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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN JOAQUIN**

DEJON MARQUIS BENNETT, individually,  
and on behalf of all others similarly situated,

Plaintiff,

vs.

INTERSTATE TRUCK CENTER, LLC, a  
limited liability company; and DOES 1 through  
10, inclusive,

Defendants

Case No.: STK-CV-UOE-2023-0006709

**CLASS AND REPRESENTATIVE ACTION**

*[Assigned for All Purposes to the Honorable  
George J. Abdallah, Department 10A]*

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

*[Filed with the Declaration of Kane Moon,  
the Declaration of Plaintiff Dejon Marquis  
Bennett, the Declaration of Lisa Mullins, the  
Declaration of [Defendant], and [Proposed]  
Preliminary Approval Order]*

**PRELIMINARY APPROVAL HEARING:**

Date: June 12, 2025

June 13, 2025

June 15, 2025

June 16, 2025

June 17, 2025

Time: 9:00 a.m.

Dept.: 10A

Action Filed: June 29, 2023

FAC Filed: September 25, 2023

Trial Date: Not Set

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

2 PLEASE TAKE NOTICE that on [REDACTED], 2025 at [REDACTED] a.m. in Department  
3 10A located at 180 East Weber Avenue, Stockton, California 95202, pursuant to Code of Civil  
4 Procedure section 382 and California Rules of Court, rule 3.769 *et seq.*, Plaintiff Dejon Marquis  
5 Bennett (“Plaintiff”) will move the Court for an order granting preliminary approval of the proposed  
6 class action settlement between Plaintiff and Defendant Interstate Truck Center, Inc. (“Defendant”).

7 Plaintiff will further move the Court for an order:

- 8 1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement;
- 9 2. Certifying a Class, for settlement purposes only;
- 10 3. Approving the Class Notice and plan for its distribution;
- 11 4. Appointing Plaintiff as the Class Representative, for settlement purposes only;
- 12 5. Appointing Moon Law Group, PC as Class Counsel, for settlement purposes only;
- 13 6. Appointing ILYM Group, Inc. as the Administrator; and
- 14 7. Scheduling a Final Approval Hearing no earlier than 130 days from the date of  
15 preliminary approval.

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

19 Respectfully submitted,

20 Dated: May 6, 2025

**MOON LAW GROUP, PC**

21 By: \_\_\_\_\_

22 Kane Moon  
23 Lilit Ter-Astvatsatryan  
24 Nichelle Christopherson

*Attorneys for Plaintiff*

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## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

Plaintiff Dejon Marquis Bennett (“Plaintiff”) seeks preliminary approval of a proposed \$740,000.00 non-reversionary, wage and hour class action settlement (the “Settlement”) with Defendant Interstate Truck Center, LLC (“Defendant”) (together with Plaintiff, the “Parties”). The Settlement will provide substantial monetary payments to an estimated 289 Class Members who worked an estimated aggregate of 40,752 Workweeks, of which roughly 184 are Aggrieved Employees who worked an estimated aggregate of 9,239 PAGA Pay Periods. As set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, formal and informal discovery, and negotiations between the Parties. The negotiations were at arm’s-length and were facilitated through a mediation session by an experienced and neutral class action mediator, Kelly Knight, Esq. Accordingly, Plaintiff requests the Court preliminarily approve the Settlement, certify the proposed Settlement Class, approve the proposed Notice to Class Members, and set a final approval hearing no earlier than 130 days from the date of preliminary approval.

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

#### **A. Plaintiff’s Claims and Procedural History**

This is a wage and hour class action and representative action for alleged Labor Code violations and claims for civil penalties pursuant to the California Private Attorneys General Act, Labor Code sections 2698, *et seq.* (“PAGA”). (Declaration of Kane Moon in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement [“Moon Decl.”], ¶ 2.) Plaintiff seeks to represent a class of all current and former hourly-paid or non-exempt employees of Defendant in California employed during the period from June 29, 2019, through either (a) the date of the Court’s preliminary approval of class settlement, or June 4, 2025, whichever is sooner (the “Class Release Period”). (*Id.*) Defendant is a one-stop dealership for truck service, parts, leasing, and sales. (*Id.*) Plaintiff worked for Defendant as a janitor from approximately April 2019 to June 2020. (*Id.*) Throughout his employment Plaintiff was employed in an hourly paid, non-exempt position. (*Id.*) Plaintiff contends he and his coworkers were subjected to the same unlawful

1 labor practices, including failure to pay wages for all hours worked. (*Id.*)

2 Plaintiff's claim for unpaid wages stems in part, from Defendant's alleged policy of  
3 requiring employees to work off-the-clock, uncompensated, and from Defendant's alleged failure  
4 to incorporate the regular rate of pay when calculating overtime, meal break premiums, and sick  
5 pay. (*Id.* at ¶ 3.) Moreover, Plaintiff brings claims against Defendant for meal and rest period  
6 violations, unreimbursed business expenses, and derivative claims for waiting time penalties,  
7 wage statement violations, unfair business practices, and civil penalties under PAGA. (*Id.*)

8 Because of the foregoing alleged violations of various provisions of the Labor Code,  
9 Plaintiff filed a class action on June 29, 2023, which, as amended, alleges Defendant  
10 systematically: (1) failed to pay minimum wages, (2) failed to pay overtime compensation, (3)  
11 failed to provide meal periods, (4) failed to authorize and permit rest periods, (5) failed to  
12 indemnify necessary business expenses, (6) failed to pay final wages at termination, (7) failed to  
13 provide accurate itemized wage statements, (8) engaged in unfair business practices, and (9)  
14 violated civil penalty provisions recoverable as PAGA penalties pursuant to Labor Code sections  
15 2698, *et seq.* (*Id.* at ¶ 4.)

