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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN DIEGO**

12 CHERI LYNN COLLINS, individually, and on
behalf of all others similarly situated,

13 *Plaintiff,*

14 v.

15 TRI-STATE GENERAL CONTRACTORS,
16 INC., a California corporation; and DOES 1
through 10, inclusive,

17 *Defendants.*

Case No.: 37-2023-00022625-CU-OE-CTL

*[Assigned for All Purposes to the Hon.
Carolyn M. Caietti, Dept. C-70]*

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

Preliminary Approval Hearing:

Date: March 27, 2026

Time: 10:30 a.m.

Dept: C-70

Action Filed: May 30, 2023

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

2 PLEASE TAKE NOTICE that on March 27, 2026, at 10:30 a.m., in Department C-70 of
3 the Superior Court of California, County of San Diego, Hall of Justice, located 330 W. Broadway,
4 San Diego, California 92101, pursuant to California Code of Civil Procedure § 382 and California
5 Rules of Court, Rule 3.769, *et seq.*, Plaintiff Cheri Lynn Collins (“Plaintiff”) will move the Court
6 for an Order granting preliminary approval of the proposed class action settlement between
7 Plaintiff and Defendant Tri-State General Contractors, Inc. (“Defendant”). Plaintiff further moves
8 the Court for an Order:

- 9 1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement
10 and Class Notice;
- 11 2. Certifying a Class for settlement purposes;
- 12 3. Approving the Notice and the plan for distribution of the Notice;
- 13 4. Appointing Plaintiff Cheri Lynn Collins as Class Representative for settlement
14 purposes;
- 15 5. Appointing Plaintiff’s Counsel, Arrash T. Fattahi, Courtney M. Miller, Lisa B.
16 Iturriaga, and Arman A. Salehi of Wilshire Law Firm, PLC, as Class Counsel for
17 settlement purposes;
- 18 6. Appointing ILYM Group, Inc. as the Settlement Administrator; and
- 19 7. Scheduling a final approval hearing.

20 The motion will be based upon this notice, the attached memorandum of points and
21 authorities, the Declaration of Arrash T. Fattahi filed concurrently herewith, the records and files

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1 in this action, and any other further evidence or argument that the Court may properly receive at
2 or before the hearing.

3 Respectfully submitted,

4 Dated: August 14, 2025

WILSHIRE LAW FIRM, PLC

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6 By: 

Arrash T. Fattahi
Courtney M. Miller
Lisa B. Iturriaga
Arman A. Salehi

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9 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Cheri Lynn Collins (“Plaintiff”) seeks preliminary approval of a proposed
4 \$295,000.00 non-reversionary, wage and hour class action settlement with Defendant Tri-State
5 General Contractors, Inc. (“Defendant,” and together with Plaintiff, the “Parties”). This motion for
6 preliminary approval is unopposed. The Settlement will provide substantial monetary payments to
7 approximately 143 class members. And, as set forth more fully below, the proposed Settlement
8 satisfies all the criteria for settlement approval under California law. The Settlement was reached
9 after extensive investigation, discovery, and negotiations. The negotiations were at arm’s length and
10 were facilitated by an experienced class action mediator, Gail Glick, Esq., over the course of a full
11 day of mediation. After extensive negotiations and discussions regarding the strengths and
12 weaknesses of Plaintiff’s claims and Defendant’s defenses, the Parties reached a settlement.
13 Accordingly, Plaintiff requests that the Court preliminarily approve the proposed Settlement, certify
14 the proposed settlement class, approve the proposed notice, and set a final approval hearing.

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

16 **A. Plaintiff’s Claims**

17 This is a wage and hour class and Private Attorneys General Act (“PAGA”) (Cal. Lab.
18 Code §§ 2699, *et seq.*) representative action. Plaintiff and putative class members worked for
19 Defendant in California as non-exempt, hourly-paid employees during the class period.
20 (Declaration of Arrash T. Fattahi in Support of Plaintiff’s Motion for Preliminary Approval of
21 Class Action and PAGA Settlement [“Fattahi Decl.”] at ¶ 2.) Defendant is a multi-state general
22 contracting business. (*Id.*)

23 Plaintiff alleges that Defendant’s payroll, timekeeping, and wage and hour practices resulted
24 in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours worked. Plaintiff
25 further alleges that Defendant failed to provide employees with legally compliant meal and rest
26 periods. Based on these allegations, Plaintiff asserts related claims for failure to provide accurate
27 wage statements, failure to pay all final wages at termination, unfair business practices, and civil
28 penalties under PAGA. (*Id.* at ¶ 3.)

