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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

TONY BERNARD MUSTAIN, individually, and on behalf of all others similarly situated,

Plaintiff,

vs.

DISCOUNT BUILDERS SUPPLY; a California corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. CGC-25-631603

CLASS AND REPRESENTATIVE ACTION

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

[*Filed with the Declaration of Kane Moon, the Declaration of Plaintiff Tony Bernard Mustain, the Declaration of Sean Hartranft, and [Proposed] Preliminary Approval Order*]

PRELIMINARY APPROVAL HEARING:
Date: December 9, 2026
Time: 9:00 a.m.
Dept.: 301
Judge: Hon. Christine Van Aken

Action Filed: November 26, 2025
Trial Date: Not Set

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

PLEASE TAKE NOTICE that on December 9, 2026, at 9:00 a.m., in Department 301 of this Court located at 400 McAllister St. San Francisco, California 94102, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769 *et seq*., Plaintiff Tony Bernard Mustain ("Plaintiff") will, and hereby does, move the Court for an Order granting preliminary approval of the proposed class action settlement between Plaintiff and Defendant Discount Builders Supply ("Defendant"). Plaintiff further moves the Court for an Order:

1. Granting preliminary approval of the Joint Stipulation of Class and Representative Action Settlement Agreement ("Settlement");
2. Certifying a Class for settlement purposes;
3. Approving the Class Notice for Final Court Approval and plan for its distribution;
4. Appointing Plaintiff as Class Representative for settlement purposes;
5. Appointing Plaintiff's Counsel, Moon Law Group, PC as Class Counsel for settlement purposes;
6. Appointing APEX Class Action Administration as the Administrator; and
7. Setting a final approval hearing no earlier than 130 days from preliminary approval.

The motion will be based upon this notice, the attached memorandum of points and authorities, the declarations filed herewith, and 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, Plaintiff respectfully request relief from the page limit requirement set by California Rules of Court, Rule 3.1113(d).

Respectfully submitted,

Dated: November 13, 2026 MOON LAW GROUP, PC

By:_____
Kane Moon
Allen Feghali

Attorneys for Plaintiff

TABLE OF CONTENTS

I. INTRODUCTION 1

II. SUMMARY OF THE LITIGATION AND SETTLEMENT 1

A. Plaintiff's Claims 1

B. Discovery and Investigation 3

C. Settlement Negotiations 4

D. Key Terms of the Proposed Settlement 4

III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL 8

A. The Settlement Is Fair, Reasonable, Adequate, and the Product of Investigation, Litigation, and Negotiation 9

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

2. The Settlement Is Fair and Reasonable in Light of the Parties' Respective Legal Positions 10

3. Plaintiff's Counsel Have Extensive Experience in Class Action Litigation 12

B. The Proposed Class Notice of Settlement Should Be Approved 12

C. The Proposed Attorneys' Fees and Costs Are Reasonable 12

1. Class Counsel Will Request an Award Of Fees Based On The "Common Fund" Method 13

2. The Requested Fee Award Is in Line with Typical Cases 14

3. This Matter Involves A "Fee-Shifting" Provision of the Labor Code 14

4. The Experience, Reputation and Ability of Plaintiff's Counsel Support the Requested Fee Award 15

D. The Class Representative Service Payment Is Reasonable 15

IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED 17

A. Legal Standard 17

B. Plaintiff Maintains That The Criteria For Class Certification Are Satisfied 18

1. The Class Is Ascertainable and Numerous 18

2. There are Many Common Issues of Law and Fact Which Predominate 18
3. Plaintiff's Claims Are Typical of the Claims of the Class 19
4. Plaintiff and His Counsel Meet the Adequacy Requirement.....20
5. A Class Action is Superior to a Multiplicity of Litigation 20
V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND 21
A. The Proposed Notice Plan Satisfies Due Process 21
B. The Class Notice Is Accurate and Informative.....21
VI. CONCLUSION 22

TABLE OF AUTHORITIES

CASES

Frank v. Eastman Kodak Co. (W.D.N.Y. 2005) 228 F.R.D. 174 16

Leyva v. Medline Ind. (9th Cir. 2013) 716 F.3d 510 20

Priddy v. Edelman (6th Cir. 1989) 883 F.2d 438 ..... 9, 10

Van Vranken v. Atlantic Richfield Company (N.D. Cal. 1995) 901 F.Supp. 294 14

Vincent v. Hughes Air West, Inc. (1977) 557 F.2d 759 13

OTHER AUTHORITIES

Theodore Eisenberg & Jeffrey P. Miller, "Incentive Awards to Class Action Plaintiffs: An Empirical Study", 53 UCLA L. Rev. 1303 (2006) 16

