

Kane Moon (SBN 249834)
E-mail: kmoon@moonlawgroup.com
Allen Feghali (SBN 301080)
E-mail: afeghali@moonlawgroup.com
Enzo Nabiev (SBN 332118)
E-mail: enabiev@moonlawgroup.com
MOON LAW GROUP, PC
725 South Figueroa St., 31st Floor
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff Yovany Flamenco

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

YOVANY FLAMENCO, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

AUSTIN/JONES CORP., a California
corporation; and DOES 1 through 10, inclusive,

Defendants

Case No. 30-2025-01528256-CU-OE-CXC

CLASS AND REPRESENTATIVE ACTION

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

*[Filed with the Declarations of Kane Moon,
the Declaration of Plaintiff, the Declaration
of Jodey Lawrence, and [Proposed] Order]*

PRELIMINARY APPROVAL HEARING

Date: February 11, 2027

Time: 2:00 p.m.

Dept. CX105

Judge: Hon. Melissa R. McCormick

Res. ID: 74970678

Complaint Filed: November 24, 2025

Trial Date: Not set

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

2 PLEASE TAKE NOTICE that on February 11, 2027, at 2:00 p.m., in Department CX105
3 of this Court located at the Civil Complex Center at 751 West Santa Ana Blvd., Santa Ana,
4 California 92701, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769
5 *et seq.*, Plaintiff Yovany Flamenco (“Plaintiff”) will move the Court for an Order granting
6 preliminary approval of the proposed class action settlement between Plaintiff and Defendant
7 Austin/Jones Corp. Plaintiff further moves the Court for an Order:

- 8 1. Granting preliminary approval of the Joint Stipulation of Class and Representative
9 Action Settlement Agreement and the Amendment to Class and Representative Action
10 Settlement Agreement (together “Settlement” or “Settlement Agreement”);
11 2. Certifying a Class for settlement purposes;
12 3. Approving the Notice of Class and Representative Action Settlement, the Request for
13 Exclusion Form and the Objection Form, and plan for their distribution;
14 4. Appointing Plaintiff as Class Representative for settlement purposes;
15 5. Appointing Plaintiff’s Counsel Moon Law Group, PC, as Class Counsel for settlement
16 purposes;
17 6. Appointing Phoenix Class Action Administration Solutions as the Administrator; and
18 7. Setting a final approval hearing no earlier than 120 days from preliminary approval.

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

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

3 Respectfully submitted,

4 Dated: September 30, 2026

MOON LAW GROUP, PC

5 By: _____

6 Kane Moon
7 Allen Feghali
8 Enzo Nabiev

9 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Yovany Flamenco (“Plaintiff”) seeks preliminary approval of a proposed \$260,000.00 non-reversionary, wage and hour class and representative California Private Attorneys General Act, Labor Code sections 2698, *et seq.* (“PAGA”) action settlement with Defendant Austin/Jones Corp. (“Defendant” and together with Plaintiff, the “Parties”). The Joint Stipulation of Class and Representative Action Settlement Agreement and the Amendment to Class and Representative Action Settlement Agreement (together, the “Settlement”) will provide substantial monetary payments to approximately 154 class members. As set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. 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 and Procedural History

Defendant is a commercial construction company and general contractor headquartered in Southern California. (Declaration of Kane Moon in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement [“Moon Decl.”], ¶ 4.). Plaintiff worked for Defendant as a painter from approximately July 2021 until July 2025. (*Id.*; Declaration of Plaintiff Yovany Flamenco in Support of Approval of Class Action and Representative Action Settlement [“Plaintiff Decl.”], ¶ 2.) Plaintiff was classified as non-exempt during the entirety of his employment and was subjected to the same unlawful labor practices as his coworkers. (Plaintiff Decl., ¶ 7.; Moon Decl., ¶ 4.)

Pursuant to PAGA, on October 4, 2025, Plaintiff gave written notice to the California Labor and Workforce Development Agency (the “LWDA”) of the alleged Labor Code violations, with certified mail service on Defendant, and paid the required filing fee. (*Id.* at ¶ 6, Ex. 2.) On November 24, 2025, Plaintiff filed a Class Action complaint, which, as amended, alleges 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 ¶ 6.)