1 On May 30, 2023, Plaintiff filed a putative wage and hour class action complaint against
2 Defendant for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime
3 wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5)
4 failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage
5 statements; and (7) violation of unfair business practices (Fattahi Decl. at ¶ 4.)

6 On June 21, 2023, Plaintiff sent a notice to Defendant and the California Labor &
7 Workforce Development Agency (“LWDA”) alleging similar wage and hour violations
8 pursuant to PAGA. (Fattahi Decl. at ¶ 4.) On September 27, 2023, Plaintiff filed a
9 Representative Action Complaint against Defendant for civil penalties under PAGA (San
10 Diego County, Case No. 37-2023-00041922-CU-OE-CTL). (*Id.*) On August 14, 2025, the
11 Parties filed a stipulation in this action requesting Plaintiff be granted leave to file a first
12 amended complaint adding a cause of action for civil penalties under PAGA. (*Id.*)

13 **B. Discovery and Investigation**

14 Following the filing of the initial complaint, the Parties exchanged documents and
15 information before mediating this action. (Fattahi Decl. at ¶ 5.) Defendant produced a sampling
16 of timekeeping and pay records for the class members. (*Id.*) Defendant also provided documents
17 of its wage and hour policies and practices during the class period, and information regarding
18 the total number of current and former employees in its informal discovery responses. (*Id.*)

19 After reviewing documents regarding Defendant’s wage and hour policies and practices
20 and analyzing Defendant’s timekeeping and payroll records, Class Counsel was able to evaluate
21 the probability of class certification, success on the merits, and Defendant’s maximum monetary
22 exposure for all claims. (*Id.* at ¶ 6.) Class Counsel also investigated the applicable law regarding
23 the claims and defenses asserted in the litigation. (*Id.*) Class Counsel reviewed these records
24 and utilized an expert to prepare a damages analysis prior to mediation. (*Id.*)

25 **C. Settlement Negotiations**

26 On September 18, 2024, the Parties participated in a private mediation with experienced
27 class action mediator, Gail Glick, Esq. (*Id.* at ¶ 7.) The settlement negotiations were at arm’s
28 length and, although conducted in a professional manner, were adversarial. The Parties went

1 into the mediation willing to explore the potential for a settlement of the dispute, but each side
2 was also prepared to litigate their position through trial and appeal if a settlement had not been
3 reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and
4 weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached a settlement, the
5 material terms of which are encompassed within the Settlement. (*Id.* at ¶ 8, **Ex. 2** [Class Action
6 and PAGA Settlement Agreement and Class Notice].)

7 Class Counsel has conducted a thorough investigation into the facts of this case. Based
8 on the Parties' informal exchange of documents and information and Class Counsel's own
9 independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is
10 fair, reasonable, and adequate and is in the best interests of the Settlement Class Members in
11 light of all known facts and circumstances, the risk of significant delay, the defenses that could
12 be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk.
13 (*Id.* at ¶ 13.)

14 Indeed, the \$295,000.00 Settlement represents approximately **70%** of the **realistic**
15 **maximum recovery** of \$424,048.51. (*Id.* at ¶ 21.) Although Class Counsel estimated that
16 Defendant's maximum potential liability for all claims was approximately \$3.09 million, when
17 the risk of prevailing at certification and trial are factored into the equation, Class Counsel
18 believes that Defendant's realistic exposure was \$424,048.51, meaning the Settlement achieves
19 a significant recovery. (*Id.* at ¶¶ 13-25.) Considering the risk and uncertainty of prevailing at
20 class certification and at trial, this is an excellent result for the Class. (*Id.* at ¶ 21.) Indeed,
21 because of the proposed Settlement, class members will receive timely, guaranteed relief and
22 will avoid the risk of an unfavorable judgment. (*Id.*)

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

24 The Settlement's key terms include:

25 1. Class Definition: For settlement purposes only, the Parties agree to the certification
26 of a class pursuant to California Code of Civil Procedure § 382 defined as: "all persons employed
27 by Tri-State in California and classified as an hourly paid, non-exempt employee during the Class
28 Period." (Settlement, § 1.5.)