16 On June 24, 2023, Plaintiff gave written notice to the California Labor and Workforce  
17 Development Agency (the "LWDA") of the alleged Labor Code violations, with certified mail  
18 service on Defendant, and paid the required filing fee. (*Id.* at ¶ 5, Exh. 2.) On September 25, 2023,  
19 Plaintiff filed the First Amended Complaint (the "Operative Complaint") to allege PAGA claims,  
20 and subsequently submitted a copy to the LWDA in compliance with Labor Code section 2699,  
21 subd. (l)(1). To date, the LWDA has not indicated its intent to investigate the alleged violations  
22 or intervene in this Action. (*Id.* at ¶ 5.)

23 Defendant ardently opposes the merits of this case and denies Plaintiff's factual allegations.  
24 (*Id.* at ¶ 6.) Defendant asserts it complied with all of its compensation obligations, including  
25 compensating Class Members for all off-the-clock work, and therefore, Plaintiff and other Class  
26 Members were paid all wages owed. (*Id.*) Defendant also argues that Defendant did not fail to  
27 incorporate any bonuses into Plaintiff's and Class Member's regular rate for purposes of overtime  
28 and sick pay as such bonuses were discretionary. (*Id.*) Defendant maintains compliance with all

1 its meal and rest period obligations. (*Id.*) Defendant asserts it complied with all of its  
2 reimbursement obligations, and therefore, Plaintiff and other Class Members were compensated  
3 for any and all necessary business expenses incurred. (*Id.*) To the extent Class Members received  
4 wage statements that were allegedly inaccurate, Defendant asserts employees suffered no actual  
5 damage or harm as a result. (*Id.*; *see, e.g., Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013,  
6 No. C 12–05860 CRB) 2013 WL 622032, at \*10 [“A plaintiff must adequately plead an injury  
7 arising from an employer’s failure to provide full and accurate wage statements, and the omission  
8 of the required information alone is not sufficient.”].) With respect to Plaintiff’s claim for waiting  
9 time penalties, Defendant alleges its good-faith belief that it paid all wages precludes the  
10 imposition of waiting time penalties since Plaintiff cannot prove Defendant’s alleged failure to  
11 pay all final wages at the time of separation was “willful.” (Moon Decl., ¶ 8; *see, e.g., Pedroza v.*  
12 *PetSmart, Inc.* (C.D. Cal. June 14, 2012, No. ED CV 11–298 GHK (DTBx)) 2012 WL 9506073,  
13 \*5.) For these reasons, among others, Defendant denies all of Plaintiff’s claims and allegations,  
14 and further claims it did not engage in any unfair business practices and denies liability under  
15 PAGA. (Moon Decl., ¶ 8.) Defendant also maintains the claims are improper for class treatment,  
16 in part, due to the individualized and testimony-intensive nature of the wage claims that could bar  
17 class certification or significantly reduce Defendant’s overall liability. (*Id.*)

18 **B. Discovery and Investigation**

19 The Parties agreed to mediate the instant action, and participated in private mediation with  
20 Kelly Knight, Esq., an experienced class and PAGA action mediator. (*Id.* at ¶ 7.) In preparation for  
21 mediation, the Parties agreed to a protocol for an informal exchange of documents and information  
22 before mediation. (*Id.*) Prior to mediation, Plaintiff obtained from Defendant, through formal and  
23 informal discovery, electronic time and pay records, policy documents, and data that were necessary  
24 and helpful to evaluate the claims asserted in this action. (*Id.*) Defendant produced an approximately  
25 100% sample of time and pay records for the putative Class, Plaintiff’s personnel file, and  
26 Defendant’s written policies. (*Id.*) Defendant also provided information regarding the estimated  
27 number of current and formerly employed Class Members, Aggrieved Employees, and PAGA Pay  
28 Periods. (*Id.*)

1 In preparation for mediation, Plaintiff's Counsel reviewed and analyzed all the information  
2 Defendant provided, including the sample records and documents regarding Defendant's wage and  
3 hour policies. (*Id.* at ¶ 8.) Plaintiff's Counsel retained a statistics expert to analyze the sample records  
4 and prepare a damage analysis prior to the mediation. (*Id.*) The sample time and pay records analyzed  
5 contained 150,143 actual shifts in the Class Period (representing roughly 99.1% of total shifts in the  
6 Class Period), which allowed Plaintiff's expert to prepare an analysis ***with a high degree of certainty***.  
7 (*Id.*) In conjunction with their extensive factual investigation, Plaintiff's Counsel also investigated  
8 the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly,  
9 Plaintiff's Counsel was able to evaluate the probability of class certification, success on the merits,  
10 and Defendant's maximum and realistic monetary exposure for all claims. (*Id.*) Thus, Plaintiff's and  
11 his Counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed  
12 them to act intelligently in negotiating the Settlement. (*Id.*)

### 13 C. Settlement Negotiations

14 On March 4, 2025, the Parties participated in a full day of private mediation before Steven  
15 Rottman, Esq. (*Id.* at ¶ 9.) The negotiations were at arm's length and, although conducted in a  
16 professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore  
17 the potential for a settlement of the dispute, but each side was also prepared to litigate their  
18 position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive  
19 negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and  
20 Defendant's defenses, a settlement was reached by the Parties. (*Id.*) The material terms of the  
21 settlement are set out in the Class Action and PAGA Settlement Agreement and Class Notice (*Id.*,  
22 Exh. 1 [the "Settlement"]). Plaintiff's Counsel represent they are not aware of any related case  
23 that would be extinguished or adversely affected by approval of this Settlement. (*Id.* at ¶ 10.)