On March 27, 2026, following leave granted by the Court, Plaintiff filed a First Amended Class and Representative Action Complaint against Defendant to add a ninth cause of action for civil penalties under PAGA (the “Operative Complaint”). (*Id.* at ¶ 7.) A file-stamped copy of the Operative Complaint containing the Court-assigned case number was submitted to the LWDA. (*Id.*) To date, the LWDA has not given its intention to investigate and intervene on the matter. (*Id.*)

Defendant ardently opposes the merits of this case and denies each of Plaintiff’s factual allegations. (*Id.* at ¶ 8.)

B. Discovery and Investigation

Following the filing of the complaint, the Parties met and conferred regarding an agreement to mediate the claims. (*Id.* at ¶ 10.) The Parties agreed to mediate with Jason C. Marsili, Esq., an experienced class and PAGA action mediator. (*Id.*) In preparation for mediation, the Parties agreed to a protocol for exchanging documents and information before the mediation. (*Id.*) Plaintiff obtained from Defendant, through informal but extensive discovery, information sufficient to meaningfully evaluate the claims at issue in the action, including Plaintiff’s complete personnel file, a sample of time and corresponding payroll records for Class Members, and information regarding the estimated number of current and former Class Members, Workweeks, Aggrieved Employees, PAGA Pay Periods, and average hourly pay. (*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 analyzed the sample records and prepared a damage analysis prior to mediation. (*Id.*) The sample time and pay records analyzed allowed Plaintiff’s Counsel 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

1 were able to evaluate the probability of class certification, success on the merits, and Defendant's
2 maximum and realistic monetary exposure for all claims. (*Id.*) Thus, Plaintiff's and his counsel's
3 familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to
4 act intelligently in negotiating the Settlement. (*Id.*)

5 The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any
6 other pending matter or action asserting claims that will be extinguished or affected by the
7 Settlement. (Settlement, ¶ 2.6.)

8 **C. Settlement Negotiations and Notice of Settlement to the LWDA**

9 On June 23, 2026, the Parties participated in a full-day mediation with Jason C. Marsili,
10 Esq., a professional and neutral class and PAGA action mediator. (*Id.* at ¶ 13.) The Parties went
11 into the mediation willing to explore the potential for a settlement of the dispute, but each side
12 was also prepared to litigate their position through trial and appeal if a settlement had not been
13 reached. (*Id.*) After extensive discussion regarding the merits and certifiability of Plaintiff's
14 claims and Defendant's defenses, a settlement was reached by the Parties, the material terms of
15 which are encompassed within Settlement. (*Id.*, Ex. 1.)

16 In compliance with Labor Code section 2699, Plaintiff's Counsel submitted to the
17 LWDA a notice of settlement and a copy of the proposed Settlement Agreement. (*Id.* at ¶ 14,
18 Ex. 4). To date, Plaintiff's administrative exhaustion period under PAGA expired without the
19 LWDA indicating its intent to investigate the alleged violations. (*Id.* at ¶ 14.).

20 **The \$260,000.00 Settlement represents approximately 80.5% of Defendant's**
21 **realistic potential overall liability of \$322,846.09.** (*Id.* at ¶ 39.)

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

23 1. Non-Reversionary Gross Settlement Amount ("GSA"): Defendant will pay a non-
24 reversionary \$260,000.00 to resolve this litigation, exclusive of Defendant's employer-side payroll
25 taxes, which Defendant will separately pay. (Settlement, ¶ 3.1.) The Administrator will disburse the
26 GSA without requiring Participating Class Members or Aggrieved Employees to submit any claim as
27 a condition of payment. (*Id.*)

1 2. Class, Class Period, Workweeks: There are approximately 154 members, defined as: all
2 current and former hourly, non-exempt employees of Defendant in California employed during the
3 Class Period. (*Id.* at ¶ 21; Settlement, ¶ 1.4.) The Class Period is from November 24, 2021, through
4 August 18, 2026. (Settlement, ¶ 1.12.) There are 7,659 Workweeks, defined as any week during the
5 Class Period in which a Class Member worked for Defendant at least one day. (*Id.* at ¶¶ 1.47, 7.1.)