RULES

California Rules of Court, Rule 3.766 21

California Rules of Court, Rule 3.769(f) 12

TREATISES

Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 11.51 9

Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03 14

Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 8.39 21

STATE CASES

Bowles v. Super. Ct. (1955) 44 Cal.2d 574 18

Cartt v. Super Ct. (1975) 50 Cal.App.3d 960 21

Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43 14

City and County of San Francisco v. Sweet (1995) 12 Cal.4th 105 13

Classen v. Weller (1983) 145 Cal.App.3d 27 19

Clothesrigger, Inc. v. GTE Corp. (1987) 191 Cal.App.3d 605 19

Collins v. Rocha (1972) 7 Cal.3d 232 18

D'Amico v. Bd. of Medical Examiners (1974) 11 Cal.3d 1 13

Daar v. Yellow Cab Co. (1967) 67 Cal. 2d 695 17

Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794 ..... 8, 9, 18

Gentry v. Super. Ct. (2007) 42 Cal.4th 443 ..... 16, 20
Laffitte v. Robert Half Int'l Inc. (2016) 1 Cal.5th 480 13
Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429 17
Mallick v. Super. Ct. (1979) 89 Cal.App.3d 434 8
McGhee v. Bank of America (1976) 60 Cal.App.3d 442 20
Miller v. Woods (1983) 148 Cal. App. 3d 862 ..... 18, 20
Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles (2010) 186 Cal.App.4th 399 ..... 9, 15
Quinn v. State of California (1995) 15 Cal.3d 162 13
Richmond v. Dart Indus., Inc. (1981) 29 Cal. 3d 462 17
Rodriguez v. W. Publ'g Corp. (9th Cir. 2009) 563 F.3d 948 16
Rose v. City of Hayward (1981) 126 Cal.App.3d 926 18
Serrano v. Priest (1977) 20 Cal.3d 25 13
Stamburgh v. Super. Ct. (1976) 62 Cal.App.3d 231 9
Wershba v. Apple Computers, Inc. (2001) 91 Cal.App.4th 224 ..... 10, 11
Wilner v. Sunset Life Ins. Co. (2000) 78 Cal.App.4th 952 18

STATUTES

Code of Civil Procedure § 382 17
Labor Code § 90.5 16

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Tony Bernard Mustain ("Plaintiff") seeks preliminary approval of a proposed $399,000.00 non-reversionary, wage and hour class action settlement with Defendant Discount Builders Supply ("Defendant") (Plaintiff and Defendant, collectively, the "Parties") pursuant to the Joint Stipulation of Class and Representative Action Settlement Agreement (the "Settlement"). (Declaration of Kane Moon in Support of Plaintiff's Motion for Preliminary Approval of Class and Representative Action Settlement ["Moon Decl."] ¶ 3, Ex 1.) The Settlement will provide substantial monetary payments to approximately 174 Class Members. 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, discovery, and negotiations. The negotiations were at arm's-length and were facilitated by experienced neutral mediator, Brandon McKelvey, Esq., through a mediation session. Accordingly, Plaintiff requests that the Court preliminarily approve the proposed Settlement, certify the proposed settlement class, approve the proposed notice, and set a final approval hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims

Defendant is a building materials and construction supply company engaged in the sale and distribution of construction-related products and supplies. (Moon Decl., ¶ 3.) Plaintiff worked for Defendant in a non-exempt position during the Class Period and was subjected to the same alleged unlawful labor practices as his coworkers. (Moon Decl., ¶ 3; Declaration of Plaintiff Tony Bernard Mustain in Support of Approval of Class and Representative Action Settlement ["Plaintiff Decl."], ¶ 2.)

Plaintiff's claim for unpaid wages includes allegations that Defendant failed to compensate Plaintiff and the putative Class for minimum and overtime wages, including as a result of alleged uncompensated off-the-clock work. (Moon Decl., ¶ 4.) Plaintiff also alleges that Defendant failed to incorporate all remuneration in calculating the correct regular rate of

pay for purposes of paying overtime pay and sick pay. (*Id.*) Plaintiff also alleges that Defendant systematically failed to provide meal periods and rest breaks. (*Id.*) In addition to the foregoing claims, Plaintiff also alleges that Defendant failed to reimburse Class Members for necessary business expenses, including expenses incurred for the purchase of protective gear and equipment, and for the use of their personal cellphones for work-related purposes. (*Id.*) Accordingly, Plaintiff also alleges derivative claims against Defendant for waiting time penalties, wage statement violations, unfair business practices, and civil penalties under PAGA. (*Id.*)

Because of Defendant's alleged violations of various provisions of the Labor Code, Plaintiff commenced this Action on November 26, 2025, by filing a Complaint, alleging that Defendant systematically: (1) failed to pay minimum wages, (2) failed to pay overtime compensation, (3) failed to provide meal periods, (4) failed to authorize and permit rest breaks, (5) failed to indemnify necessary business expenses; (6) failed to timely pay final wages at termination, (7) failed to provide accurate itemized wage statements, and (8) engaged in unfair business practices. (*Id.* at ¶ 5.)