24 Plaintiff's Counsel have conducted a thorough investigation into the facts of this case. (*Id.*  
25 at ¶ 17.) Based on the foregoing document and information exchange and on their own independent  
26 investigation and evaluation, Plaintiff's Counsel are of the opinion that the proposed Settlement  
27 is fair, reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and  
28 circumstances, the risk of significant delay, trial risk, appellate risk, and the defenses that

Defendant may assert both to certification and on the merits, the Settlement is in the best interest of the Class. (*Id.*; *see also id.* at ¶¶ 17–31.) **Indeed, the \$740,000.00 gross settlement figure represents roughly 68.6% of the realistic recovery estimated to be \$1,078,754.23.** (*Id.* at ¶ 26.)

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

Under the Settlement, Defendant will pay a non-reversionary, all-inclusive amount of *no less than* \$740,000.00 to resolve this action. (Settlement, ¶¶ 1.20, 3.1.) The key terms include:

1. Class Members or Settlement Class, and Class Period: The proposed Class for purposes of the Settlement contains approximately 289 members and is defined as all current and former hourly-paid or non-exempt employees of Defendant in California employed during the Class Release Period. (*Id.* at ¶¶ 1.5, 4.1.) The “Class Release Period” means the period from June 29, 2019, through either (a) the date of the Court’s preliminary approval of class settlement, or June 4, 2025, whichever is sooner. (Settlement, ¶ 1.12.) The Class will exclude any Class Member who opts out of the Class portion of the Settlement by sending the Administrator a valid and timely Request for Exclusion (“Non-Participating Class Member”). (*Id.* at ¶ 1.27.)

2. Aggrieved Employees and PAGA Period: The Class contains an estimated 184 Aggrieved Employees who worked approximately 9,239 PAGA Pay Periods, defined as all current and former hourly-paid or non-exempt employees of Defendant in California employed during the PAGA Release Period. (*Id.* at ¶¶ 1.4, 4.1.) The “PAGA Period” is the period from June 29, 2022, through the date of the Court’s preliminary approval of the settlement, or June 4, 2025, whichever is sooner. (*Id.* at ¶ 1.29.)

3. Non-reversionary Gross Settlement Amount: This amount is \$740,000.00, subject to a potential increase under the escalator clause (as more particularly set forth in the Settlement) and excludes Defendant’s employer’s share of payroll taxes. (Settlement, ¶¶ 3.1, 8.) No portion will revert to Defendant. (*Id.* at ¶ 3.1.)

4. Escalator Clause: Based on a review of its records, Defendant represents that there are approximately 40,752 workweeks during the period from June 29, 2019, to March 4, 2025. (*Id.* at ¶ 8.) Should the number of workweeks increase more than 10% greater than these figures during the Class Release Period, Defendant agrees to either 1) increase the Gross Settlement Amount on a

1 proportional basis by the amount by which it exceeds 10% (i.e., if there is an 11% increase in the  
2 number workweeks during the Class Period, Defendant would agree to increase the Gross Settlement  
3 Amount by 1%), or 2) shorten the release period such that it ends on the date that the number of  
4 workweeks reaches 44,827, in which case Defendant will not be required to pay the additional  
5 amounts. (*Id.*)

6       5. Net Settlement Amount: The total amount of money available for payout and distribution  
7 to Participating Class Members in Individual Class Payments, which is the Gross Settlement Amount  
8 less the following payments, in amounts as finally approved by the Court: (i) the Class Representative  
9 Enhancement Payment of up to \$7,500.00 to Plaintiff; (ii) Administration Expenses Payment of up to  
10 \$20,000.00; (iii) PAGA Penalties in the amount of \$50,000.00, which will be distributed as 75%  
11 (\$37,500.00) to the LWDA and 25% (\$12,500.00) to Aggrieved Employees; (iv) the Class Counsel  
12 Fees Payment of not more 33.33% of the Gross Settlement Amount (currently estimated to be  
13 \$246,642.00); and (v) and the Class Counsel Litigation Expenses Payment of up to \$25,000.00. (*Id.* at  
14 ¶¶ 1.26, 3.2.1-3.2.5.) In the event the amounts finally approved are less, the remainder will revert to  
15 Participating Class Members. (*Id.* at ¶¶ 3.2.1-3.2.5.2.)

16       6. Administrator and Costs: The Parties jointly appointed ILYM Group, Inc. as the neutral  
17 entity to administer this Settlement. (*Id.* at ¶ 1.2, 7.1.) At this time, the Administrator estimates costs  
18 will not exceed \$7,000.00 (Moon Decl., ¶ 15, Exh 4; Declaration of Lisa Mullins Regarding  
19 Qualifications and Settlement Administration, ¶ 10.)

20       7. Individual Class Payment: Participating Class Members will receive a pro rata share of  
21 the Net Settlement Amount calculated according to the number of Workweeks worked during the  
22 Class Period. (Settlement, ¶ 1.21.) “Workweek” means any week during which a Class Member  
23 worked for Defendant for at least one day, during the Class Period. (*Id.* at ¶ 1.43.)

24       8. Individual PAGA Payment: Aggrieved Employees will receive a pro rata share of 25%  
25 of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the  
26 PAGA Period. (*Id.* at ¶ 1.22.) “PAGA Pay Period” means any Pay Period during which an Aggrieved  
27 Employee worked for Defendant for at least one day during the PAGA Period. (*Id.* at ¶ 1.28.)  
28

1           9. Tax Treatment: 10% of each Participating Class Member’s Individual Class Payment  
2 will be allocated to settlement of wage claims (the “Wage Portion”). (*Id.* at ¶ 3.2.4.1.) The Wage  
3 Portions are subject to tax withholding and will be reported on an IRS W-2 Form. (*Id.*) The remaining  
4 90% of each Participating Class Member’s Individual Class Payment will be allocated to settlement  
5 of claims for interest and penalties (the “Non-Wage Portion”). (*Id.*) The Non-Wage Portions are not  
6 subject to wage withholdings and will be reported on IRS 1099 Forms. (*Id.*) Aggrieved Employees  
7 assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (*Id.*  
8 at ¶ 3.2.4.1)

9           10. Released Parties: Defendant and its subsidiaries and/ or parent corporations,  
10 predecessors and successors, as well as their divisions, affiliates, past and present officers, owners,  
11 predecessors, directors, employees, agents, shareholders, fiduciaries, representatives, attorneys,  
12 insurers, benefit plans, private investigators and each and all of the foregoing persons’ heirs,  
13 assigns, executors, administrators and successors, or any of them, or anyone claiming by, through,  
14 under or on behalf of any of them. (*Id.* at ¶ 1.40.)

