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

MARCELINA PEREYRA, individually and on
behalf of all others similarly situated and the
State of California under the Private Attorneys
General Act,

Plaintiffs,

vs.

G.A.T. AIRLINE GROUND SUPPORT, INC.
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2024-00000064-CU-OE-CTL

Hon. Carolyn M. Caietti
Dept. 70

**PLAINTIFFS' 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 Nicholas J. Ferraro, the
Declaration of Plaintiff Pereyra, the
Declaration of Plaintiff Manu, the
Declaration of Plaintiff Grant, the
Declaration of Plaintiff Asuncion, and
[Proposed] Preliminary Approval Order]*

PRELIMINARY APPROVAL HEARING:

Date: July 25, 2025
Time: 10:30 a.m.
Dept.: 70

Complaint Filed: January 2, 2024
Trial: Not set

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Attorneys for Plaintiff Ulualofaiga Manu, Angel Grant, and Tammy Lynn Asuncion

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

2 PLEASE TAKE NOTICE that on July 25, 2025 at 10:30 a.m. in Department 70 located at the
3 Hall of Justice, 330 West Broadway, Fifth Floor, San Diego, California 92101 pursuant to Code of
4 Civil Procedure section 382 and California Rules of Court, rule 3.769 *et seq.*, Plaintiffs Marcelina
5 Pereyra, Ulualofaiga Manu, Angel Grant, and Tammy Lynn Asuncion (“Plaintiffs”) will, and hereby
6 do, move the Court for an order granting preliminary approval of the proposed class action settlement
7 between Plaintiff and Defendant G.A.T. Airline Ground Support, Inc. (“Defendant”).

8 Plaintiffs will further move the Court for an order:

- 9 1. Granting preliminary approval of the Stipulation of Settlement;
- 10 2. Certifying a Class, for settlement purposes only;
- 11 3. Approving the Class Notice and plan for its distribution;
- 12 4. Appointing Plaintiffs as the Class Representatives, for settlement purposes only;
- 13 5. Appointing Ferraro Vega Employment Lawyers, Inc. and Moon Law Group, PC as
14 Class Counsel, for settlement purposes only;
- 15 6. Appointing CPT Group, Inc. as the Administrator; and
- 16 7. Scheduling a Final Approval Hearing no earlier than 130 days from the date of
17 preliminary approval.

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

22 Respectfully submitted,

23 Dated: July 1, 2025

MOON LAW GROUP, PC

24 By: _____

25 Kane Moon
26 Allen Feghali
27 Lilit Ter-Astvatsatryan
28 Jamie C. Osganian

*Attorneys for Plaintiffs Ulualofaiga Manu, Angel
Grant, and Tammy Lynn Asuncion*

1
2 Dated: July 1, 2025

FERRARO VEGA EMPLOYMENT LAWYERS, INC.

3 By:

4 _____
Nicholas J. Ferraro
Lauren N. Vega

5 *Attorneys for Plaintiff Marcelina Pereyra*
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Marcelina Pereyra (“Plaintiff Pereyra”), Ulualofaiga Manu (“Plaintiff Manu”), Angel Grant (“Plaintiff Grant”), and Tammy Lynn Asuncion (“Plaintiff Asuncion”) (collectively, “Plaintiffs”) seek preliminary approval of a proposed \$1,460,000.00 non-reversionary, wage and hour class action settlement (the “Settlement”) with Defendant G.A.T. Airline Ground Support, Inc. (“Defendant” or “G.A.T.”) (together with Plaintiffs, the “Parties”). The Settlement will provide substantial monetary payments to an estimated 4,167 Class Members who worked an estimated aggregate of 179,834 Workweeks, of whom roughly 2,705 are Aggrieved Employees who worked an estimated aggregate of 56,439 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, 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, Tripper Ortman, Esq. Accordingly, Plaintiffs request the Court preliminarily approve the Settlement, certify the proposed 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. Plaintiffs’ 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 Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement [“Moon Decl.”], ¶ 2.) Plaintiffs seek to represent a class of all individuals currently or formerly employed by Defendant in California as hourly, non-exempt employees during the period from May 1, 2019, through July 25, 2025 (the “Class Period”), for various labor code violations. (*Id.*) Defendant is in the business of providing airline ground, passenger, and cargo support services to its airline partners, including Southwest, Frontier Airlines, and JetBlue, at five different locations in California. (*Id.*) Plaintiff

1 Manu worked for Defendant as a ramp agent from approximately December 2022 to April 2023.
2 (Declaration of Ulualofaiga Manu in Support of Approval of Class Action and PAGA Settlement
3 [“Manu Decl.”], ¶ 2.) Plaintiff Asuncion worked for Defendant as an account manager from
4 approximately April 2022 to August 2023. (Declaration of Tammy Lynn Asuncion in Support of
5 Approval of Class Action and PAGA Settlement [“Asuncion Decl.”], ¶ 2.) Plaintiff Grant worked
6 for Defendant as a cabin cleaner from approximately November 2023 to February 2024.
7 (Declaration of Angel Grant in Support of Approval of Class Action and PAGA Settlement [“Grant
8 Decl.”], ¶ 2.) Plaintiff Pereyra worked for Defendant as a Guest Service Agent from approximately
9 August 2021 to July 2023. (Declaration of Marcelina Pereyra in Support of Approval of Class
10 Action and PAGA Settlement [“Pereyra Decl.”], ¶ 2.) Throughout their employment Plaintiffs
11 were employed in an hourly paid, non-exempt position. Plaintiffs contend they and their coworkers
12 were subjected to the same unlawful labor practices, including failure to pay wages for all hours
13 worked. (Moon Decl., ¶ 2.)