6 3. Aggrieved Employees, PAGA Period, PAGA Pay Periods: There are approximately 68
7 Aggrieved Employees, defined as: all current and former hourly, non-exempt employees of
8 Defendant in California employed during the PAGA Period. (*Id.* at ¶ 1.34.) The PAGA Period is
9 from November 24, 2024, through August 18, 2026. (*Id.* at ¶ 1.32.) There are approximately 1,432
10 PAGA Pay Periods, defined as any pay period during which an Aggrieved Employee worked for
11 Defendant for at least one day during the PAGA Period. (*Id.* at ¶ 1.32; Moon Decl., ¶ 32.)

12 4. Released Class Claims: The Released Class Claims are limited to any and all claims,
13 debts, liabilities, demands, obligations, penalties, costs, expenses, attorneys' fees, damages, and
14 causes of action that were alleged or that reasonably could have been alleged based on the facts
15 alleged in the Operative Complaint arising during the Class Period. (Settlement, ¶ 5.2.) The release
16 excludes any other claims, including claims for vested benefits, unemployment benefits, disability
17 benefits, social security benefits, and/or workers' compensation benefits. (*Id.*)

18 5. Released PAGA Claims: The Released PAGA Claims are limited to all claims for civil
19 penalties, and attorneys' fees and costs, under PAGA that were alleged or that reasonably could
20 have been alleged based on the facts alleged in the Operative Complaint or the PAGA Notice. (*Id.*
21 at ¶ 5.3.)

22 6. PAGA Penalties: The Settlement allocates \$26,000.00 from the GSA for PAGA
23 Penalties, which will be distributed 65% (\$16,900.00) to the LWDA and 35% (\$9,100.00) to
24 Aggrieved Employees pursuant to PAGA law governing Plaintiff's claims. (*Id.* at ¶ 3.2.5.)

25 7. Net Settlement Amount: means the GSA, less the following payments in the amounts
26 approved by the Court: Individual PAGA Payments, LWDA PAGA Payment, Class Representative
27 Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and
28

Administration Expenses Payment. (*Id.* at ¶ 1.28.) The remainder is to be paid to Participating Class Members as Individual Class Payment. (*Id.*)

8. Individual Class Payment: means a Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks he or she worked during the Class Period, calculated solely and exclusively to effectuate Settlement of the Action. (*Id.* at ¶ 1.23.)

9. Individual PAGA Payment: means Aggrieved Employee’s pro rata share of 35% of the PAGA Penalties calculated according to the number of workweeks he or she worked during the PAGA Period. (*Id.* at ¶ 1.24.)

10. Uncashed Settlement Checks: Any funds remaining uncashed after 180 days from issuance will be transmitted to the California Controller’s Unclaimed Property Fund pursuant to the Unclaimed Property Law, California Civil Code section 1500, *et seq.*, in the name of the Class Member or Aggrieved Employee, thereby leaving no “unpaid residue” in accordance with the requirements of California Code of Civil Procedure section 384(b). (*Id.* at ¶¶ 4.2.1, 4.2.3.) The Parties agree that this disposition results in no unpaid residue, as all payments to the Participating Class Members and PAGA Members will be paid out whether or not these individuals cash their Settlement checks. (*Id.* at ¶ 4.2,3.) Therefore, Defendant will not be required to pay any interest on such amounts. (*Id.*)

11. Tax Allocation of Settlement Payments: 20% of each Participating Class Member’s Individual Class Payment will be allocated as wages, 40% as interest, and 40% as penalties. (*Id.* at ¶ 3.2.4.a.) Aggrieved Employees assume full responsibility and liability for any employee taxes owed on their Individual PAGA Payment. (*Id.* at ¶ 3.2.5.a.)

12. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment: means the court-approved amount allocated to Class Counsel for reimbursement of their reasonable fees incurred to prosecute the Action, not to exceed 35% of the Gross Settlement Amount and for reimbursement of their reasonable expenses incurred to prosecute the Action, not to exceed \$25,000.00. (*Id.* at ¶¶ 1.6, 1.7.) The Settlement provides, subject to Court approval, a Class Counsel Fees Payment of not more than 35% the GSA, which is currently estimated to be \$91,000.00, and a Class Counsel Litigation Expenses Payment of not more than \$25,000.00. (*Id.* at ¶ 3.2.2.) There is

1 no fee-splitting agreement. (Moon Decl., ¶ 18.) At this time, Plaintiff’s Counsel’s costs are
2 approximately \$11,062.75. (*Id.* at ¶ 18, Ex. 5.)

3 13. Class Representative Service Payment: Subject to Court approval, Plaintiff shall be paid
4 a Class Representative Service Payment not to exceed \$10,000. (Settlement, ¶ 3.2.1.) This amount
5 is for initiating and providing services in support of the Action. (*Id.* at ¶ 1.14.) Plaintiff will not be
6 receiving any additional consideration from Defendant outside of the Class Representative Service
7 Payment and the payments to Plaintiff as a Class Member and as an Aggrieved Employee pursuant
8 to the Settlement. (Moon Decl., ¶ 19.) Plaintiff is estimated to receive \$2,466.56 for his Individual
9 Class Payment and \$98.58 for his Individual PAGA Payment. (*Id.* at ¶ 49.)

10 14. Notice of Proposed Settlement: The Class Notice, Dispute Form, and Request for
11 Exclusion Form will be mailed in English and Spanish¹ via first-class U.S. mail to the current
12 address of each Class Member. (*Id.* at ¶¶ 1.11, 1.18, 1.30, 6.4.) Phoenix Class Action
13 Administration Solutions (“Phoenix”), the proposed Administrator, will undertake its best efforts
14 to ensure notice is provided to current addresses, including conducting a cross-check against
15 USPS’ National Change of Address List. (*Id.*) Defendant will provide Class Data no later than 21
16 calendar days after the Court grants preliminary approval of the Settlement. (*Id.* at ¶ 6.2.) The
17 Administrator will mail notices within 7 calendar days of receiving the Class Data. (*Id.* at ¶ 6.4.)
18 Returned notices will be re-mailed after a skip-trace. (*Id.*) Settlement administration costs are
19 estimated to be \$7,500.00, with a cap of \$7,500.00 under the Settlement. (Moon Decl., ¶ 20, Ex.
20 6; Settlement ¶ 3.2.3.) The Declaration of Jodey Lawrence (“Lawrence Decl.”) is filed concurrently
21 herewith and describes Phoenix’s qualifications, data security procedures, and insurance.
22 (Lawrence Decl., ¶¶ 5-18.)

23 15. Response Deadline and Procedures: Class Members will have 60 calendar days from the
24 date of initial mailing to object, opt out, or challenge the number of Workweeks and/or PAGA Pay
25 Periods, with an extension of 14 calendar days for re-mailed notices. (Settlement, ¶ 6.5.1.) A
26

27 ¹ The Class Notice, Dispute Form, and Request for Exclusion Form do not need to be
28 translated into any other language. (Moon Decl., ¶ 30, n.2.) Class Members are proficient in
English and/or Spanish. (*Id.*)

Request for Exclusion Form and an Objection Form will be provided. (*Id.* Ex. A.) Class Members need not file a notice of intention to appear at the Final Approval Hearing. (*Id.* at ¶ 6.13.3, Ex. A.)

16. Funding and Distribution: Defendant shall fund the GSA by transmission of such funds to the Administrator within thirty (30) calendar days of the Effective Date. (*Id.* at ¶ 4.1.) The funding date shall be advanced to the next regular business day if it falls on a holiday or a weekend. (*Id.*)

17. Website and Final Judgment: The Administrator will maintain a website to post information of interest to Class Members. (*Id.* at ¶ 6.12.) The Class Notice include the URL of the website. (*Id.* at Ex. A.) The Administrator will provide notice of final judgment to the Class on the. (*See id.* at ¶ 6.12.)

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: 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.) 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 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 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 necessary for this Court to determine that the proposed settlement is fair, adequate, and reasonable.

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

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. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.) Settlement is favored, and assessed realistically. (*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.”].)