2. Class Period: “means the period from December 3, 2018 to September 24, 2024.”
(Settlement, § 1.12.)

3. Class Member or Settlement Class Member: “means a member of the Class, as either
a Participating Class Member or Non-Participating Class Member (including a Non-Participating
Class Member who qualifies as an Aggrieved Employee).” (Settlement, § 1.9.)

4. Aggrieved Employee: “means a person employed by Tri-State in California and
classified as an hourly paid, non-exempt employee who worked for Tri-State during the PAGA
Period.” (Settlement, § 1.4.)

5. PAGA Period: “means the period from June 21, 2022 to September 24, 2024.”
(Settlement, § 1.31.)

6. Gross Settlement Amount: means “[e]xcept as otherwise provided by Paragraph 8
below, Tri-State promises to pay \$295,000.00 and no more as the Gross Settlement Amount and
to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual
Class Payments. Tri-State has no obligation to pay the Gross Settlement Amount (or any payroll
taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will
disburse the entire Gross Settlement Amount without asking or requiring Participating Class
Members or Aggrieved Employees to submit any claim as a condition of payment. None of the
Gross Settlement Amount will revert to Tri-State.” (Settlement, § 3.1.)

7. Uncashed Checks: Any settlement checks remaining uncashed after one hundred
and eighty (180) days shall be cancelled and the funds shall be transmitted to Legal Aid at Work
as the *cy pres* recipient. If the Court does not approve the *cy pres* designee, the Parties shall select
a new *cy pres* designee, with approval by the Court. (Settlement, §§ 4.4.1, 4.4.3.)

8. Release by Participating Class Members: “All Participating Class Members, on
behalf of themselves and their respective former and present representatives, agents, attorneys,
heirs, administrators, successors, and assigns, release Released Parties from all claims that were
alleged, or reasonably could have been alleged, based on the Class Period facts stated in the
Operative Complaint and ascertained in the course of the Action including any and all claims for:
(1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure

1 to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay
2 final wages at termination; (6) failure to provide accurate itemized wage statements; (7) violation
3 of California’s Unfair Competition Law, California Business and Professions Code §§ 17200, *et*
4 *seq*; and (8) any and all claims involving any alleged violation of Private Attorneys General Act
5 of 2004. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not
6 release any other claims, including claims for vested benefits, wrongful termination, violation of
7 the Fair Employment and Housing Act, unemployment insurance, disability, social security,
8 workers’ compensation, or claims based on facts occurring outside the Class Period.” (Settlement,
9 § 5.2.)

10 9. Release by Aggrieved Employees: “All Aggrieved Employees, including, Non-
11 Participating Class Members who are Aggrieved Employees, are deemed to release, on behalf of
12 themselves and their respective former and present representatives, agents, attorneys, heirs,
13 administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties
14 that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated
15 in the Operative Complaint, and the PAGA Notice and ascertained in the course of the Action,
16 including any and all claims for: (1) failure to pay minimum and straight time wages; (2) failure to
17 pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest
18 periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized
19 wage statements; (7) violation of California’s Unfair Competition Law, California Business and
20 Professions Code §§ 17200, *et seq*; and (8) any and all claims involving any alleged violation of
21 Private Attorneys General Act of 2004.” (Settlement, § 5.3.)

22 10. No Reversion, No Claims Made: means that “[n]one of the Gross Settlement
23 Amount will revert to Tri-State.” (Settlement, § 3.1.)

24 11. PAGA Allocation: The settlement includes \$10,000.00 allocated to Plaintiff’s
25 claims under PAGA, with 75% (\$7,500.00) being paid to the LWDA and 25% (\$2,500.00) being
26 paid to the Aggrieved Employees. (Settlement, § 3.2.5.) Class Counsel submitted the proposed
27 settlement to the LWDA before filing this Motion for Preliminary Approval. (Fattahi Decl. at ¶ 9.)

28 12. Net Settlement Amount: “means the Gross Settlement Amount, less the following:

Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative's Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments." (Settlement, § 1.23.)