14 Plaintiffs’ claim for unpaid wages stems, in part, from Defendant’s alleged failure to
15 compensate Class Members for off-the-clock work, from Defendant’s alleged failure to
16 incorporate the regular rate of pay when calculating overtime pay, meal period premiums, and sick
17 pay, from Defendant’s alleged rounding practice, and from Defendant’s alleged failure to pay
18 vacation wages. (*Id.* at ¶ 3.) Moreover, Plaintiffs bring claims against Defendant for meal and rest
19 period violations, unreimbursed business expenses, and derivative claims for waiting time
20 penalties, wage statement violations, unfair business practices, and civil penalties under PAGA.
21 (*Id.*) Defendants deny Plaintiffs’ claims and allegations, deny committing any Labor Code
22 violations, and deny this case is appropriate for class or representative treatment. (*Id.*)

23 On June 20, 2023, Plaintiff Manu filed a complaint alleging causes of action against
24 Defendant for violations under the Labor Code and Business and Professions Code for: (1) failure
25 to pay minimum wages, (2) failure to pay overtime wages, (3) meal period violations, (4) rest
26 period violations, (5) failure to indemnify, (6) failure to pay final wages, (7) wage statement
27 violations, and (8) unfair business practices. (*Id.* at ¶ 4.) On March 25, 2024, Plaintiff Manu filed
28 a complaint alleging a single cause of action against Defendant for violation of the Private

1 Attorneys General Act (“PAGA”). (*Id.*) On October 26, 2023, Plaintiff Pereyra filed a complaint
2 alleging causes of action against Defendant for violations under the Labor Code and Business and
3 Professions Code for: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3)
4 meal period violations, (4) rest period violations, (5) paid sick leave violations, (6) unpaid vacation
5 wages, (7) failure to timely pay wages, (8) wage statement violations, (9) waiting time penalties,
6 (10) failure to indemnify, (11) failure to provide records, and (12) unfair business practices. (*Id.*)
7 On January 2, 2024, Plaintiff Pereyra filed a complaint alleging a single cause of action against
8 Defendant for violation of the PAGA. (*Id.*) On or about May 20, 2025, pursuant to the Parties’
9 settlement agreement, Plaintiffs filed a consolidated First Amended Complaint (the “Operative
10 Complaint”), asserting all causes of action alleged in all four lawsuits, and adding Plaintiff Grant
11 and Plaintiff Asuncion as named plaintiffs. (*Id.*)

12 A copy of Plaintiffs’ complaints alleging a PAGA cause of action and containing the case
13 numbers assigned by the Court were submitted to the California Labor and Workforce
14 Development Agency (the “LWDA”) in compliance with Labor Code section 2699, subd. (l)(1).
15 (*Id.* at ¶ 5.) To date, the LWDA has not indicated its intent to investigate the alleged violations or
16 intervene in this Action. (*Id.*)

17 On June 18, 2023, Plaintiff Manu, gave written notice to the LWDA of the alleged Labor
18 Code violations, with certified mail service on Defendant, and paid the required filing fee. (*Id.* at
19 ¶ 6, Exh. 2A.) On August 2, 2024, Plaintiff Asuncion gave written notice to the LWDA of the
20 alleged Labor Code violations, with certified mail service on Defendant, and paid the required
21 filing fee. (*Id.* at ¶ 6, Exh. 2B.) On October 26, 2023, Plaintiff Pereyra, gave written notice to the
22 LWDA of the alleged Labor Code violations, with certified mail service on Defendant, and paid
23 the required filing fee. (Declaration of Nicholas J. Ferraro in Support of Plaintiffs’ Motion for
24 Preliminary Approval of Class Action Settlement [“Ferraro Decl.”], ¶ 6, Exh. 1.)

25 Defendant ardently opposes the merits of this case and denies Plaintiffs’ factual allegations.
26 (Moon Decl., ¶ 7.) Defendant asserts it complied with all of its compensation obligations,
27 including compensating Class Members for all off-the-clock work, and therefore, Plaintiffs and
28 other Class Members were paid all wages owed. (*Id.*) Defendant also maintains it did not fail to