15           11. Release by Participating Class Members: The claims to be released by the Settlement  
16 Class Members as to the Released Parties include all claims under state, federal, or local law,  
17 arising out of the claims expressly pleaded in the Operative Complaint in the Action and all other  
18 claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other  
19 provisions of law, that could have been asserted based on the facts pleaded in the operative  
20 complaint in the Action for: (1) failure to pay minimum wages under Labor Code Sec. 1194, et  
21 seq.; (2) failure to pay overtime wages under Labor Code Sec. 510, 1198; (3) failure to provide  
22 meal periods and/or pay meal period premiums under Labor Code Sec. 226.7, 512; (4) failure to  
23 provide rest periods and/or pay rest period premiums under Labor Code Sec. 226.7; (5) failure to  
24 reimburse business expenses under Labor Code Sec. 2800, 2802; (6) failure to timely pay wages  
25 upon termination under Labor Code Sec. 203; (7) failure to provide accurate, itemized wage  
26 statements under Labor Code Sec. 226; (8) violation of California’s unfair competition law under  
27 Business and Professions Code Sec. 17200. (*Id.* at ¶ 5.2.)  
28

1           12. Release by Aggrieved Employees: All The claims to be released by the Aggrieved  
2 Employees as to the Released Parties include all claims for civil penalties under PAGA based on the  
3 afore-referenced claims asserted in the Operative Complaint or referenced in the LWDA PAGA  
4 Notice letter sent in connection with this Action. (*Id.* at ¶ 5.3.)

5           13. Uncashed Settlement Checks: For any Class Member whose Individual Class Payment  
6 check or Individual PAGA Payment check is uncashed and cancelled after the void date (not less  
7 than 180 days after the date of mailing), the Administrator shall transmit the funds represented by  
8 such checks to the California Controller's Unclaimed Property Fund in the name of the Class  
9 Member thereby leaving no "unpaid residue" subject to the requirements of California Code of  
10 Civil Procedure § 384(b). (*Id.* at ¶¶ 4.4.1, 4.4.5.)

11           14. Class Notice: The proposed Class Notice sets forth, in plain terms, a statement of case,  
12 the terms of the Settlement, the approximate amounts of attorneys' fees, costs, PAGA Penalties, and  
13 service award being sought, an explanation of how the individual payments are calculated, and the  
14 Final Approval Hearing information. (Settlement, ¶ 7.4, Exh. A.) The proposed method for providing  
15 notice of the proposed Settlement and distribution thereof is the one most likely to give actual notice  
16 to the greatest number, if not all, of the Class Members. (*Id.* at ¶ 7.4.2.) The Administrator will  
17 undertake its best efforts to ensure the Class Notice is provided to the current address of Class  
18 Members, including conducting a national change of address search and re-mailing the notice to  
19 updated addresses. (*Id.*)

20           15. Procedure for Disputing Pay Periods, Opting Out, or Objecting: The Class Notice  
21 explains the procedure under which a Class Member can dispute the number of individual Workweeks  
22 and/or Pay Periods credited to them. (*Id.* at ¶ 7.6, Exh. A.) Additionally, the Class Notice explains  
23 how Class Members may, should they choose to do so, opt-out or otherwise object to the Settlement.  
24 Class Members need not file or serve, or state in any written objection, a notice of intention to appear  
25 at the Final Approval Hearing. (*Id.* at ¶¶ 7.5, 7.7, Exh. A.)

26           16. Funding: Defendant shall deposit into a Qualified Settlement Fund established by the  
27 Settlement Administrator the Gross Settlement Amount, within fourteen (14) court days of the  
28 Effective Date of the Settlement. (*Id.* at ¶ 4.3.)

### 1     **III.     THE COURT SHOULD GRANT PRELIMINARY APPROVAL**

2           The law favors the settlement of lawsuits, particularly in class actions and other complex  
3 cases. (*See, e.g., Neary v. Regents of Univ. of Cal.* (1992) 3 Cal.4th 272, 277–81.) To prevent fraud,  
4 collusion, or unfairness to the class, the settlement of a class action requires court approval. (*Dunk v.*  
5 *Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800–01 [citing authority omitted].) To approve a  
6 settlement, the Court must find “the settlement is fair, adequate, and reasonable.” (*Id.*) This Court  
7 has wide discretion in making this determination. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434,  
8 438.) Fairness, adequacy, and reasonableness are presumed, as here, when: “(1) the settlement is  
9 reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow  
10 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the  
11 percentage of objectors is small.” (*Dunk*, 48 Cal.App.4th at p. 1802 [citing Newberg, Newberg on  
12 Class Actions (3rd ed. 1992) § 11.41].)