Here, the Settlement was reached following a full-day mediation session with experienced mediator Jason C. Marsili, Esq. (Moon Decl., ¶ 13.) Prior to settling, Plaintiff’s Counsel conducted informal discovery and investigation including reviewing the time and pay records and investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.* at ¶¶ 11, 31-32.) Thus, Plaintiff’s Counsel were able to evaluate the probability of class certification, success on the merits, and Defendant’s maximum and realistic monetary exposure. (*Id.*)

Plaintiff’s Counsel have considerable experience in litigating wage and hour class actions. (Moon Decl., ¶¶ 51-66.) This supports the conclusion that the Settlement terms are based on objective evidence, weighed against the risks and expenses of continued litigation.

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

A settlement is not judged against what might plaintiff 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

1 and necessary in the settlement process...even if the relief afforded by the proposed settlement is
2 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar
3 to a class settlement because the public interest may indeed be served by a voluntary settlement in
4 which each side gives ground in the interest of avoiding litigation.”))

5 The Settlement obviates the significant risk that this Court may deny certification of all or
6 some of Plaintiff’s claims. (Moon Decl., ¶ 42.) While Plaintiff is confident in the merits of his
7 claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 40.) Plaintiff also
8 recognizes that proving the amount of wages due to each Class Member would be an expensive,
9 time-consuming, and uncertain proposition. (*Id.*) Furthermore, even if Plaintiff was able to pursue
10 his claims on a class-wide basis and thereafter obtained certification of all or some of the claims,
11 continued litigation would be expensive, involving a trial and possible appeals, and would
12 substantially delay and reduce any recovery by the Class Members. (*Id.* at ¶ 42.)

13 The proposed settlement of \$260,000.00 therefore represents a substantial recovery when
14 compared to Plaintiff’s reasonably forecasted recovery. (*Id.* at ¶ 45.) Because of the proposed
15 Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of an
16 unfavorable judgment. (*Id.* at ¶ 39.) When considering the risks of litigation, the uncertainties
17 involved in achieving class certification, the burdens of proof necessary to establish liability, the
18 probability of appeal of a favorable judgment, the settlement amount of \$260,000.00 is within the
19 “ballpark” of reasonableness, and preliminary settlement approval is appropriate. (*Id.* at ¶ 45.)

20 The Net Settlement Amount available for settlement payments is no less than **\$100,500.00**
21 for an estimated Class size of **154 individuals**.² (*Id.* at ¶ 44.) Each Participating Class Member is
22 eligible to receive an average benefit of approximately **\$652.60**, or approximately **19.32 hours of**
23 **work**. (*Id.*) Based on 7,659 Workweeks, **the average Workweek value is estimated to be \$13.12**.
24 (*Id.*) The Individual Class Payments are estimated to range from \$13.12 to \$3,240.64. (*Id.*)

25
26 ² The Net Settlement Amount is at least \$260,000 less the following: \$10,000 for the Class
27 Representative Service Payment, \$7,500.00 for the Administration Expenses Payment, \$26,000 for
28 the PAGA Penalties payments to the LWDA and to Aggrieved Employees, \$91,000.00 for Class
Counsel’s attorneys’ fees, and up to \$25,000.00 for Class Counsel’s litigation costs. (Settlement
Agreement, ¶¶ 1.28, 3.1-3.2.5.)

1 Additionally, **68 Aggrieved Employees** are expected to receive an average of **\$133.82** from the
2 Individual PAGA Payments of \$9,100.00, at a **PAGA workweek value of \$3.18** based on the
3 1,432 pay periods, or 2,864 weeks, during the PAGA Period. (*Id.*) The Individual PAGA Payments
4 are estimated to range from \$3.18 to \$286.20. (*Id.*) Accurate estimates of the high, low, and average
5 payments will be provided to the Court in Plaintiff's Motion for Final Approval. (*Id.*)

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

8 The settlement negotiations were conducted by highly capable and experienced counsel.
9 (*See id.* at ¶¶ 51-66.) Plaintiff's Counsel have a strong record of vigorous and effective advocacy
10 for their clients and are experienced in handling complex wage and hour class action litigation.
11 (*Id.*) Although Plaintiff and his counsel were prepared to litigate the claims, they support the
12 proposed Settlement as being in the best interest of the Class Members. (*Id.* at ¶ 31.)