On October 4, 2025, pursuant to Labor Code § 2699.3(a), Plaintiff provided written notice to the LWDA and Defendant by sending the PAGA Notice, which was assigned LWDA Case No. LWDA-CM-1129758-25. (*Id.* at ¶ 6.) The administrative exhaustion period under PAGA expired without any notice from the LWDA of intent to investigate the allegations. (*Id.*) For purposes of the Settlement, on June 5, 2026, Plaintiff submitted an amended PAGA Notice. (*Id.*) The administrative exhaustion period under PAGA expired without any notice from the LWDA of intent to investigate the allegations. (*Id.*)

On February 5, 2026, Plaintiff filed a First Amended Complaint against Defendant adding a cause of action for civil penalties under PAGA. (*Id.* at ¶ 7.) Plaintiff submitted a conformed copy of the First Amended Complaint to the LWDA. To date, the LWDA has not sought to intervene in the Action. (*Id.*)

For purposes of the Settlement, on August 6, 2026, Plaintiff filed a Second Amended Complaint (the "Operative Complaint"). (*Id.* at ¶ 8.) Plaintiff submitted a conformed copy of

the Operative Complaint to the LWDA. (*Id.*)

Defendant denies the allegations in the Operative Complaint, denies any failure to comply with any laws, including, but not limited to, the laws identified in the Operative Complaint, and denies any and all liability for the causes of action alleged in the Operative Complaint. (*Id.* at ¶ 9.)

B. Discovery and Investigation

Following the filing of the Action, the Parties met and conferred regarding an agreement to mediate the claims. (*Id.* at ¶ 10.) Prior to mediation, the Parties engaged in informal discovery. (*Id.*) Defendant produced documents relating to its policies, practices, and procedures regarding payment of wages, meal and rest periods, reimbursement of business expenses, and timekeeping and payroll, along with data regarding the number of Workweeks and PAGA Pay Periods worked by Class Members and Aggrieved Employees. (*Id.*) Defendant produced a statistically sound sampling of time and pay records of 52% of the putative Class. (*Id.*)

In preparation for mediation, Plaintiff's Counsel reviewed and analyzed all the information Defendant provided, including the sample time/pay records and documents regarding Defendant's wage and hour policies. (*Id.* at ¶ 11.) Plaintiff's Counsel retained a statistics expert to analyze the sample records and prepare a damage analysis prior to mediation. (*Id.*) The sample of time and pay records contained the records of 35,484 shifts actually worked during the Class Period (representing approximately 52% of the Class), which allowed Plaintiff's expert to prepare an analysis with a high degree of certainty. (*Id.*) In conjunction with their extensive factual investigation, Plaintiff's Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly, Plaintiff's Counsel were 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, Plaintiff's and his counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement. (*Id.*)

After a reasonable inquiry, Plaintiff's Counsel aver that they are not aware of any case, the nature of any claims asserted in such case, or the definition of a class of parties on whose behalf any

action was brought that would overlap with the putative Class, as defined in this matter, or would otherwise be extinguished or adversely affected by approval of this Settlement. (*Id.* at ¶ 12.)

C. Settlement Negotiations

On May 20, 2026, the Parties participated in a full day mediation with Brandon McKelvey, Esq., a professional and neutral class and PAGA action mediator. (*Id.* at ¶ 13.) The settlement negotiations were at arm's-length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive discussion regarding the merits and certifiability of Plaintiff's claims and Defendant's defenses, a resolution was reached by the Parties, the material terms of which are encompassed within the Settlement (*Id.* at ¶¶ 2, 13, Ex. 1.) Additionally, the Class Notice is attached as Exhibit A to the Settlement. (*Id.* at ¶ 13.)

Plaintiff's Counsel have conducted a thorough investigation into the facts of this case. (*Id.* at ¶ 22.) Based on the foregoing discovery and their own independent investigation and evaluation, Plaintiff's Counsel is of the opinion that the Settlement is fair, reasonable, and adequate. (*Id.*) Furthermore, in light of all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, the defenses that could be asserted by Defendant both to certification and on the merits, the settlement is in the best interests of the Class Members. (*Id.*) **Indeed, the $399,000.00 Settlement represents approximately 14% of Plaintiff's maximum potential recovery of $2,871,406.55 and 56% of Plaintiff's realistic recovery of $717,851.64.** (Moon Decl., ¶¶ 30, 32.)