1 incorporate any bonuses into Plaintiffs’ and Class Member’s regular rate for purposes of overtime
2 pay, meal break premiums, or sick pay as such bonuses were discretionary. (*Id.*) Defendant denies
3 it rounded employees’ time. . (*Id.*) Defendant maintains it complies with all its meal and rest
4 period obligations. Defendant asserts it complied with all of its reimbursement obligations, and
5 therefore, Plaintiffs and other Class Members were compensated for any and all necessary business
6 expenses incurred. (*Id.*) Defendants maintains employee wage statements complied with Labor
7 Code section 226 in all respects and, to the extent Class Members received wage statements that
8 were allegedly inaccurate, Defendant asserts employees suffered no actual damage or harm as a
9 result. (*Id.*; *see, e.g., Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013, No. C 12–05860
10 CRB) 2013 WL 622032, at *10 [“A plaintiff must adequately plead an injury arising from an
11 employer’s failure to provide full and accurate wage statements, and the omission of the required
12 information alone is not sufficient.”].) With respect to Plaintiffs’ claim for waiting time penalties,
13 Defendant alleges it paid all wages at the time of separation and, if it didn’t, its good-faith belief
14 that it paid all wages precludes the imposition of waiting time penalties since Plaintiffs cannot
15 prove Defendant’s alleged failure to pay all final wages at the time of separation was “willful.”
16 (Moon Decl., ¶ 7; *see, e.g., Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012, No. ED CV 11–
17 298 GHK (DTBx)) 2012 WL 9506073, *5.) For these reasons, among others, Defendant denies all
18 of Plaintiffs’ claims and allegations, and further claims it did not engage in any unfair business
19 practices and denies liability under PAGA. (Moon Decl., ¶ 7.) Defendant also maintains the claims
20 are improper for class treatment, in part, due to the individualized and testimony-intensive nature
21 of the wage claims that could bar class certification or significantly reduce Defendant’s overall
22 liability. (*Id.*)

23 **B. Discovery and Investigation**

24 Following the filing of Plaintiff Manu’s and Plaintiff Pereyra’s complaints, the Parties met
25 and conferred regarding an agreement to mediate the claims. (*Id.* at ¶ 8.) The Parties later agreed to
26 mediate the claims with Tripper Ortman, Esq., an experienced class and PAGA action mediator. In
27 preparation for mediation, the Parties agreed to a protocol for an informal exchange of documents
28 and information before mediation. (*Id.*) Prior to mediation, Defendant produced a 20% sample of

1 time and pay records for Class Members, Plaintiffs’ personnel files, and Defendant’s written policies
2 relevant to the claims in the action. (*Id.*) Defendant also provided information regarding the estimated
3 number of current and formerly employed Class Members, total workweeks and pay period counts.
4 (*Id.*)

5 In preparation for mediation, Plaintiffs’ Counsel reviewed and analyzed all the information
6 Defendant provided. Plaintiffs’ Counsel retained a statistics expert to analyze the sample pay and
7 time records and prepared a damage analysis prior to the mediation. (*Id.* at ¶ 9.) In conjunction with
8 their extensive factual investigation, Plaintiffs’ Counsel also investigated the applicable law
9 regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly, Plaintiffs’ Counsel
10 were able to evaluate the probability of class certification, success on the merits, and Defendant’s
11 maximum and realistic monetary exposure for all claims. (*Id.*) Thus, Plaintiffs’ and their Counsel’s
12 familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act
13 intelligently in negotiating the Settlement. (*Id.*)

14 **C. Settlement Negotiations**

15 On December 9, 2024, the Parties participated in a full day of private mediation before
16 Tripper Ortman, Esq., an experienced, professional, and neutral class action mediator. (*Id.* at ¶
17 10.) The negotiations were at arm’s length and, although conducted in a professional manner, were
18 adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a
19 settlement of the dispute, but each side was also prepared to litigate their position through trial
20 and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions
21 regarding the strengths and weaknesses of Plaintiffs’ claims and Defendant’s defenses, the Parties
22 reached a settlement, the material terms of which are encompassed within the Class and Collective
23 Action and PAGA Settlement Agreement (*Id.*, Exh. 1 [the “Settlement”].)

24 Plaintiffs’ 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, Plaintiffs’ 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 ¶¶ 17–33.) **Indeed, the \$1,460,000.00 gross settlement figure represents roughly 62% of the total realistic recovery.** (*Id.* at ¶ 27.)

D. Key Terms of the Proposed Settlement

Under the Settlement, Defendant will pay a non-reversionary, all-inclusive amount of *no less than* \$1,460,000.00 to resolve this action. (Settlement, ¶ 3.1.) The key terms include:

1. Class and Class Period: The proposed Class for purposes of the Settlement contains approximately 4,167 members and is defined as all individuals currently or formerly employed by G.A.T. Airline in California as hourly, non-exempt employees during the Class Period. (*Id.* at ¶¶ 1.7, 8.) “Class Period” means the period from May 1, 2019, through July 25, 2025, or the date of preliminary approval. (*Id.* at ¶ 1.10.)

2. PAGA Members and PAGA Period: The Class contains an estimated 2,705 Aggrieved Employees who worked 56,439 PAGA Pay Periods and are defined as all individuals currently or formerly employed by G.A.T. Airline in California as hourly, non-exempt employees during the PAGA Period. (*Id.* at ¶¶ 1.43, 9.) “PAGA Period” means June 18, 2022, through July 25, 2025, or the date of the preliminary approval. (*Id.* at ¶ 1.40.)

3. Covered Employees: means all PAGA Members and all Class Members. (*Id.* at ¶ 1.17.)

4. Net Settlement Amount: means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Service Payments, Attorneys’ Fees, Litigation Expenses, Individual PAGA Payments, the LWDA PAGA Payment, and the Administrator’s Expenses. (*Id.* at ¶ 1.33.)