13. Distribution Formula: The Individual Class Payment will be "calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks." (Settlement, § 3.2.4.) As to PAGA, "[t]he Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$2,500) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment." (Settlement, § 3.2.5.1.)

14. Tax Allocation: 33% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The 67% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). (Settlement, § 3.2.4.1.)

15. Class Representative Service Payment: Defendant agrees not to oppose Plaintiff's request for a service payment to Plaintiff of up to \$10,000.00. (Settlement, § 3.2.1.) This payment shall be in addition to the *pro rata* recovery received by Plaintiff as part of the settlement.

16. Attorneys' Fees and Costs: The Settlement provides that Defendant will not oppose a fee application of up to one-third (1/3) of the Gross Settlement Amount (currently estimated to be \$98,333.33), plus out-of-pocket costs not to exceed \$30,000.00. (Settlement, § 3.2.2.)

17. Notice of Proposed Class Action Settlement: The Notice sets forth in plain terms, a statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys' fees, costs, and service payment being sought, and an explanation of how the settlement allocations are calculated. (Settlement, Ex. A, Class Notice.) Class Members will be notified by first-class mail of the settlement. (Settlement, § 7.4.2.) ILYM Group, Inc. ("ILYM"), the proposed Settlement

1 Administrator, will undertake its best efforts to ensure that the notice is provided to the current
2 addresses of class members, including conducting a national change of address search and re-
3 mailing the notice to updated addresses. (*Id.*; Fattahi Decl. at ¶ 10, Ex. 4 [ILYM’s Bid].)

4 **III. DISCUSSION**

5 To prevent fraud, collusion, or unfairness to the class, the settlement of a class action
6 requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This
7 Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super.*
8 *Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached
9 through arm’s-length bargaining; (2) investigation is sufficient to allow counsel and the court to
10 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
11 is small. (*Dunk*, 48 Cal.App.4th at p. 1800.)

12 In considering whether a settlement is reasonable, the trial court should consider relevant
13 factors, which may include the strength of plaintiff’s case, the risk, expense, complexity and likely
14 duration of further litigation, the risk of maintaining class action status through trial, the amount
15 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
16 experience and views of counsel, the presence of a governmental participant, and the reaction of
17 the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
18 Cal.App.4th 116, 128.) In order to approve a class action settlement, the court must satisfy itself
19 that the class settlement is within the “ballpark” of reasonableness. (*Id.* at p. 133.) The record need
20 not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola*
21 *Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not
22 require “an explicit statement of the maximum amount the plaintiff class could recover if it
23 prevailed on all its claims”, but instead, only an “understanding of the amount that is in controversy
24 and the realistic range of outcomes of the litigation.”].)

25 As discussed below, Class Counsel has provided information exceeding the threshold
26 required to provide this Court with materials and information necessary to determine that the
27 proposed settlement is fair, adequate, and reasonable.

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 Informed**
4 **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; thus, there is a presumption here that the negotiations were
7 conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.)
8 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super.*
9 *Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The
10 fact that a plaintiff might have received more if the case had been fully litigated is no reason not
11 to approve the settlement.”].)

12 The Settlement was reached following extensive negotiations following one day of
13 mediation with experienced class action employment mediator, Gail Glick, Esq. (Fattahi Decl. at
14 ¶ 7.) The settlement negotiations were at arm’s length and, although conducted in a professional
15 manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential
16 for a settlement of the dispute, but each side was also prepared to litigate their or its position
17 through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and
18 discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses,
19 the Parties reached an agreement. (*Id.* at ¶ 8.)

20 Prior to reaching this settlement, Class Counsel conducted informal discovery concerning
21 the claims set forth in the litigation, such as a sample of class member timekeeping and payroll
22 records, Defendant’s policies and procedures concerning the payment of wages, the provision of
23 meal and rest breaks, and issuance of wage statements, as well as information regarding the number
24 of putative class members and the mix of current versus former employees, the wage rates in effect,
25 and the amount of meal and rest period premium wages paid to class members. (*Id.* at ¶¶ 5-6.) In
26 conjunction with their extensive factual investigation, Class Counsel investigated the applicable
27 law regarding the claims and defenses asserted in the litigation. (*Id.* at ¶ 6.) Thus, Plaintiff and her
28 counsel were able to act intelligently and effectively in negotiating the proposed Settlement.