D. Key Terms of the Proposed Settlement

The Settlement's key terms include:

1. Gross Settlement Amount: Defendant will pay a non-reversionary, Gross Settlement Amount of $399,000.00 to resolve this litigation, subject to any increase under the escalator clause. (Settlement, ¶ 3.1.) Defendant will separately pay its employer payroll taxes owed on the Wage Portion of the Individual Class Payments. (*Id.*) The Gross Settlement Amount was negotiated based

on Defendant's estimate that there are 15,371 Workweeks during the Class Period. (*Id.* at ¶ 8.) If the actual number of Workweeks is more than 10% greater than this estimated count (i.e., if the actual number of Workweeks is more than 16,908), then Defendant agrees, at its sole option, to either (a) make a proportional increase to the Gross Settlement Amount by the percentage increase for each additional Workweek above 16,908, or (b) end the Class and PAGA Periods early as of the date upon which the actual number of Workweeks totals 16,908. (*Id.*) Defendant agrees to inform Plaintiff's Counsel of its election prior to the Preliminary Approval Hearing. (*Id.*)

2. Class and Class Period: The proposed Class for purposes of the Settlement contains approximately 174 members and is defined as: all current and former non-exempt employees of Defendant employed in the State of California at any time during the Class Period. (Settlement, ¶¶ 1.5, 4.1.) "Class Period" means the period from November 26, 2021, through July 20, 2026. (*Id.* at ¶ 1.12.)

3. Workweek: means any workweek during which a Class Member worked for Defendant in California at least one day during the Class Period. (*Id.* at ¶ 1.45.)

4. Released Class Claims: The Released Class Claims are limited to all claims that were alleged, or that reasonably could have been alleged, based on the facts asserted in the Operative Complaint as stated in Section 5.2 of the Settlement. (*Id*. at ¶ 5.2.) The Released Class Claims exclude any claims for vested benefits, unemployment benefits, disability benefits, social security benefits or workers' compensation benefits that arose at any time, any claims that are not releasable as a matter of law or public policy, and any claims arising outside the Class Period. (*Id.*)

5. Released PAGA Claims: The Released PAGA Claims are limited to all claims for PAGA penalties, which were alleged, or reasonably could have been alleged, in the PAGA Notice and the Operative Complaint as stated in Section 5.3 of the Settlement. (*Id.* at ¶ 5.3.) The Released PAGA Claims include only claims for penalties under PAGA that arose during the PAGA Period. (*Id.*)

6. PAGA Penalties: The Settlement allocates PAGA Penalties in the total amount of $25,000.00 to be paid from the Gross Settlement Amount, distributed as sixty-five percent (65%) ($16,250.00) to the LWDA through a LWDA PAGA Payment and thirty-five percent (35%)

($8,750.00) to Aggrieved Employees through Individual PAGA Payments. (*Id.* at ¶ 3.2.5.) Each Aggrieved Employee will receive a *pro rata* share of thirty-five percent (35%) of the PAGA Penalties as calculated by the Administrator according to the number of PAGA Pay Periods worked by Aggrieved Employees during the PAGA Period. (*Id.* at ¶ 1.23.)

7. Net Settlement Amount: means the Gross Settlement Amount, less the following payments in amounts as approved by the Court: Individual PAGA Payments, LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Administration Expenses Payment. (*Id.* at ¶ 1.27.) The remainder is to be paid to Participating Class Members through Individual Class Payments. (*Id.*)

8. Individual Class Payment: means the Participating Class Member's *pro rata* share of the Net Settlement Amount as calculated by the Administrator according to the number of Workweeks worked by Participating Class Members during the Class Period. (*Id.* at ¶ 1.22.)

9. Unclaimed Funds: For any Class Member whose Individual Class Payment and/or Individual PAGA Payment is uncashed after the 180-day cashing deadline (the "Void Date"), the Administrator shall cancel those checks and transmit the funds represented by such checks to the California State Controller's Unclaimed Property Fund in the name of the individual who failed to timely cash his or her check, in accordance with California Code of Civil Procedure section 384(b), until such time as he or she claims his or her property. (*Id.* at ¶¶ 4.4.1, 4.4.3.)