13           In evaluating a settlement, the trial court considers the following factors: (1) the strength of  
14 plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk  
15 of maintaining class action status through trial; (4) the settlement amount offered; (5) the extent of  
16 discovery completed and the stage of the proceedings; (6) counsel’s experience and views; (7) the  
17 presence of a governmental participant; and (8) the class members’ reaction to the proposed  
18 settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) To approve a class  
19 action settlement, “the court must satisfy itself that the class settlement is within the ‘ballpark’ of  
20 reasonableness.” (*Id.* at p. 133.) The record need not contain an explicit statement of the maximum  
21 theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App.4th 399,  
22 408–09 [holding that *Kullar* does not require “an explicit statement of the maximum amount the  
23 plaintiff class could recover if it prevailed on all its claims,” but instead, only an “understanding  
24 of the amount that is in controversy and the realistic range of outcomes of the litigation”].)

25           As discussed below, Plaintiff’s Counsel have provided materials and information exceeding  
26 the threshold required for this Court to conclude the Settlement is fair, reasonable, and adequate.

27     ///

28     ///

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

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

5           Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless  
6           evidence to the contrary is offered. (Newberg, Newberg on Class Actions (3rd ed. 1992) § 11.51.)  
7           Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super. Ct.*  
8           (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The fact that  
9           the plaintiff might have received more if the case had been fully litigated is no reason not to approve  
10          the settlement.”].) Thus, there is a presumption here that negotiations were conducted in good faith.

11          The proposed Settlement at issue was reached following extensive negotiations and  
12          discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses  
13          with an experienced and neutral class action mediator. (Moon Decl., ¶ 9.) Plaintiff’s Counsel  
14          performed an extensive investigation into the facts, claims, and defenses at issue, including by  
15          reviewing the governing law, analyzing’ Defendant’s written policies and sampling time/pay data,  
16          and retaining a statistics expert to prepare a damage analysis regarding Defendant’s potential liability.  
17          (*Id.* at ¶¶ 7–8.) Once an agreement to mediate was made, Plaintiff obtained, through formal and  
18          informal discovery, documents and data necessary and helpful to evaluate the claims and defenses at  
19          issue, including an approximate 100% sample of time and pay records for the putative Class as well  
20          as demographic data. (*Id.*) Based on a review of its records to date, Defendant estimates there are 289  
21          Class Members who collectively worked a total of 40,752 Workweeks during the Class Period, and  
22          approximately 184 Aggrieved Employees who worked a total of 9,239 PAGA Pay Periods during the  
23          PAGA Period. (Settlement, ¶ 4.1.) Additionally, Plaintiff’s expert estimated that Class Members’  
24          average hourly rate was \$26.93; there were 118 former employees falling within the three-year statute  
25          of limitations (“SOL”) period for waiting time penalties, and 184 employees falling within the one-  
26          year SOL period for inaccurate wage statement penalties and PAGA penalties. (Moon Decl., ¶ 18.)  
27          Based on Plaintiff’s Counsel’s review of the time, payroll, and additional data provided by Defendant,  
28          on Plaintiff’s expert’s analysis of the sampling records provided by Defendant, and on information

1 from Plaintiff, Plaintiff's Counsel evaluated the estimated maximum and risk-adjusted exposure that  
2 Defendant faced. (*Id.*)

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

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

12           Here, based on the information provided at mediation, Defendant's **realistic exposure**  
13 (adjusted for risks at certification and proof on the merits) for the alleged claims, including penalties,  
14 is estimated to be **\$1,078,754.23**. (Moon Decl., ¶¶ 18, 25.) This amount was calculated as follows:  
15 **\$166,858.70** (90% discount) for the off-the-clock work claim; **\$23,396.00** (75% discount) for the  
16 regular rate claim; **\$257,410.41** (75% discount) for the meal period claim; **\$460,109.82** (90%  
17 discount) for the rest period claim; **\$48,705.00** (90% discount) for the unreimbursed business expense  
18 claim; **\$39,279.30** (95% discount) for the waiting time penalties claim; **\$36,800.00** (95% discount)  
19 for the wage statement claim; and **\$46,195.00** (95% discount) for the PAGA penalties claim. (*Id.* at  
20 ¶¶ 18-24.) The foregoing discounts were based on the evidence presented and arguments made during  
21 arm's-length settlement negotiations. (*Id.* at ¶¶ 9, 18-25.) **The \$740,000.00 gross settlement figure**  
22 **represents roughly 68.6% of the total realistic recovery.** (*Id.* at ¶ 25.) This is an excellent result  
23 for the Class, particularly because, under the Settlement, Class Members will receive timely and  
24 guaranteed relief, avoiding the risk of not being able to recover anything. (*Id.*)

25           With regards to the PAGA claims, Plaintiff and his Counsel believe the Settlement is a fair  
26 and reasonable resolution that satisfies PAGA's dual statutory purposes of deterrence and  
27 punishment, on the one hand, and providing PAGA Members with genuine and meaningful relief, on  
28 the other. (*Id.* at ¶ 26; Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendant has had to

1 hire legal counsel, engage in formal and informal discovery, and participate in mediation. (Moon Decl.,  
2 ¶ 26.) Defendant is also now having to pay civil penalties to the LWDA under the Settlement, assuming  
3 final settlement approval is granted. (Settlement, ¶ 3.2.5.) Not including its own attorneys' fees and  
4 costs as well as the employer's share of payroll taxes, Defendant will pay no less than \$740,000.00 to  
5 resolve this matter— of which \$50,000.00 is allocated toward the PAGA claims and will be distributed,  
6 in compliance with Labor Code section 2699 as 75% (\$37,500.00) to the LWDA and 25% (\$12,500.00)  
7 to Aggrieved Employees—and the release obtained under the Settlement does not preclude Aggrieved  
8 Employees from seeking remedies based on any underlying individual claims they may have against  
9 Defendant or the other Released Parties. (Moon Decl., ¶ 26; Lab. Code § 2699(i).) Moreover, Plaintiff's  
10 Counsel are of the opinion that because the issues here are fairly contested, there is a possibility of  
11 the Court not awarding the PAGA penalties even if Plaintiff prevailed on the merits due to the largely  
12 discretionary nature of awarding PAGA penalties. (Moon Decl., ¶ 26.) Indeed, under Labor Code  
13 section 2699, subdivision (e)(2), a Court can reduce PAGA penalties "if, based on the facts and  
14 circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary  
15 and oppressive, or confiscatory." (Lab. Code § 2699(e)(2).) In other words, were this matter to go to  
16 trial, any award granted would be at the discretion of the Court and subject to a substantial reduction.  
17 (Moon Decl., ¶ 26.)