13 **B. The Proposed Class Notice of Settlement Should Be Approved**

14 The proposed Notice of Class and Representative Action Settlement ("Class Notice"), in
15 the form attached to the Settlement as Exhibit A, should be approved for dissemination to the Class.
16 The Class Notice informs the class of the terms of the Settlement and of their rights to be excluded
17 from the Settlement. If there are Class Members who wish to object to this proposed Settlement,
18 they can also file an objection and be heard at the Final Approval Hearing. Accordingly, the
19 proposed Class Notice meets all the requirements of Rule 3.769(f) of the California Rules of Court.

20 **C. The Proposed Attorneys' Fees and Costs Are Reasonable**

21 The Settlement provides a Class Counsel Fees Payment of not more than 35% of the Gross
22 Settlement, which is currently estimated to be \$91,000.00 and a Class Counsel Litigation Expenses
23 Payment of not more than \$25,000.00. (Settlement, ¶ 3.2.2.) These amounts are subject to Court
24 approval. (*Id.*) These amounts will be disclosed to all Class Members in the proposed Class Notice
25 and are reasonable.

26 **1. Class Counsel Will Request an Award of Fees Based on The "Common**
27 **Fund" Method**

28 California courts have long awarded attorneys' fees as a percentage of the benefit created

1 by counsel on behalf of a class. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34.) The California
2 Supreme Court affirmed in *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480 that trial courts
3 may determine a reasonable fee by choosing an appropriate percentage of the fund created. (*Id.* at
4 p. 503.) Class Counsel seek an award of attorneys' fees on the "percentage of recovery/common
5 fund" theory, which serves to "spread litigation costs proportionally among all the beneficiaries"
6 (*Vincent v. Hughes Air West, Inc.* (1977) 557 F.2d 759, 769.) Attorneys' fees that are fifty percent
7 of the fund are typically considered the upper limit, with thirty to forty percent commonly awarded
8 in cases where the settlement is relatively small. (*See* Conte & Newberg, Newberg on Class Actions
9 (3rd Ed.) § 14.03.)

10 Here, Plaintiff requests attorneys' fees equal to 35% of the Gross Settlement Amount,
11 consistent with prevailing guidelines. (*Compare* Settlement, ¶ 3.2.2 with *Chavez v. Netflix, Inc.*
12 (2008) 162 Cal.App.4th 43, 66, n.11. [stating fee awards in class actions average around one-third
13 of the recovery.]

14 Additionally, the fee-shifting provisions of Labor Code §§ 218.5, 226, 1194 and 2699, *et*
15 *seq.* would permit Plaintiff to recover his actual attorneys' fees, even if those fees were larger than
16 the total class recovery at the conclusion of this case. This further supports the reasonableness of
17 the requested fee. Plaintiff's Counsel also undertook this matter solely on a contingent basis, with
18 no guarantee of recovery. (*Id.*)

19 **2. The Experience, Reputation and Ability of Plaintiff's Counsel Support** 20 **the Requested Fee Award**

21 As demonstrated by their past experience in pursuing class actions on behalf of consumers
22 and employees, Plaintiff's Counsel possess considerable expertise in litigating class actions and
23 have been involved as lead counsel or co-counsel in several class actions, resulting in millions in
24 recovery. (Moon Decl., ¶¶ 51-66.)

25 Their experience in wage and hour class actions was integral in evaluating the strengths
26 and weaknesses of the case and the reasonableness of the settlement. (*Id.* at ¶ 67.) Therefore, the
27 requested fee award is reasonable and fair. A detailed analysis of why the fee request is appropriate,
28

1 including contemporaneously made billing entries to support a lodestar analysis, will be provided
2 in support of Plaintiff’s motion for final approval.

3 **D. The Service Payment To Plaintiff Is Reasonable**

4 Named plaintiffs in class action lawsuits are eligible for reasonable incentive payments to
5 compensate them for the expense or risk they have incurred in conferring a benefit on the class.
6 (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Service awards are particularly important in wage and
7 hour cases where retaliation against employees for asserting statutory rights is widespread despite
8 anti-retaliation protections. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61.)