5. Attorneys’ Fees and Costs: The Settlement provides up to 33.33% of the Gross Settlement Amount for reasonable attorneys’ fees, plus reimbursement for actual litigation costs not to exceed \$50,000.00, payable from the Gross Settlement Amount. (*Id.* at ¶ 3.2.2.) As this time, Moon Law Group, PC has incurred \$28,856.85 in litigation costs, Ferraro Vega Employment Layers, Inc. has incurred an estimated \$2,000.00 in litigation costs to date. (Moon Decl., ¶ 13, Exh. 4; Ferraro Decl., ¶ 17.) Pursuant to a joint prosecution and fee-sharing agreement between the two law firms representing Plaintiffs, and as consented to in a signed writing by Plaintiffs (the “JPA”), the firms

1 will split the award for attorneys' fees with 60% to Moon Law Group, PC and 40% to Ferraro Vega
2 Employment Layers, Inc, regardless of the amount awarded or whether the award is based on a
3 common fund or lodestar analysis. (Moon Decl., ¶ 62.) As to costs, the JPA states that the two firms
4 will be reimbursed in full to the extent possible for their respective costs actually incurred. (*Id.*)

5 6. Administrator and Costs: The Parties have agreed to appoint CPT Group, Inc. as the
6 neutral entity to administer the Settlement. (*Id.* at ¶ 1.3.) The Gross Settlement Amount includes
7 Administration Expenses not to exceed \$26,000.00. (*Id.* at ¶ 3.2.3.) At this time, CPT Group, Inc.
8 estimates costs will be \$26,000.00. (Moon Decl., ¶ 15, Exh. 5.)

9 7. Individual Class Payments: Individual Class Payments will be calculated by: (a) dividing
10 the Net Settlement Amount by the total number of Class Workweeks worked by all Participating
11 Class Members during the Class Period; and (b) multiplying the result by each Participating Class
12 Member's Class Workweeks. (*Id.* at ¶ 3.2.4.)

13 8. Payments to Aggrieved Employees: Individual PAGA Payments will be calculated by:
14 (a) dividing the Net PAGA Payment (\$18,750.00) by the total number of PAGA Pay Periods worked
15 by all PAGA Members during the PAGA Period; and (b) multiplying the result by each PAGA
16 Members' PAGA Pay Periods. (*Id.* at ¶ 3.2.7.)

17 9. Tax Treatment: 90% of each Individual Class Payment will be allocated as interest and
18 penalties, and 10% will be allocated as wages. (*Id.* at ¶ 3.2.4.) Individual PAGA Payments will be
19 deemed 100% penalties and interest and reported on IRS 1099 Forms. (*Id.* at ¶ 3.2.7.)

20 10. Released Parties: "Released Parties" Defendant and each of its past, present and future
21 agents, employees, servants, officers, directors, managing agents, members, owners (whether
22 direct or indirect), partners, trustees, representatives, shareholders, stockholders, attorneys,
23 parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships,
24 divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers,
25 potential and alleged joint employers, , temporary staffing agencies (whether direct or indirect),
26 contractors, affiliates, service providers, alter-egos, vendors, affiliated organizations, any person
27 and/or entity with potential or alleged to have joint liability, and all of their respective past, present
28 and future employees, directors, officers, members, owners, agents, representatives, payroll

1 agencies, attorneys, stockholders, fiduciaries, parents, subsidiaries, other service providers, and
2 assigns, and any and all persons and/or entities acting under, by, through or in concert with any of
3 them. (*Id.* at ¶ 1.50.)

4 11. Release by Participating Class Members: All Participating Class Members release
5 Released Parties from any and all claims, damages, and penalties asserted in the Action, as
6 amended, and/or arising from the facts alleged in the Action or the PAGA Notice, or that could
7 have been raised in the Action or the PAGA Notice based on the facts alleged. The Released Class
8 Claims include all claims for unpaid wages, including, but not limited to, failure to pay minimum
9 wages, straight time compensation, overtime compensation, double-time compensation, and
10 interest; the calculation of the regular rate of pay; wages related to alleged illegal time rounding;
11 missed/short/late/interrupted meal period, rest period, and/or recovery period wages/premiums;
12 failure to provide meal periods; failure to authorize and permit rest periods and/or recovery periods;
13 the calculation of meal period, rest period, and/or recovery period premiums; payment for all hours
14 worked, including off-the-clock work; failure to reimburse business expenses; wage statements;
15 failure to keep accurate records; failure to timely pay wages; failure to timely pay final wages;
16 failure to provide suitable seating; failure to pay vacation wages, violations of California's paid
17 sick leave laws; failure to provide supplemental paid sick leave; unfair business practices related
18 to the Labor Code violations alleged in the Operative Complaint; penalties, including
19 recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time
20 penalties; non-compliant wage statements; attorneys' fees and costs associated with recovery of
21 the alleged Labor Code violations alleged in the Operative Complaint; and generally all claims that
22 could have been brought based on the facts alleged in the Operative Complaint arising under: the
23 California Labor Code (including, but not limited to, sections 200, 201, 202, 203, 204, 206, 210,
24 216, 218, 218.5, 218.6, 223, 225.5, 234, 226, 226.3, 226.6, 226.7, 227.3, 233, 234, 245-248.7, 432,
25 432.5, 432.7, 510, 512, 516, 558, 558.1, 1024.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,
26 1197.1, 1198, 1198.5, 1199, 2802, 2804, 2810.5); the Wage Orders of the California Industrial
27 Welfare Commission; the California Business and Professions Code section 17200, *et seq.*; the
28 California Civil Code, to include but not limited to, sections 1786, 3287, 3336 and 3294; 12 CCR