18 While Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to  
19 each cause of action. (*Id.* at ¶ 27.) Plaintiff also recognizes that proving the amounts of wages owed  
20 to each Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id.*) The  
21 Settlement obviates the significant risk that this Court may deny certification of all or some of  
22 Plaintiff's claims. (*Id.* at ¶ 28.) Furthermore, even if Plaintiff was able to pursue his claims on a class-  
23 wide basis and obtain certification of all or some of the claims, continued litigation would be  
24 expensive, involving a trial and possible appeals, and would substantially delay and reduce any  
25 recovery by the Class. (*Id.*) This Settlement avoids the risks, burdens, and the accompanying expense  
26 of further litigation. (*Id.* at ¶ 29.) Although the Parties have engaged in a significant amount of  
27 investigation, formal and informal discovery, and class-wide data analysis, they have not conducted  
28 extensive formal discovery, including depositions. (*Id.*) Moreover, preparation for class certification

1 and a trial would remain for the Parties as well as the prospect of appeals in the wake of a disputed  
2 class certification ruling for Plaintiff and/or any summary judgment ruling. (*Id.*) As a result, the  
3 Parties would incur considerably more attorneys' fees and costs through trial. (*Id.*)

4       The Net Settlement Amount available for settlement payments is estimated to be *no less than*  
5 **\$165,858.00<sup>1</sup>** for an estimated Class of **289 individuals**. (*Id.* at ¶ 30.) As a result, it is estimated each  
6 Participating Class Member will receive an average gross benefit of approximately **\$573.90** prior to  
7 tax withholdings on the wage portion of payments. (*Id.*) Considering Class Members' average hourly  
8 rate is \$26.93, the average benefit is roughly **21.3 hours of work**. (*Id.*) This amounts to **an estimated**  
9 **Workweek value of roughly \$4.07** for the currently estimated **40,752 Workweeks**. (*Id.*)  
10 Additionally, it is currently estimated there are **184 Aggrieved Employees** who will receive an  
11 estimated average of approximately **\$67.93** from their \$12,500.00 total share of the PAGA Penalties,  
12 which results in an estimated **Pay Period value of \$1.35** per pay period based on the currently  
13 estimated **9,239 PAGA Pay Periods**. (*Id.*) The actual amounts to Participating Class Members and  
14 Aggrieved Employees will vary based on each individual's duration of work during the Class Period  
15 or PAGA Period, respectively; thus, those who worked longer will receive a gross benefit greater  
16 than the average estimated amount. (*Id.*) At this time, the high and low range of payments to Class  
17 Members is unknown. (*Id.*) These ranges will be calculated by the Administrator following  
18 preliminary approval and receipt and processing of the Class Data and will be provided to the Court  
19 in a motion for final approval. (*Id.*)

20       The proposed Settlement of \$740,000.00 therefore represents a substantial recovery when  
21 compared to Plaintiff's reasonably forecasted recovery. (*Id.* at ¶ 32.) When considering the risks of  
22 litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to  
23

24 \_\_\_\_\_  
25  
26       <sup>1</sup> The Net Settlement Amount is at least \$740,000.00 less the following: \$7,500.00 for the  
27 Class Representative Service Payment, up to \$20,000.00 for Administration Expenses Payment,  
28 \$50,000.00 for the PAGA Penalties to the LWDA and Aggrieved Employees, \$246,642.00 for the  
Class Counsel Fees Payment, and up to \$30,000.00 for the Class Counsel Litigation Expenses  
Payment. (Settlement, ¶¶ 3.2.1-3.2.5.)

1 establish liability, and the probability of appeal, it is clear the Settlement amount of \$740,000.00 is  
2 within the “ballpark” of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*)

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

5           The Settlement negotiations were conducted by highly capable counsel with considerable  
6 experience and demonstrated competence with litigating wage and hour class actions. (*Id.* at ¶¶ 36–  
7 53.) Plaintiff’s Counsel have a strong record of vigorous and effective advocacy for their clients and  
8 are experienced in handling complex wage and hour class action litigation. (*Id.* at ¶¶ 36–53.) The  
9 experience of Plaintiff’s Counsel was helpful in assessing the reasonableness of the Settlement at  
10 issue here, and from this experience they concluded that this litigation could not have been settled on  
11 better terms than provided under the Settlement. (*Id.* at ¶ 54.) Although Plaintiff and his counsel were  
12 prepared to try the claims alleged in the litigation, they support the proposed Settlement as being in  
13 the best interest of the Class based on objective evidence that has been considered and weighed  
14 against the risks, expenses, and time consumption to both sides of continued litigation. (*Id.* at ¶¶ 9,  
15 17, 27–29.)

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

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

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

23           Subject to the Court’s approval, the Settlement provides a fee application of up to 33.33% of  
24 the Gross Settlement Amount for Class Counsel’s attorneys’ fees, plus reimbursement for out-of-  
25 pocket litigation costs not to exceed \$25,000.00. (Settlement, ¶ 3.2.2.) These amounts are disclosed  
26 to Class Members in the proposed Class Notice and are reasonable. (*Id.* at Exh. A.)  
27  
28

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

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

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

19                   The California Supreme Court recently affirmed in *Laffitte v. Robert Half International Inc.*  
20 (2016) 1 Cal.5th 480 that, “when class action litigation establishes a monetary fund for the benefit of  
21 the class members, and the trial court in its equitable powers awards class counsel a fee out of that  
22 fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage  
23 of the fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the  
24 percentage method—including relative ease of calculation, alignment of incentives between counsel  
25 and the class, a better approximation of market conditions in a contingency case, and the  
26 encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging  
27 the litigation[ ]—convince us the percentage method is a valuable tool that should not be denied our  
28

trial courts.” (*Id.* [internal citations omitted].) This line of legal authority supports a request for attorneys’ fees based on the percentage of recovery/common fund method.