9 The Settlement provides a Class Representative Service Award of \$10,000 to Plaintiff,
10 subject to Court approval. (Settlement, ¶ 3.2.1.) Plaintiff devoted significant time assisting counsel
11 in the case and communicated with counsel frequently for litigation and to prepare for mediation.
12 (Moon Decl., ¶¶ 47-51; Declaration of Plaintiff Yovany Flamenco in Support of Approval of Class
13 Action and PAGA Action Settlement [“Plaintiff Decl.”], ¶¶ 22.) This amount is reasonable
14 particularly in light of the substantial benefits Plaintiff generated for all class members. (Moon
15 Decl., ¶¶ 46–50.) A detailed analysis of why the proposed amount is appropriate will be provided
16 in support of Plaintiff’s motion for final approval.

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

18 **A. Legal Standard**

19 The proposed Settlement Class is well suited for class certification. Code of Civil Procedure
20 section 382 provides that when a question is of common or general interest, one or more may sue
21 or defend for the benefit of all. Two requirements must be met: (1) an ascertainable class; and (2)
22 a well-defined community of interest in the questions of law and fact. (*Daar v. Yellow Cab Co.*
23 (1967) 67 Cal. 2d 695, 704.) The community-of-interest requirement embodies three factors: (1)
24 predominant questions of law or fact; (2) class representatives with claims or defenses typical of
25 the class; and (3) class representatives who can adequately represent the class.” (*Richmond v. Dart*
26 *Indus., Inc.* (1981) 29 Cal. 3d 462, 470.) California law favors the fullest and most flexible use of
27 the class action device, and any doubt as to the appropriateness of class treatment should be
28 resolved in favor of certification. (*Id.* at pp. 469-75.)

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

2 **1. The Class Is Ascertainable and Numerous**

3 The proposed class is ascertainable because the class definition is sufficiently precise,
4 consists of 154 class members, and Class Members can be readily identified from Defendant's
5 regular business records based on their employment by Defendant in California, hourly, non-
6 exempt classification, and actual work during the Class period. (*See Miller v. Woods*, 148 Cal.
7 App. 3d 862, 873 (1983); *Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 959-60.)

8 With approximately 154 Class Members, numerosity is plainly satisfied. (*Rose v. City of*
9 *Hayward* (1981) 126 Cal.App.3d 926, 934.)

10 **2. There are Many Common Issues of Law and Fact Which Predominate**

11 To satisfy the community of interest requirement, Parties must show: (1) common questions
12 of law and fact that predominate over individual issues; (2) class representatives must have claims
13 or defenses typical of the class; and (3) class representatives must adequately represent the class.
14 *Dunk*, 48 Cal. App. 4th at 1806. This inquiry tests whether proposed classes are sufficiently
15 cohesive to warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.*
16 (1987) 191 Cal.App.3d 605.) Plaintiff's claims satisfy all three requirements.

17 In this case, the employment practices at issue are: whether Defendant had legally
18 compliant policies and practices to pay employees all wages owed; had legally compliant policies
19 and practices to provide employees with meal periods; had legally compliant policies and practices
20 authorizing and permitting its employees to take rest periods; had legally compliant policies and
21 practices reimbursing its employees for business expenses; whether final payment of wages was
22 untimely and excluded unpaid wages, including meal period premium wages, and rest period
23 premium wages; whether all wages were paid to employees at the time of termination of the
24 employment relationship; and whether the wage statements were consequently non-compliant.
25 Plaintiff contends that the factual and legal issues are the same for all Class Members. Further, all
26 Class Members suffered from and seek redress for the same alleged injuries. Considering that Class
27 Members would need to prove the same issues of law and fact to prevail and their legal remedies
28 are identical, it would be preferable to resolve all claims through a settlement agreement than to

1 force each Class Member to litigate their own individual claims. Thus, the Court should grant
2 conditional class certification for settlement because common questions of law and fact
3 predominate over any individual questions within the class.