§ 11040; 8 CCR § 11060; California Code of Civil Procedure § 1021.5; 15 U.S.C. § 1681; the California common law of contract the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 et seq.; 29 CFR 778.223; 29 CFR 778.315; and federal common law. Upon entry of Judgment, Participating Class Members are precluded from filing a wage and hour action under the Fair Labor Standards Act against the Released Parties for claims and/or causes of action encompassed by the Released Class Claims which are extinguished and precluded pursuant to the holding in *Rangel v. PLS Check Cashers of California, Inc.*, 899 F.3d 1106 (2018). This release excludes the release of claims not permitted by law. (*Id.* at ¶ 5.2.)

12. Release by PAGA Members: All PAGA Members and the LWDA release Released Parties from, and are forever barred from pursuing such against Released Parties for all claims for civil penalties under PAGA that were alleged, or could have been alleged, based on the facts asserted in Plaintiff’s Operative Complaint, as amended, and/or in the PAGA Notice, including but not limited to, claims relating to failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; wages related to alleged illegal time rounding; missed/short/late/interrupted meal period, rest period, and/or recovery period wages/premiums; failure to provide meal periods; failure to authorize and permit rest periods and/or recovery periods; the calculation of meal period, rest period, and/or recovery period premiums; payment for all hours worked, including off-the-clock work; failure to reimburse business expenses; wage statements; failure to keep accurate records; failure to timely pay wages; failure to timely pay final wages; failure to provide suitable seating; unlawful agreements / unlawful criminal history inquiries and/or financial checks; failure to pay vacation wages, violations of California’s paid sick leave laws; failure to provide supplemental paid sick leave; and alleged violations of Labor Code sections 200, 201, 202, 203, 204, 206, 210, 216, 218, 218.5, 218.6, 223, 225.5, 234, 226, 226.3, 226.6, 226.7, 227.3, 233, 234, 245-248.7, 432, 432.5, 432.7, 510, 512, 516, 558, 558.1, 1024.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, 2810.5, 2698, *et seq.* and 2699 *et seq.* (“Released PAGA Claims”). The Released PAGA Claims are limited to the PAGA Period. Aggrieved Employees will be bound by the release of the Released

1 PAGA Claims regardless of their decision to participate in or opt out of the release of the Released
2 Class Claims. (*Id.* at ¶ 5.3.)

3 13. Uncashed Settlement Checks: For any Covered Employee whose Individual Settlement
4 Payment check is uncashed and cancelled after the void date (not less than 180 days after the date
5 of mailing), the Administrator shall transmit the funds, in the name of the Covered Employee, to
6 the State of California’s Unclaimed Property Division. (*Id.* at ¶¶ 4.3.1, 4.3.3.)

7 14. Class Notice: The proposed Class Notice sets forth, in plain terms, a statement of case,
8 the terms of the Settlement, the approximate amounts of attorneys’ fees, costs, PAGA civil penalties,
9 and service award being sought, an explanation of how the settlement are calculated, and the Final
10 Approval Hearing information. (Settlement, ¶ 7.4, Attachment A.) The proposed method for
11 providing notice of the proposed Settlement and distribution thereof is the one most likely to give
12 actual notice to the greatest number, if not all, of the Class Members. (*See id.* at ¶ 7.4.2.) The
13 Administrator will undertake its best efforts to ensure the Class Notice is provided to the current
14 address of Class Members, including conducting a national change of address search and re-mailing
15 the notice to updated addresses. (*Id.* at ¶ 7.4.3.)

16 15. Procedure for Disputing Pay Periods, Opting Out, or Objecting: The Class Notice
17 explains the procedure under which a Class Member can dispute the number of individual workweeks
18 credited to them. (*Id.* at ¶ 7.6, Attachment A.) Additionally, the Class Notice explains how Class
19 Members may, should they choose to do so, opt-out or otherwise object to the Settlement. (*Id.* at ¶¶
20 7.5, 7.7, Attachment A.)

21 16. Funding: G.A.T. Airline shall fully fund the Gross Settlement Amount and fund the
22 amounts necessary to fully pay its share of payroll taxes by transmitting the funds to the
23 Administrator no later than 14 days after the Effective Date. (*Id.* at ¶ 4.2.) “Effective Date” means
24 the date on which the Court enters Judgment on its order granting Final Approval of the Settlement
25 and the Judgment is final. The Judgment is final as of the latest of the following occurrences: (i) if
26 no appeal, or other challenge is filed, the sixty-fifth (65) day following service of a Notice of Entry
27 of Judgment; (ii) the date of affirmance of an appeal of the Order Granting Final Approval and/or
28 Judgment becomes final under the California Rules of Court; or (iii) the date of final dismissal of any

1 appeal from the Order Granting Final Approval and/or Judgment or the final dismissal of any
2 proceeding on review of any court of appeal decision relating to the Order Granting Final Approval
3 and/or Judgment, and issuance of remittitur. (*Id.* at ¶ 1.19.)