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

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

Here, Plaintiff’s Counsel will request fees equal to 33.33% 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 requests the Court preliminarily approve his counsel’s ability to request attorneys’ fees as negotiated by the Parties.

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

Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(g)(1), 2802(d).) Under these sections, Plaintiff would be permitted to recover his actual attorneys’ fees, even if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) This Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Plaintiff’s Counsel for their decision to assume risk by taking on this matter. (*See* Moon Decl., ¶ 30.) In fact, prosecution of this action involved significant financial risk for Plaintiff’s Counsel. (*Id.* at ¶¶ 57–61.) His Counsel

1 undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.* at ¶¶ 57–61.)  
2 Once Plaintiff’s Counsel undertook this litigation on behalf of the Class, they committed to pursue it  
3 to its conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶ 59.)

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

5 As demonstrated by their past experience in pursuing class actions on behalf of consumers  
6 and employees, Plaintiff’s Counsel possess considerable expertise in litigating class actions. (*Id.* at  
7 ¶¶ 36-53.) Plaintiff’s Counsel have been involved as lead counsel or co-counsel in numerous class  
8 actions that resulted in millions in recovery. (*Id.* at ¶¶ 36-53.) Plaintiff’s Counsel’s experience in  
9 wage and hour litigation was integral in evaluating the strengths and weaknesses of the case against  
10 Defendant and the reasonableness of the settlement. (*Id.* at ¶ 54.) Practice in the narrow field of wage  
11 and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law  
12 (state and federal) as well as the procedural law of class action litigation. (*Id.* at ¶ 52.) Based on these  
13 and other factors, Plaintiff’s Counsel have frequently received fee awards of this percentage from the  
14 gross recovery for the class. (*See id.* at ¶¶ 40, 46.) Because it is reasonable to compensate counsel  
15 commensurate with their skill, reputation, and experience, the requested fee award is supported here.

#### 16 **D. The Service Award to Plaintiff Is Reasonable**

17 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to  
18 compensate them for the expense or risk they have incurred in conferring a benefit on other members  
19 of the class.” (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Courts routinely grant approval of class  
20 action settlement agreements containing enhancements for the class representatives, which are  
21 necessary to provide incentive to represent the class and are appropriate given the benefit the class  
22 representatives help to bring about for the class. (*See Rodriguez v. W. Publ’g Corp.* (9th Cir. 2009)  
23 563 F.3d. 948, 958–59.) Service awards are particularly important to plaintiffs in wage and hour  
24 cases because they promote the important public policies underlying the wage and hour laws. This  
25 strong policy is codified in California Labor Code section 90.5, which provides, “[i]t is the policy of  
26 this state to vigorously enforce minimum labor standards in order to ensure employees are not  
27 required or permitted to work under substandard unlawful conditions . . .” (Lab. Code § 90.5.)  
28 Nonetheless, the California Supreme Court has noted that “retaliation against employees for asserting

1 statutory rights under the Labor Code is widespread,” despite anti-retaliation statutes designed to  
2 protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61.) In this context, class  
3 representatives should be rewarded for assuming the risk of retaliation for the sake of class members.  
4 (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

5 Under the Settlement here, subject to the Court’s approval, Defendant agrees to pay a Class  
6 Representative Service Payment of \$7,500.00 to Plaintiff, which will be in addition to his amount  
7 as a Class Member. (Settlement, ¶ 3.2.1.) This award is in recognition of Plaintiff initiating the  
8 Action and providing services in support of the Action. (*Id.* at ¶ 1.14.) Plaintiff has devoted a great  
9 deal of time and work assisting counsel in the case and communicated with counsel frequently.  
10 (Moon Decl., ¶¶ 34–38; Declaration of Plaintiff Dejon Marquis Bennett in Support of Motion for  
11 Preliminary Approval of Class Action and PAGA Settlement [“Plaintiff Decl.”], ¶¶ 9-11.) The  
12 requested award is fair and reasonable, particularly considering the substantial benefits Plaintiff  
13 generated for all Class Members. (Moon Decl., ¶¶ 25–35.)

14 When compared with the amounts awarded in typical class action cases, the amount requested  
15 here is particularly reasonable. A 2006 study examining the average incentive award given to class  
16 action plaintiffs from 1993 to 2002 found that the “average award per class representative was  
17 \$15,992 and the median award per class representative was \$4357.” (Eisenberg & Miller, *Incentive*  
18 *Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L. Rev. 1303, 1307–08.)  
19 The same study found that named plaintiffs in employment discrimination class actions received an  
20 average award of \$69,850 and a median award of \$31,081, while named plaintiffs in other  
21 employment class actions received an average award of \$12,121 and a median award of \$13,059. (*Id.*  
22 at p. 1333.) The authors of the study found that higher awards in employment cases reflected the  
23 “courts’ wish to make representative plaintiffs whole by compensating them for the high costs of  
24 their service to the class, including risks of stigmatization or retaliation on the job.” (*Id.* at p. 1308.)