1 Class Counsel also has considerable experience and has demonstrated competence with
2 litigating wage and hour class actions. (*Id.* at ¶¶ 36-46.) Again, this supports the position that
3 the terms of the Settlement are premised on objective evidence that has been considered and
4 weighed in light of the risks, expenses, and time consumption to both sides of continued
5 litigation of this action.

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

8 A settlement is not judged against what might plaintiff recover had plaintiff prevailed at
9 trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable.
10 (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 [“Compromise is inherent
11 and necessary in the settlement process . . . even if the relief afforded by the proposed settlement
12 is substantially narrower than it would be if the suits were to be successfully litigated, this is no
13 bar to a class settlement because the public interest may indeed be served by a voluntary settlement
14 in which each side gives ground in the interest of avoiding litigation.”].)

15 This settlement avoids the risks and the accompanying expense of further litigation. (Fattahi
16 Decl. at ¶ 23.) While Plaintiff is confident in the merits of her claims, a legitimate controversy
17 exists as to each cause of action. (*Id.* at ¶ 22.) Plaintiff also recognizes that proving the amount of
18 wages due to each class member would be an expensive, time-consuming, and uncertain
19 proposition. (*Id.*)

20 The proposed settlement of \$295,000.00 therefore represents a substantial recovery when
21 compared to Plaintiff’s reasonably forecasted recovery. (*Id.* at ¶¶ 13-25.) Because of the proposed
22 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
23 unfavorable judgment. When considering the risks of litigation, the uncertainties involved in
24 achieving class certification, the burdens of proof necessary to establish liability, the probability
25 of appeal of a favorable judgment, it is clear that the settlement amount of \$295,000.00 is well
26 within the “ballpark” of reasonableness, and preliminary settlement approval is appropriate. (*Id.*)
27 ***Indeed, each Settlement Class Member is eligible to receive an average net benefit of***
28 ***approximately \$977.74.*** (*Id.* at ¶ 24.)

1 **3. Class Counsel Has Extensive Experience in Class Action Litigation**

2 The settlement negotiations were conducted by highly capable and experienced counsel.
3 Class Counsel have a strong record of vigorous and effective advocacy for their clients and are
4 experienced in handling complex wage and hour class action litigation. (Fattahi Decl. at ¶¶ 36-46.)
5 Although Plaintiff and her counsel were prepared to litigate the claims alleged in the litigation,
6 they support the proposed Settlement as being in the best interests of the class.

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

8 The proposed Notice, in the form attached to the Settlement Agreement, should be approved
9 for dissemination to the class. The Notice informs the class of the terms of the settlement and of
10 their rights to be excluded from the settlement. And if there are class members who wish to object
11 to this proposed class action settlement, they will have the opportunity to file their objections and
12 be heard at the Final Approval Hearing. Accordingly, the proposed Notice meets all the
13 requirements of Rule 3.769(f) of the California Rules of Court.

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

15 Under the Settlement, subject to the Court's approval, the Parties agreed to allocate
16 reasonable attorneys' fees in an amount currently estimated to be \$98,333.33, and up to \$30,000.00
17 in costs. (Settlement, § 3.2.2.) These amounts are disclosed to all class members in the proposed
18 Notice and are reasonable.

19 **1. Class Counsel Request an Award of Fees Based on the "Common Fund"**
20 **Method**

21 California courts have long awarded attorneys' fees as a percentage of the benefit created
22 by counsel in creating a common fund. The California Supreme Court held that "when a number
23 of persons is entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs
24 for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs
25 may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34,
26 quoting *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

27 Class Counsel seeks an award of attorneys' fees on the "percentage of recovery/common
28 fund" theory. The purpose of this approach is to "spread litigation costs proportionally among all

1 the beneficiaries so that the active beneficiary does not bear the entire burden alone.” (*Vincent v.*
2 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1995)
3 15 Cal.3d 162, the California Supreme Court stated: “[O]ne who expends attorneys’ fees in
4 winning a suit which creates a fund from which others derive benefits may require those passive
5 beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in *City and*
6 *County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized
7 that the common fund doctrine has been applied “consistently in California when an action brought
8 by one party creates a fund in which other persons are entitled to share.” (*Id.* at p. 110.)