10. Tax Treatment: 15% of each Participating Class Member's Individual Class Payment shall be allocated to settlement of wage claims (the "Wage Portion"), and the remaining 85% of each Participating Class Member's Individual Class Payment shall be allocated to settlement of claims for penalties, interest, and reimbursement of alleged expenses (the "Non-Wage Portion"). (*Id.* at ¶ 3.2.4.a.) Defendant will separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. (*Id.* at ¶ 3.1.) Individual PAGA Payments shall be treated as 100% penalties for tax purposes. (*Id.* at ¶ 3.2.5.a.) Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (*Id.*)

11. Attorneys' Fees and Costs: The Settlement Agreement provides for a Class Counsel Fees Payment of not more than one-third of the Gross Settlement Amount, which is currently

estimated to be $133,000.00, and a Class Counsel Litigation Expenses Payment in an amount of up to $25,000.00. (*Id.* at ¶ 3.2.2.) If the Court approves a Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator shall allocate the remainder to the Net Settlement Amount. (*Id.*) At this time, Plaintiff's Counsel has incurred $19,124.45 in costs. (Moon Decl., ¶ 17, Ex. 4.)

12. Class Representative Service Payment: The Settlement Agreement includes a Class Representative Service Payment to Plaintiff as the Class Representative of not more than $10,000.00, in addition to any Individual Class Payment and Individual PAGA Payment Plaintiff is entitled to receive as a Participating Class Member. (Settlement, ¶ 3.2.1.) If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator shall allocate the remainder to the Net Settlement Amount. (*Id.*) The payment is in exchange for Plaintiff's general release, and in recognition of having initiated the Action, providing services in support thereof, and incurring risks inherent in the role of being named Plaintiff. (*Id.* at ¶ 1.14.)

13. Settlement Administrator: The Parties jointly appoint APEX Class Action Administration ("APEX") as the neutral entity to administer this Settlement. (*Id.* at ¶ 1.2.) The Settlement Agreement provides the Administrator will be paid an Administration Expenses Payment in an amount not to exceed $6,790.00, the Administrator's bid submitted to the Court, except for a showing of good cause and as approved by the Court. (*Id.* at ¶ 3.2.3; Moon Decl., ¶ 20, Ex. 5.))

14. Notice of Proposed Settlement: The Class Notice sets forth in plain terms, a statement of case, the terms of the Settlement Agreement, the estimated dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of any Workweeks and PAGA Pay Periods used to calculate these amounts, and an explanation of how the settlement allocations are calculated. (Settlement, ¶ 7.4.2., Ex. A.) Using its best efforts to perform as soon as possible, and in no event later than 14 calendar days after receiving the Class Data, the Administrator shall send to all Class Members identified in the Class Data, via first-class USPS mail, with an accurate Spanish translation thereof the Class Notice. (*Id.* at ¶ 7.4.2.) Before mailing the Class Notice, the Administrator shall update Class Member addresses using the

National Change of Address data. (*Id.*) Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall remail the Class Notice using any forwarding address provided by the USPS. (*Id.* at ¶ 7.4.3.) If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search and shall re-mail the Class Notice to the most current address obtained. (*Id.*)

15. Response Deadline: Class Members will have 60 calendar days after the Administrator mails the Class Notice to Class Members to email or postmark any (a) Requests for Exclusion, (b) written Objections, or (c) disputes regarding the calculation of Workweeks and/or PAGA Pay Periods. (*Id.* at ¶ 1.43.) Class Members to whom their initial Class Notice is resent after having been returned as undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline. (*Id.*) The Class Notice explains the procedure under which a Class Member and/or Aggrieved Employee can challenge the number of his or her individual Workweeks and/or PAGA Pay Periods stated in their Class Notice. (*Id.* at Ex. A.) Additionally, the Class Notice explains how Class Members may, should they choose to do so, request exclusion, or otherwise submit a written objection or state an oral objection at the Final Approval Hearing. (*Id.*) Class Members need not file or serve, or state in any written objection, a notice of intention to appear at the Final Approval Hearing. (*See id.*)

16. Funding: Within 7 calendar days of receipt of notice of the entry of the Court's Final Approval Order, the Administrator shall provide Defendant with the total amount of Defendant's employer-share of payroll taxes owed and the wiring and/or mailing instructions. (*Id.* at ¶ 4.3.) Within fourteen (14) calendar days of the Effective Date, Defendant shall fund the Gross Settlement Amount and its employer-share of payroll taxes by transmitting the funds into the Qualified Settlement Fund established and maintained by the Administrator. (*Id.*)

III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL

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.) This Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached

through arm's-length bargaining; (2) investigation is 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. 1800.)