#### 25 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

##### 26 **A. Legal Standard**

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

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

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

## **B. Plaintiff Maintains that the Criteria for Class Certification Are Satisfied**

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

When determining whether a class is ascertainable, California courts focus on the following three factors: “(1) the class definition, (2) the size of the class and (3) the means of identifying class members.” (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, Plaintiff maintains there is an easily ascertainable Class, defined by objective and precise criteria. (Settlement, ¶¶ 1.5, 1.12.) The proposed Class that Plaintiff seeks to represent is ascertainable because (1) the Class definition is sufficiently precise, (2) the Class consists of about 289 individuals, and (3) Class Members can be readily identified by looking at Defendant’s records. (*Id.* at ¶¶ 1.5, 1.12, 1.8, 4.1.) Because Class

Members are identified using specific criteria in the regular business records of Defendant—their employment by Defendant in California, non-exempt classification, and actual work during the Class Period—the Class is ascertainable. (*See Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 959–60 [class membership defined by ownership of product that is the subject of the lawsuit is sufficient to make the class ascertainable].) “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a class action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action may be maintained as a class action even where the parties are numerous and it is in fact practicable to join them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a trust in an action for removal of the trustees.” (*Id.* [citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574]; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a class of 9 plaintiffs and 35 members].) Therefore, numerosity is plainly satisfied.

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

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

Here, Plaintiff’s claims satisfy all three requirements. The employment practices at issue include whether Defendant: had legally compliant policies and practices to pay employees all minimum and overtime wages owed; reimbursed employees for necessary business expenses; had legally compliant policies and practices to provide employees with and authorize meal and rest periods; paid all final wages to employees at the time of termination; intentionally failed to pay all final wages; provided inaccurate itemized wage statements; engaged in unfair business practices; and violated civil penalty provisions recoverable under PAGA. (Moon Decl., ¶ 3–4.) Plaintiff contends the factual and legal issues are the same for all Class Members, and further that all Class Members

1 suffered from and seek redress for the same alleged injuries. (Plaintiff Decl., ¶¶ 5-6.) Considering  
2 Class Members would need to prove the same issues of law and fact to prevail, and their legal  
3 remedies are identical, it would be preferable to resolve all claims through a settlement than to force  
4 each Class Member to litigate their own individual claims. Thus, the Court should grant conditional  
5 class certification for settlement purposes because common questions of law and fact predominate  
6 over any individual questions within the Class.

### 7                   **3.       Plaintiff’s Claims Are Typical of the Claims of the Class**

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

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

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

23           Here, all requirements are met. Plaintiff retained counsel with extensive experience in  
24 prosecuting complex class actions, including similar class actions that previously settled. (Moon  
25 Decl., ¶¶ 36–53.) With their experience, Plaintiff’s Counsel unquestionably are “qualified,  
26 experienced and generally able to conduct the proposed litigation.” (*Miller, supra*, 148 Cal.App.3d  
27 at p. 874.) In addition, Plaintiff and his Counsel have no conflicts with one another, other Class  
28 Members, the proposed Administrator. (Plaintiff Decl., ¶¶ 7–8; Moon Decl., ¶ 55.) Further, Plaintiff

1 has, with counsel, litigated this case and diligently reviewed the settlement terms, showing  
2 dedication, and with full knowledge and acceptance of duties, he has committed to his role as Class  
3 Representative. (Plaintiff Decl., ¶¶ 9-10.)

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

5 Finally, in making its class certification decision, the Court must determine that a class action  
6 would be superior to alternative means for the fair and efficient adjudication of the litigation. (*See*  
7 *Leyva v. Medline Indus. Inc.* (9th Cir. 2013) 716 F.3d 510, 514–15.) By consolidating many potential  
8 individual actions into a single proceeding, this Court’s use of the class action device enables it to  
9 manage this litigation in a manner that serves the economics of time, effort, and expense for the  
10 litigants and the judicial system. (*Id.*) Absent class treatment, similarly situated employees with  
11 small, but nevertheless meritorious, claims for damages would, as a practical matter, have no means  
12 of redress because of the time, effort, and expense required to prosecute individual actions. (*Id.* at p.  
13 515; *Gentry, supra*, 42 Cal.4th at pp. 457–62.) Moreover, in the context of settlement, the superiority  
14 concerns are essentially non-existent. (*See generally, e.g., Stamburgh, supra*, 62 Cal.App.3d.)

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

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

17 Class Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,  
18 rule 3.766(e)–(f).) California law vests the Court with broad discretion in fashioning an appropriate  
19 notice program. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 970, 973–74.) There is no statutory  
20 or due process requirement that all class members receive actual notice, but in this matter, the Class  
21 Members will receive direct mailed notice. (Settlement, ¶ 7.4.2.) As the Court of Appeals has  
22 explained, “[t]he notice given should have a reasonable chance of reaching a substantial percentage  
23 of the Class Members . . .” (*Cartt*, 50 Cal.App.3d at p. 974.) In this case, notice of the proposed  
24 Settlement will be provided by direct mailing, the best possible form of notice under the  
25 circumstances. (Settlement, ¶ 7.4.2.)

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

27 The proposed Class Notice should be approved. It will be disseminated through direct U.S.  
28 first-class mail to the current address for each Class Member. (*Id.* at ¶ 7.4.2.) It informs the Class of

1 the terms of the Settlement and the right to be excluded. (*Id.* at ¶ 7.5, Exh. A.) And if there are Class  
2 Members who wish to object to the proposed Settlement, they are informed of their right to submit  
3 written objections and/or be heard at the Final Approval Hearing. (*Id.* at ¶ 7.7.2, Exh. A.)

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

13 **VI. CONCLUSION**

14 For the foregoing reasons, Plaintiff respectfully requests the Court grant this motion, enter the  
15 proposed order submitted herewith regarding preliminary approval, and set a final approval hearing  
16 no earlier than 130 days from the preliminary approval order.

17 Respectfully submitted,

18 Dated: May 6, 2025

**MOON LAW GROUP, PC**

19  
20 By: \_\_\_\_\_

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