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

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

16 In evaluating a settlement, the trial court considers the following factors: (1) the strength of
17 plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk
18 of maintaining class action status through trial; (4) the settlement amount offered; (5) the extent of
19 discovery completed and the stage of the proceedings; (6) counsel’s experience and views; (7) the
20 presence of a governmental participant; and (8) the class members’ reaction to the proposed
21 settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) To approve a class
22 action settlement, “the court must satisfy itself that the class settlement is within the ‘ballpark’ of
23 reasonableness.” (*Id.* at p. 133.) The record need not contain an explicit statement of the maximum
24 theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App.4th 399,
25 408–09 [holding that *Kullar* does not require “an explicit statement of the maximum amount the
26 plaintiff class could recover if it prevailed on all its claims,” but instead, only an “understanding
27 of the amount that is in controversy and the realistic range of outcomes of the litigation”].)

1 As discussed below, Plaintiffs' Counsel have provided materials and information exceeding
2 the threshold required for this Court to conclude the Settlement is fair, reasonable, and adequate.

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

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

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

13 The proposed Settlement at issue was reached following extensive negotiations and
14 discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses
15 with an experienced and neutral class action mediator. (Moon Decl., ¶ 10.) Plaintiffs' Counsel
16 performed an extensive investigation into the facts, claims, and defenses at issue, including by
17 reviewing the governing law, analyzing Defendant's written policies and sampling time/pay data,
18 and retaining a statistics expert to prepare a damage analysis regarding Defendant's potential liability.
19 (*Id.* at ¶¶ 8-9.) Plaintiffs obtained, through informal discovery, documents and data necessary and
20 helpful to evaluate the claims and defenses at issue, including a 20% sample of time and pay records
21 for the putative Class as well as demographic data. (*Id.*) The Settlement is based on the following
22 demographics: 4,167 Class Members who worked an aggregate of 179,834 Workweeks, at an average
23 hourly rate of \$18.54. (Moon Decl., ¶ 18; *see* Settlement, ¶ 8.) Additionally, there are an estimated:
24 1,147 former employees falling within the three-year statute of limitations (“SOL”) period for waiting
25 time penalties, 2,705 employees falling within the one-year SOL period for inaccurate wage
26 statement penalties and PAGA penalties, and 56,439 PAGA Pay Periods in the PAGA Period. (Moon
27 Decl., ¶ 18; *see* Settlement, ¶ 9.) Based on Plaintiffs' Counsel's review of the time, payroll, and
28 additional data provided by Defendant, on Plaintiffs' expert's analysis of the sampling records

provided by Defendant, and on information from Plaintiffs, Plaintiffs' Counsel evaluated the estimated maximum and risk-adjusted exposure that Defendant faced. (*Id.*)

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

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

Here, based on the information provided at mediation, Defendant's **realistic exposure** (adjusted for risks at certification and proof on the merits) for the alleged claims, including penalties, is estimated to be **\$2,327,754.59**. (Moon Decl., ¶¶ 18, 27.) This amount was calculated as follows: **\$333,133.52** (90% discount) for the off-the-clock work claim; **\$13,290.00** (75% discount) for the regular rate claim; **\$67,967.64** (50% discount) for the rounding claim; **negligible, if any value**, for the unpaid vacation claim; **\$588,779.42** (75% discount) for the meal period claim; **\$399,375.70** (90% discount) for the rest period claim; **\$112,396.25** (90% discount) for the unreimbursed business expense claim; **\$255,184.56** (95% discount) for the waiting time penalties claim; **\$275,432.50** (95% discount) for the wage statement claim; and **\$282,195.00** (95% discount) for the PAGA penalties claim. (*Id.* at ¶¶ 19-26.) The foregoing discounts were based on the evidence presented and arguments made during arm's-length settlement negotiations. (*Id.* at ¶¶ 10, 19-26.) **The \$1,460,000.00 gross settlement figure represents roughly 63% of the total realistic recovery.** (*Id.* at ¶ 27.) This is an excellent result for the Class, particularly because, under the Settlement, Class Members will receive timely and guaranteed relief, avoiding the risk of not being able to recover anything. (*Id.*)

With regards to the PAGA claims, Plaintiffs and their Counsel believe the Settlement is a fair and reasonable resolution that satisfies PAGA's dual statutory purposes of deterrence and punishment, on the one hand, and providing PAGA Members with genuine and meaningful relief, on