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 amount offered in settlement; 5) the extent of discovery completed and the stage of the proceedings; 6) the experience and views of counsel; 7) the presence of a governmental participant; and 8) the reaction of the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc*., (2008) 168 Cal.App.4th 116, 128.) In order 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 Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not require "an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims", but instead, only an "understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."].)

As discussed below, Plaintiff's Counsel have provided information exceeding the threshold required to provide this Court with materials and information necessary to determine that the proposed settlement is fair, adequate, and reasonable.

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; thus, there is a presumption here that the negotiations were conducted in good faith. (Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 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 a plaintiff might have received more if the case had been fully litigated is no reason not to approve the settlement."].)

The Settlement was reached following extensive negotiations following a mediation session with experienced employment mediator Brandon McKelvey, Esq. (Moon Decl. ¶ 13.) The settlement 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.*)

Prior to reaching this Settlement, Plaintiff's Counsel conducted informal discovery and investigation into the claims alleged by Plaintiff, including, among other things, reviewing sample time/pay records and documents regarding Defendant's wage and hour policies and preparing a damage analysis. (Moon Decl., ¶¶ 10-11, 22-23.) Significantly, Plaintiff's Counsel's calculations are based on the analysis of a statistics expert retained by Plaintiff's Counsel to analyze the records produced by Defendant. (*Id*. at ¶¶ 11, 23.) In conjunction with their extensive factual investigation, Plaintiff's Counsel investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id*. at ¶¶ 11, 23.) Thus, Plaintiff and his counsel were able to act intelligently and effectively in negotiating the proposed settlement. (*Id*. at ¶ 11.)

Plaintiff's Counsel also have considerable experience and have demonstrated competence with litigating wage and hour class actions. (Moon Decl., ¶¶ 43-54.) Based on Plaintiff's Counsel's experience, Plaintiff's Counsel are of the opinion that the Settlement is based on objective evidence that has been considered and weighed against the risks, expenses, and time consumption to both sides of continued litigation of this action.

2. The Settlement Is Fair and Reasonable in Light of the Parties' Respective Legal Positions

A settlement is not judged against what a plaintiff might have recovered 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 Computers, 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."])

The Settlement obviates the significant risk that this Court may deny certification of all or some of Plaintiff's claims. (Moon Decl., ¶ 35.) While Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each cause of action. (*Id*. at ¶ 33.) Plaintiff also recognizes that proving the amount of wages due to each Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id*.) Furthermore, even if Plaintiff was able to pursue his claims on a class-wide basis and thereafter obtained 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 Members. (*Id*. at ¶ 35.)

The proposed settlement of $399,000.00 therefore represents a substantial recovery when compared to Plaintiff's reasonably forecasted recovery. (*Id*. at ¶ 38.) Because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id.* at ¶ 32.) When considering the risks of litigation, including the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement amount is within the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id*. at ¶ 38.)

The Net Settlement Amount available for settlement payments is no less than **$199,210.00** for an estimated Class size of **174 individuals**.[1] (*Id*. at ¶ 37.) As a result, it is estimated each Participating Class Member is eligible to receive an average benefit of approximately **$1,202.36** prior to tax withholdings on the wage portion of payments. (*Id.*) Considering Class Members' average hourly rate is $22.40, the average benefit is for approximately **51 hours of work**. (*Id.*)

[1] The Net Settlement Amount is at least $399,000.00 less the following: $10,000.00 for the Class Representative Service Payment, up to $6,790.00 for the Administration Expenses Payment, $25,000.00 for PAGA Penalties, $133,000.00 for the Class Counsel Fees Payment, and up to $25,000.00 for Class Counsel Litigation Expenses Payment. (Settlement, ¶¶ 3.1-3.2 *et. seq*.)

Additionally, there are an estimated **102 Aggrieved Employees** each of whom are expected to receive an average of **$85.78** from the $8,750.00 Individual PAGA Payments, or 35% of the $25,000.00 as PAGA Penalties, or a **pay period value of $1.49** based on the **5,875 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 for Defendant during the relevant period will receive a 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 Data and will be provided to the Court in a motion for final approval. (*Id.*)

3. Plaintiff's Counsel Have Extensive Experience in Class Action Litigation

The settlement negotiations were conducted by highly capable and experienced counsel. Plaintiff's Counsel have a strong record of vigorous and effective advocacy for their clients and are experienced in handling complex wage and hour class action litigation. (*Id.* at ¶¶ 43-54.) Although Plaintiff and his counsel were prepared to litigate the claims alleged in the litigation, they support the proposed Settlement as being in the best interest of the class. (Moon Decl., ¶ 22; Plaintiff Decl., ¶ 12.)

