at p. 974.) In this case, notice of the proposed
10 Settlement will be provided in both English and Spanish, and by direct mailing, the best possible
11 form of notice under the circumstances. (Settlement, ¶ 7.6.2.)

12 **B. The Notice Is Accurate and Informative**

13 The proposed Class Notice should be approved. As discussed above, it informs the Class of
14 the terms of the Settlement, including the claims being released, each Class Member’s anticipated
15 individual settlement payment amount, how that amount was calculated, the amount of fees and
16 expenses requested by Class Counsel, the amount requested for the enhancement award to Plaintiff,
17 and of Class Members’ rights to be excluded from or object to the Settlement as well as the procedures
18 for requesting exclusion or making objections. (Settlement, Exh. A.) Specifically, the Class Notice
19 provides that if there are Class Members who wish to object to the proposed Settlement, they will
20 have the opportunity to submit written objections and/or be heard at the Final Approval Hearing. (*Id.*)

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

1 class notice.

2 **VI. CONCLUSION**

3 For the foregoing reasons, Plaintiff respectfully requests the Court grant this motion, enter the
4 proposed order submitted herewith regarding preliminary approval, and set a final approval hearing
5 no earlier than 140 days from the preliminary approval order.

6
7 Respectfully submitted,

8 Dated: August 21, 2025

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9
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