1 the other. (*Id.* at ¶ 29; Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendant has had to
2 hire legal counsel, engage in informal discovery, and participate in mediation. (Moon Decl., ¶ 28.)
3 Defendant is also now having to pay civil penalties to the LWDA under the Settlement, assuming final
4 settlement approval is granted. (Settlement, ¶¶ 3.2.6-.2.7.) Not including its own attorneys’ fees and
5 costs as well as the employer’s share of payroll taxes, Defendant will pay no less than \$1,460,000.00
6 to resolve this matter—of which \$75,000.00 is allocated toward the PAGA claims and will be
7 distributed, in compliance with Labor Code section 2699 as 75% (\$56,250.00) to the LWDA and 25%
8 (\$18,750.00) to Aggrieved Employees. (Moon Decl., ¶ 28; Lab. Code § 2699(i).) Moreover, Plaintiffs’
9 Counsel are of the opinion that because the issues here are fairly contested, there is a possibility that,
10 if the PAGA claim was brought to trial, the Court may not award PAGA penalties at all even if
11 Plaintiffs prevailed on the merits due to the largely discretionary nature of awarding PAGA penalties.
12 (Moon Decl., ¶ 28.) Indeed, under Labor Code section 2699, subdivision (e)(2), a Court can reduce
13 PAGA penalties “if, based on the facts and circumstances of the particular case, to do otherwise
14 would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” (Lab. Code §
15 2699(e)(2).) In other words, were this matter to go to trial, any award granted would be at the
16 discretion of the Court and subject to a substantial reduction. (Moon Decl., ¶ 28.)

17 While Plaintiffs are confident in the merits of their claims, Defendant vigorously disputes the
18 merit of the claims, and thus a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 29.)
19 Plaintiffs also recognize that proving the amounts of wages owed to each Class Member would be an
20 expensive, time-consuming, and uncertain proposition. (*Id.*) The Settlement obviates the significant
21 risk that this Court may deny certification of all or some of Plaintiffs’ claims. (*Id.* at ¶ 30.)
22 Furthermore, even if Plaintiffs were able to pursue their claims on a class-wide basis and obtain
23 certification of all or some of the claims, continued litigation would be expensive, involving a trial
24 and possible appeals, and would substantially delay and reduce any recovery by the Class. (*Id.*) This
25 Settlement avoids the risks, burdens, and the accompanying expense of further litigation. (*Id.* at ¶
26 31.) Although the Parties have engaged in a significant amount of investigation, informal discovery,
27 and class-wide data analysis, they have not conducted extensive formal discovery, including
28 depositions. (*Id.*) Moreover, preparation for class certification and a trial would remain for the Parties

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

4 The Net Settlement Amount available for settlement payments is estimated to be *no less than*
5 \$792,382.00 for an estimated Class of 4,167 individuals.¹ (*Id.* at ¶ 32.) As a result, it is estimated
6 each Class Member will receive **an average gross benefit of approximately \$190.16** prior to tax
7 withholdings on the wage portion of payments. (*Id.*) Considering Class Members' average hourly
8 rate is \$18.54, **the average benefit is roughly 10 hours of work.** (*Id.*) This amounts to an **estimated**
9 **workweek value of roughly \$4.41** for the currently estimated 179,834 Workweeks. (*Id.*)
10 Additionally, it is currently estimated there are **2,705 Aggrieved Employees who will receive an**
11 **estimated average of approximately \$6.93** from their \$18,750.00 total share of the PAGA Payment,
12 which results in an estimated value of **\$0.33 per Pay Period in the PAGA Period** based on the
13 currently estimated 56,439 Pay Periods in the PAGA Period. (*Id.*) The actual amounts to Class
14 Members and Aggrieved Employees will vary based on each individual's duration of work during
15 the Class Period or PAGA Period, respectively; thus, those who worked longer will receive a gross
16 benefit greater than the average estimated amount. (*Id.*) At this time, the high and low range of
17 payments to Class Members is unknown. (*Id.*) These ranges will be calculated by the Administrator
18 following preliminary approval and receipt and processing of the Class Data and will be provided to
19 the Court in a motion for final approval. (*Id.*)

20 The proposed Settlement of \$1,460,000.00 therefore represents a substantial recovery when
21 compared to Plaintiffs' reasonably forecasted recovery. (*Id.* at ¶ 33.) When considering the risks of
22 litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to
23

24 _____
25
26 ¹ The Net Settlement Amount is at least \$1,460,000.00 less the following: \$30,000.00 in total
27 for the Service Payments to the Class Representatives, with \$7,500.00 to each, \$26,000.00 for
28 Administration Expenses, \$75,000.00 for PAGA civil penalties to the LWDA and Aggrieved
Employees, \$486,618.00 attorneys' fees to Class Counsel, and up to \$50,000.00 for reimbursement
of litigation costs to Class Counsel. (Settlement, ¶¶ 3.1-.2.)

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

3 **3. Plaintiffs’ 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 ¶¶ 38–
7 58; Ferraro Decl., ¶¶ 18-20, Exh. 4.) Plaintiffs’ Counsel have a strong record of vigorous and effective
8 advocacy for their clients and are experienced in handling complex wage and hour class action
9 litigation. (Moon Decl., ¶¶ 38–58; Ferraro Decl., ¶¶ 18-20, Exh. 4.) The experience of Plaintiffs’
10 Counsel was helpful in assessing the reasonableness of the Settlement at issue here, and from this
11 experience they concluded that this litigation could not have been settled on better terms than
12 provided under the Settlement. (Moon Decl., ¶ 59.) Although Plaintiffs and their counsel were
13 prepared to try the claims alleged in the litigation, they support the proposed Settlement as being in
14 the best interest of the Class based on objective evidence that has been considered and weighed
15 against the risks, expenses, and time consumption to both sides of continued litigation. (*Id.* at ¶¶ 10,
16 17, 29–31.)