9 The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th
10 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
11 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
12 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
13 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
14 method—including relative ease of calculation, alignment of incentives between counsel and the
15 class, a better approximation of market conditions in a contingency case, and the encouragement
16 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—
17 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
18 (*Id.* [internal citations omitted].)

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

20 According to a leading treatise on class actions, “[n]o general rule can be articulated on what
21 is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a
22 reasonable fee award from a common fund in order to assure that the fees do not consume a
23 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
24 are not unprecedented.” (*See Conte & Newberg, Newberg on Class Actions* (3rd Ed.) § 14.03.)
25 Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with thirty
26 to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also*
27 *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most
28 cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10 million].)

1 Here, Plaintiff requests attorneys' fees equal to one-third (1/3) of the Settlement Amount,
2 which is in line with the prevailing guidelines established in California case law and academic
3 literature and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162
4 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method
5 or the lodestar method is used, fee awards in class actions average around one-third of the
6 recovery."].) Accordingly, Plaintiff respectfully requests that the Court approve the attorneys' fees
7 as negotiated by the Parties and requested herein.

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

9 Labor Code § 1194 (a) provides for the recovery of "minimum wage or overtime
10 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Under this
11 section, Plaintiff would be permitted to recover her actual attorneys' fees, even if those fees were
12 larger than the total class recovery at the conclusion of this case. This settlement is beneficial in
13 that it limits the risk of continued expenses and consumption of time, energy, and resources facing
14 Defendant while at the same time rewarding Class Counsel for their decision to assume risk by
15 taking on this matter. In fact, prosecution of this action involved significant financial risk for Class
16 Counsel. (Fattahi Decl. at ¶¶ 34-35.) Class Counsel undertook this matter solely on a contingent
17 basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the
18 Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class
19 ahead of all other concerns.

20 **4. The Experience, Reputation and Ability of Class Counsel Support the** 21 **Requested Fee Award**

22 As demonstrated by their past experience in pursuing class actions on behalf of consumers
23 and employees, Class Counsel possesses considerable expertise in litigating class actions. (Fattahi
24 Decl. at ¶¶ 36-46.) Class Counsel has been involved as lead counsel or co-counsel in several class
25 actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class
26 counsel commensurate with their skill, reputation and experience, Class Counsel's requested fee
27 award is supported here.

28 ///

1 Class Counsel's experience in wage and hour class actions was integral in evaluating the
2 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement.
3 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning
4 the rapidly evolving substantive law (state and federal), as well as the procedural law of class
5 action litigation. Based on these and other factors, Class Counsel has frequently received fee
6 awards of this percentage from the gross recovery for the class. Therefore, the requested fee award
7 is reasonable and fair.

8 **D. The PAGA Allocation is Reasonable**

9 Where settlements negotiate a good faith amount for PAGA penalties and "there is no
10 indication that this amount was the result of self-interest at the expense of other" class members,
11 such amounts are generally considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr.
12 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133 at *1, 9.) Courts have approved amounts for
13 PAGA penalties in the range of zero to two percent of the total maximum amount of the Settlement.
14 (*Id.* [approving a PAGA payment of 0.3%, or \$1,500]; *see also Jack v. Hartford Fire Ins. Co.* (S.D.
15 Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a PAGA payment of 0.25%]; *McKenzie v.*
16 *Fed. Express Corp.* (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5 [acknowledging that courts
17 approve PAGA claim settlements in the range of zero to two percent of the total settlement].) Here,
18 the amount to be paid to the LWDA is larger than many other PAGA settlement amounts approved
19 by the courts where seemingly nominal amounts were allocated for such claims. (*See, e.g., Zubia*
20 *v. Shamrock Foods Co.* (C.D. Cal. Dec. 21, 2017) No. CV1603128ABAGRX, 2017 WL 10541431,
21 at *14 [approving a PAGA settlement of 0.1%]; *Hopson*, 2008 WL 3385452, at *1 [approving a
22 PAGA settlement of 0.3% or \$1,500]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012)
23 No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 [approving a PAGA settlement of
24 0.27%].) Here, the Parties negotiated a good faith amount of \$10,000.00, 75% percent of which
25 (\$7,500.00) will be paid to the LWDA and 25% (\$2,500.00) to be distributed to the Aggrieved
26 Employees. (Settlement, § 3.2.5.) The \$10,000.00 allocation equates to 3% of the Gross Settlement
27 Amount, which exceeds amounts that are routinely approved. The Parties negotiated to allocate
28 3% of the Settlement to PAGA penalties in good faith and this amount is reasonable considering

1 that the maximum PAGA penalties were estimated at \$500,000.00 (which assumed \$100 per pay
2 period). (Fattahi Decl. at ¶ 20.)