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

5 The typicality requirement does not focus on the individual characteristics or circumstances
6 of the representative plaintiff compared to those of the remainder of the class, but rather upon the
7 typicality of the proposed representative's claims as they relate to the defendant's conduct and
8 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["[t]he only requirements are that
9 common questions of law and fact predominate and that the class representative be similarly
10 situated" vis-à-vis the class.]) A representative plaintiff's claims are typical of the class if they
11 arise from the same event, practice or course of conduct, and if the claims rest on the same legal
12 theories. (*Id.*) That is precisely the case here. Plaintiff is a former employee of Defendant; as such,
13 he alleges that he was subject to the same policies and practices as other similarly situated
14 employees. (Plaintiff Decl., ¶¶ 5,6.)

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

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

20 Here, all requirements are met. Plaintiff retained counsel with extensive experience in
21 prosecuting complex class actions, including similar class actions that previously settled. (Moon
22 Decl., ¶¶ 51-66.) With their combined experience, Plaintiff's Counsel unquestionably are
23 "qualified, experienced and generally able to conduct the proposed litigation." (*Miller, supra*, 148
24 Cal.App.3d at 875.) In addition, Plaintiff has no conflicts, and Plaintiff has, with counsel, litigated
25 this case and diligently reviewed the settlement terms, showing his dedication. (Plaintiff Decl., ¶¶
26 8-21.) Plaintiff's willingness to serve as a representative demonstrates his serious commitment to
27 bringing about the best results possible for the class. (*Id.* at ¶¶ 11-21; *McGhee, supra*, 60
28 Cal.App.3d at p. 451.)

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

2 Finally, in making its class certification decision, the Court must determine that a class
3 action would be superior to alternative means for the fair and efficient adjudication of the litigation.
4 By consolidating many potential individual actions into a single proceeding, this Court’s use of the
5 class action device enables it to manage this litigation in a manner that serves the economics of
6 time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly
7 situated employees with small but nevertheless meritorious claims for damages would, as a
8 practical matter, have no means of redress because of the time, effort and expense required to
9 prosecute individual actions. (*Gentry v. Super. Ct.* (2007) 42 Cal. 4th 443, 457-62; *Leyva v.*
10 *Medline Ind.* (9th Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the
11 superiority concerns are essentially non-existent.

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

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

14 Notice requirements are set forth in the California Rules of Court. Cal. Rules of Court, Rule
15 3.766 (e) and (f). California law vests the Court with broad discretion in fashioning an appropriate
16 notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no statutory or
17 due process requirement that all class members receive actual notice, but in this matter, the class
18 members will receive direct first-class mailed notice. (Settlement, ¶ 6.4.) As the Court of Appeals
19 has explained, “[t]he notice given should have a reasonable chance of reaching a substantial
20 percentage of the Class Members” (*Id.* at p. 974.) In this case, notice will be provided by
21 direct mailing, the best possible form of notice under the circumstances. (Settlement, ¶ 6.4.)

22 **B. The Class Notice Is Accurate and Informative**

23 The proposed Class Notice should be approved. It will be disseminated through direct U.S.
24 first class mail to the last known address for each Class Member and will be provided in both
25 English and Spanish. (*Id.* at ¶ 6.4.) It informs Class Members of the settlement terms and their
26 rights to be excluded, object, and be heard at the Final Approval Hearing. (*Id.*, at Ex. A.)

27 The Class Notice is neutral, summarizes the proceedings, the Settlement terms, and
28 makes clear that the Settlement does not constitute an admission of liability by Defendant. (*Id.*)

1 It also states that the final settlement approval decision has yet to be made. (*Id.*) Accordingly,
2 the Class Notice complies with the standards of fairness, completeness, and neutrality required
3 of a combined settlement-certification class notice.

4 **VI. CONCLUSION**

5 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
6 approval of the proposed settlement and set a Final Approval Hearing no earlier than 120 days
7 from preliminary approval.

8 Respectfully submitted,

9 Dated: September 30, 2026

MOON LAW GROUP, PC

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11 By: _____

12 Kane Moon
13 Allen Feghali
14 Enzo Nabiev

15 Attorneys for Plaintiff
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