B. <u>The Proposed Class Notice of Settlement 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 the Settlement. Additionally, if there are Class Members who wish to object to this proposed Settlement, they will have the opportunity to file their objections and be heard at the Final Approval Hearing. Accordingly, the proposed Class Notice meets all the requirements of Rule 3.769(f) of the California Rules of Court.

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

The Settlement provides for attorneys' fees payable to Plaintiff's Counsel in an amount of not more than one-third of the Gross Settlement Amount, which is currently estimated to be

$133,000.00, and reimbursement of actual litigation costs in an amount of up to $25,000.00. (Settlement, ¶ 3.2.2.) These amounts are subject to Court approval. (*Id.*) These amounts will be disclosed to all class members in the proposed Notice and are reasonable.

1. Class Counsel Will Request an Award Of Fees 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. The California Supreme Court held that "when a number of persons is 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 attorneys' fees out of the fund." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34, quoting *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

Plaintiff's Counsel seek an award of attorneys' fees on the "percentage of recovery/common fund" theory. (Moon Decl., ¶ 57.) The purpose of this approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air West, Inc.* (1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1995) 15 Cal.3d 162, the California Supreme Court stated: "[O]ne 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 p. 110.)

The California Supreme Court recently affirmed in *Laffitte v. Robert Half Int'l 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].)

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." (*See* Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 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 Company* (N.D. Cal. 1995) 901 F.Supp. 294 [stating that most cases where 30-50 percent was awarded involved "smaller" settlement funds of under $10 million].)

Here, Plaintiff requests attorneys' 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, ¶ 3.2.2 *with Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].) Accordingly, Plaintiff respectfully requests that the Court approve the attorneys' fees as negotiated by the Parties and requested herein.

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

Labor Code §§ 218.5, 226, 1194 and 2699, *et seq*. provide for the recovery of reasonable attorney's fees, and costs of suit, for the claims made in this action. Under these sections, Plaintiff would be permitted to recover his actual attorneys' fees, even if those fees were larger than the total class recovery at the conclusion of this case. This Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while

at the same time rewarding Plaintiff's Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action involved significant financial risk for Plaintiff's Counsel. (Moon Decl., ¶¶ 60-62.) Plaintiff's Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id*.) Once Plaintiff's Counsel undertook this litigation on behalf of the Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class ahead of all other concerns. (*See id.* at ¶ 60.)

4. The Experience, Reputation and Ability of Plaintiff's Counsel Support the Requested Fee Award

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Plaintiff's Counsel possess considerable expertise in litigating class actions. (*Id.* at ¶¶ 43-54.) Plaintiff's Counsel has been involved as lead counsel or co-counsel in several class actions that resulted in millions in recovery. (Moon Decl., ¶¶ 47, 52.) Because it is reasonable to compensate class counsel commensurate with their skill, reputation and experience, Plaintiff's Counsel's requested fee award is supported here.

Plaintiff's Counsel's experience in wage and hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. (Moon Decl., ¶ 55.) 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. (*See id*. at ¶ 53.) Based on these and other factors, Plaintiff's Counsel have frequently received fee awards of this percentage from the gross recovery for the class. (*Id*. at ¶¶ 47,52.) Therefore, the requested fee award is reasonable and fair.

D. <u>The Class Representative Service Payment Is 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,* 86 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 payments 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, "it 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…."). 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.)

The Settlement Agreement includes a Class Representative Service Payment to Plaintiff as the Class Representative of not more than $10,000.00, in addition to any Individual Class Payment and Individual PAGA Payment Plaintiff is entitled to receive as a Participating Class Member. (*Id.* at ¶ 3.2.1.) Plaintiff's Counsel represents that Plaintiff devoted a great deal of time and work assisting counsel in the case and communicated with counsel very frequently for litigation and to prepare for mediation. (Moon Decl., ¶¶ 39-42.) This amount is reasonable particularly in light of the substantial benefits Plaintiff generated for all class members. (*Id*.)

When compared with the amounts awarded in typical class action cases, the amount requested here is particularly reasonable. Indeed, 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 $4,357." (Theodore Eisenberg & Jeffrey P. Miller, "Incentive Awards to Class Action Plaintiffs: An Empirical Study", 53 UCLA L. Rev. 1303, 1308 (2006).) That 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. 1334.) 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 Class is well suited for class certification. All of the claims derive from a core set of alleged violations of California's wage and hour laws and regulations. For the reasons set forth more fully below, the Class satisfies the prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides: "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." (Code Civ. Proc., § 382.) 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 [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 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. 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. *See Miller v. Woods*, 148 Cal. App. 3d 862, 873 (1983). Here, the proposed class that Plaintiff seeks to represent is ascertainable because (1) the class definition is sufficiently precise, (2) consists of 174 class members, and (3) class members can be readily identified by looking at Defendant's records. (Settlement, ¶ 4.1.)