3 **E. The Service Payment to Named 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 other
6 members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval
7 of class action settlement agreements containing enhancements for the class representatives, which
8 are necessary to provide incentive to represent the class, and are appropriate given the benefit the
9 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ’g Corp.* (9th Cir.
10 2009) 563 F.3d 948, 958-59.)

11 Service awards are particularly important to plaintiffs in wage and hour cases because they
12 promote the important public policies underlying the wage and hour laws. This strong policy is
13 codified in California Labor Code § 90.5, which provides, “it is the policy of this state to vigorously
14 enforce minimum labor standards in order to ensure employees are not required or permitted to
15 work under substandard unlawful conditions” Nonetheless, the California Supreme Court has
16 noted that “retaliation against employees for asserting statutory rights under the Labor Code is
17 widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.*
18 (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should be rewarded for
19 assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.*
20 (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

21 Under the Settlement, subject to the Court’s approval, Defendant agreed to pay a Service
22 Payment in the amount of \$10,000.00 to Plaintiff. (Settlement, § 3.2.1.) Courts routinely approve
23 a \$10,000 enhancement award for plaintiffs represented by Class Counsel. (*See, e.g., Moreno v.*
24 *Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) 2021 WL 3673845, *3 [“The Court concludes
25 a \$10,000 incentive award is appropriate.”]; *Suarez v. Bank of America, National Association* (N.D.
26 Cal., Jan. 11, 2024, No. 18-CV-01202-LB) 2024 WL 150721, at *4 [“The court approves awards
27 of \$10,000 for each class representative.”].) Class Counsel represent that Plaintiff devoted a great
28 deal of time and work assisting counsel in the case, communicated with counsel very frequently

1 for litigation and to prepare for mediation, and was frequently in contact with Class Counsel during
2 the mediation. (Fattahi Decl. at ¶¶ 26-30.) This amount is reasonable particularly in light of the
3 substantial benefits Plaintiff generated for all class members. (*Id.*)

4 When compared with the amounts awarded in typical class action cases, the amount
5 requested here is particularly reasonable. Indeed, a 2006 study examining the average incentive
6 award given to class action plaintiffs from 1993 to 2002 found that the “average award per class
7 representative was \$15,992 and the median award per class representative was \$4,357.” (Eisenberg
8 & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L.Rev.
9 1303, 1308.) That same study found that named plaintiffs in employment discrimination class
10 actions received an average award of \$69,850 and a median award of \$31,081, while named
11 plaintiffs in other employment class actions received an average award of \$12,121 and a median
12 award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards in
13 employment cases reflected the “courts’ wish to make representative plaintiffs whole by
14 compensating them for the high costs of their service to the class, including risks of stigmatization
15 or retaliation on the job.” (*Id.* at p. 1308.)

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

17 **A. Legal Standard**

18 The proposed Settlement Class is well suited for class certification. All of the claims derive
19 from a core set of alleged violations of California’s wage and hour laws and regulations. For the
20 reasons set forth more fully below, for purposes of settlement only, the Class satisfies the
21 prerequisites for certification under California Code of Civil Procedure § 382. Section 382
22 provides: “when the question is one of a common or general interest, of many persons, or when
23 the parties are numerous, and it is impracticable to bring them all before the court, one or more
24 may sue or defend for the benefit of all.” (Code Civ. Proc., § 382.) There are two requirements to
25 section 382: “(1) There must be an ascertainable class; and (2) there must be a well-defined
26 community of interest in the questions of law and fact involved affecting the parties to be
27 represented.” (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 704 [citations omitted].) To clarify
28 these requirements, the California Supreme Court has looked to Federal Rule of Civil Procedure

23 to explain that the community-of-interest requirement itself embodies three factors: “(1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 470.)

California law and policy favor the fullest and most flexible use of the class action device. (*Id.* at pp. 469-73.) Indeed, “[c]ourts 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 for Settlement Purposes.

1. The Class is Ascertainable and Numerous

The proposed class that Plaintiff seeks to represent is easily ascertainable and includes approximately 143 employees of Defendant.

Plaintiff maintains that there is an easily ascertainable class, defined by objective and precise criteria. Because class members are identified using specific criteria in the regular business records of Defendant, i.e., job position, the class is ascertainable. (*Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 959-60 [class membership defined by ownership of product that is the subject of the lawsuit is sufficient to make the class ascertainable].)

“The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a class action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action may be maintained as a class action even where the parties are numerous and it is in fact practicable to join them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a trust in an action for removal of the trustees.” (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.]) Therefore, Plaintiff

1 contends that numerosity is plainly satisfied.

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

3 The Court should grant conditional class certification for settlement purposes here on the
4 grounds that questions of law and fact common to all class and subclass predominate over any
5 individual questions. This inquiry tests whether proposed classes are sufficiently cohesive to
6 warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191
7 Cal.App.3d 605.)

8 Here, the employment practices at issue are: whether Defendant had legally compliant
9 policies and practices for all hours worked, including overtime wages; whether Defendant had
10 legally compliant policies and practices to provide employees with meal periods; whether
11 Defendant had legally compliant policies and practices authorizing and permitting its employees
12 to take rest periods; whether Defendant consequently paid final wages timely at termination; and
13 whether Defendant consequently failed to provide accurate itemized wage statements. Plaintiff
14 contends that the factual and legal issues are the same for all of the identified class members,
15 including Plaintiff. Further, all class members suffered from, and seek redress for, the same alleged
16 injuries.

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

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

28 ///

1 **4. Plaintiff and Her Counsel Meet the Adequacy Requirement**

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

6 All of these requirements are met here for settlement purposes. Plaintiff retained counsel
7 with extensive experience in prosecuting complex class actions, including similar class actions that
8 previously settled. (Fattahi Decl. at ¶¶ 36-46.) Class Counsel unquestionably is "qualified,
9 experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148
10 Cal.App.3d 862, 875.) In addition, Plaintiff has no conflicts, and Plaintiff has, with counsel,
11 litigated this case and diligently reviewed the settlement terms, showing her dedication. Plaintiff's
12 willingness to serve as a representative demonstrates her serious commitment to bringing about
13 the best results possible for the class. (*McGhee, supra*, 60 Cal.App.3d at p. 451.)

14 **5. A Class Action is Superior to a Multiplicity of Litigation**

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

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

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

27 Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,
28 Rule 3.766 (e), (f).) California law vests the Court with broad discretion in fashioning an

1 appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no
2 statutory or due process requirement that all class members receive actual notice, but in this matter,
3 the class members will receive direct mailed notice. As the Court of Appeals has explained, “[t]he
4 notice given should have a reasonable chance of reaching a substantial percentage of the Class
5 Members . . .” (*Id.* at p. 974.) In this case, notice of the proposed settlement will be provided by
6 direct mailing, the best possible form of notice.

7 **B. The Notice is Accurate and Informative**

8 The proposed Notice should be approved. It will be disseminated through direct U.S. first
9 class mail to the last known address for each Class Member. It informs the Class Members of the
10 terms of the Settlement and their right to be excluded from the Settlement. And if there are Class
11 Members who wish to object to this proposed class action settlement, they will have the
12 opportunity to file their objections and be heard at the Final Approval Hearing.

13 The Notice also fulfills the requirement of neutrality in class notices. (Conte & Newberg,
14 *Newberg on Class Actions* (3rd Ed.) § 8.39.) It summarizes the proceedings to date and the terms
15 and conditions of the settlement agreement, in an informative and coherent manner. It makes
16 clear that the settlement agreement does not constitute an admission of liability by the
17 Defendant, who denies all liability, and it recognizes that this Court has not ruled on the merits
18 of the action. It also states that the final settlement approval decision has yet to be made. The
19 Notice thus complies with the standards of fairness, completeness, and neutrality required of a
20 combined settlement-certification class notice.

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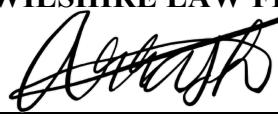
1 **VI. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
3 approval of the proposed settlement and set a Final Approval Hearing.

4
5 Dated: August 14, 2025

Respectfully submitted,

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6
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