Plaintiff maintains that there is an easily ascertainable class, defined by objective and precise criteria. Because class members are identified using specific criteria in the regular business records of Defendant, the class is ascertainable. (*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 35 member class.]) Therefore, Plaintiff contends that 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 must have claims or defenses typical of the class; and (3) class representatives must adequately represent the class. *Dunk*, 48 Cal. App. 4th at 1806. This inquiry tests whether proposed classes are sufficiently

cohesive to warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp*. (1987) 191 Cal.App.3d 605.) Plaintiff's claims satisfy all three requirements.

In this case, the employment practices at issue are: whether Defendant had legally compliant policies and practices to pay employees all wages owed including minimum and overtime wages; whether Defendant incorporated all remuneration into the regular rate of pay for purposes of calculating the correct overtime pay and sick pay, and whether these additional remunerations were discretionary; whether Defendant had legally compliant policies and practices to provide employees with meal periods; whether Defendant had legally compliant policies and practices authorizing and permitting its employees to take rest periods; whether final payment of wages was untimely and excluded unpaid wages, including meal period premium wages, and rest period premium wages; whether all wages were paid to employees at the time of termination of the employment relationship; and whether the wage statements were consequently non-compliant. Plaintiff contends that the factual and legal issues are the same for all identified class members, including Plaintiff. Further, all class members suffered from and seek redress for the same alleged injuries. Considering that 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 agreement than to force each Class Member to litigate their own individual claims. Thus, the Court should grant conditional class certification for settlement because common questions of law and fact predominate over any individual questions within the class.

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

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

he alleges that he was subject to the same policies and practices as other similarly situated employees. (Plaintiff Decl., ¶ 2, 7.)

4. Plaintiff and His Counsel Meet the Adequacy Requirement

The adequacy of representation requirement is met by fulfilling two conditions: first, a named plaintiff must be represented by counsel qualified to conduct the pending litigation; second, a named plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451.)

Here, all requirements are met. Plaintiff retained counsel with extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Moon Decl., ¶¶ 43-54.) With their combined experience, Plaintiff's Counsel unquestionably are "qualified, experienced and generally able to conduct the proposed litigation." (*Miller*, *supra*, 148 Cal.App.3d at 875.) In addition, Plaintiff has no conflicts, and Plaintiff has, with counsel, litigated this case and diligently reviewed the settlement terms, showing his dedication. (Plaintiff Decl., ¶¶ 9-10, 11-21.) Plaintiff's willingness to serve as representative demonstrates his serious commitment to bringing about the best results possible for the class. (*Id*; *McGhee*, *supra,* 60 Cal.App.3d at p. 451.)

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. 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 economies of time, effort and expense for the litigants and the judicial system. 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. (*Gentry*, *supra,* 42 Cal.4th at 57-62; *Leyva v. Medline Ind.* (9th Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the superiority concerns are essentially non-existent.

V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND

A. The Proposed Notice Plan Satisfies Due Process

Notice requirements are set forth in the California Rules of Court. Cal. Rules of Court, Rule 3.766 (e) and (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, 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, ¶ 7.4.2.) As the Court of Appeal has explained, "[t]he notice given should have a reasonable chance of reaching a substantial percentage of the Class Members . . . ." (*Id.* 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.

B. The Class Notice Is Accurate and Informative

The proposed Class Notice should be approved. It will be disseminated through direct U.S. first class mail to the last known address for each Class Member. (Settlement, ¶ 7.4.2.) It informs the Class Members of the terms of the settlement and their right to be excluded from the Settlement. (*Id.* at Ex. A.) If there are Class Members who wish to object to this proposed class action settlement, they will have the opportunity to file their objections and be heard at the Final Approval Hearing. (*Id.*)

The Class Notice also fulfills the requirement of neutrality in class notices. (Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 8.39.) It summarizes the proceedings to date and the terms and conditions of the settlement agreement, in an informative and coherent manner. (Settlement, Ex. A.) It makes clear that the settlement agreement does not constitute an admission of liability by the Defendant, who denies all liability, and it recognizes that this Court has not ruled on the merits of the action. (*Id.*) It also states that the final settlement approval decision has yet to be made. (*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, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed settlement and set a Final Approval Hearing no earlier than 130 days from preliminary approval.

Respectfully submitted,

Dated: November 13, 2026

MOON LAW GROUP, PC

By: _____
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