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

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

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

24 Subject to the Court’s approval, the Settlement provides a fee application of up to 33.33% of
25 the Gross Settlement Amount for Class Counsel’s attorneys’ fees, plus reimbursement for out-of-
26 pocket litigation costs not to exceed \$50,000.00. (Settlement, ¶ 3.2.2.) These amounts are disclosed
27 to Class Members in the proposed Class Notice and are reasonable. (*Id.* at Attachment A.)
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 Plaintiffs’ Counsel will seek an award of attorneys’ fees on the “percentage of
9 recovery/common fund” theory. (Moon Decl., ¶ 61.) 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, Plaintiffs’ 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, Plaintiffs request the Court preliminarily approve their 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, Plaintiffs would be permitted to recover their 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 Plaintiffs’ 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 Plaintiffs’ Counsel. (*Id.* at ¶¶ 63–67.) Their Counsel

1 undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.* at ¶¶ 63–67.)
2 Once Plaintiffs’ 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 ¶ 66.)

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, Plaintiffs’ Counsel possess considerable expertise in litigating class actions. (*Id.* at
7 ¶¶ 38-58; Ferraro Decl., ¶¶ 18-29, Exh. 4.) Plaintiffs’ Counsel have been involved as lead counsel or
8 co-counsel in numerous class actions that resulted in millions in recovery. (Moon Decl., ¶¶ 38-58;
9 Ferraro Decl., ¶¶ 18-29, Exh. 4.) Plaintiffs’ Counsel’s experience in wage and hour litigation was
10 integral in evaluating the strengths and weaknesses of the case against Defendant and the
11 reasonableness of the settlement. (Moon Decl., ¶ 59.) Practice in the narrow field of wage and hour
12 litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and
13 federal) as well as the procedural law of class action litigation. (*Id.* at ¶ 57.) Based on these and other
14 factors, Plaintiffs’ Counsel have frequently received fee awards of this percentage from the gross
15 recovery for the class. (*See id.* at ¶¶ 42, 48; Ferraro Decl., Exh. 4.) Because it is reasonable to
16 compensate counsel commensurate with their skill, reputation, and experience, the requested fee
17 award is supported here.

18 **D. The Service Payments to Plaintiffs Are Reasonable**

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

1 required or permitted to work under substandard unlawful conditions . . .” (Lab. Code § 90.5.)
2 Nonetheless, the California Supreme Court has noted that “retaliation against employees for asserting
3 statutory rights under the Labor Code is widespread,” despite anti-retaliation statutes designed to
4 protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61.) In this context, class
5 representatives should be rewarded for assuming the risk of retaliation for the sake of class members.
6 (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

7 Under the Settlement here, subject to the Court’s approval, Defendant agrees to pay Service
8 Payments of up to \$7,500.00 to each Plaintiff, which will be in addition to their amounts as Class
9 Members. (Settlement, ¶ 1.52.) This award is in recognition of Plaintiffs initiating and providing
10 services in support of the Action and for Plaintiffs’ individual settlement and general release of all
11 claims, as set forth in this Agreement. (*Id.*) Plaintiffs have devoted a great deal of time and work
12 assisting counsel in the case and communicated with counsel frequently. (Moon Decl., ¶¶ 34–37;
13 Manu Decl., ¶¶ 17-24; Grant Decl., ¶¶ 17-24; Asuncion Decl., ¶¶ 17-24; Pereyra Decl., ¶¶ 17-24.)
14 The requested awards are fair and reasonable, particularly considering the substantial benefits
15 Plaintiffs generated for all Class Members. (Moon Decl., ¶¶ 27–37.)

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

2 **A. Legal Standard**

3 The proposed Settlement Class is well suited for class certification. The claims all derive from
4 a core set of alleged violations of California’s wage and hour laws and regulations. (Moon Decl., ¶¶
5 3-4.) For the reasons set forth more fully below, the Class, for purposes of Settlement, satisfies the
6 prerequisites for certification under Code of Civil Procedure section 382. (Code Civ. Proc. § 382.)
7 Section 382 provides that “when the question is one of a common or general interest, of many
8 persons, or when the parties are numerous, and it is impracticable to bring them all before the court,
9 one or more may sue or defend for the benefit of all.” (*Id.*) There are two requirements to section
10 382: “(1) there must be an ascertainable class[]; and (2) there must be a well defined community of
11 interest in the questions of law and fact involved affecting the parties to be represented.” (*Daar v.*
12 *Yellow Cab Co.* (1967) 67 Cal. 2d 695, 704 [internal citations omitted].) To clarify these
13 requirements, the California Supreme Court has looked to Federal Rule of Civil Procedure 23 to
14 explain that the community-of-interest requirement itself embodies three factors: “(1) predominant
15 common questions of law or fact; (2) class representatives with claims or defenses typical of the
16 class; and (3) class representatives who can adequately represent the class.” (*Richmond v. Dart*
17 *Indus., Inc.* (1981) 29 Cal. 3d 462, 470.)

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

24 **B. Plaintiffs Maintain that the Criteria for Class Certification Are Satisfied**

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

26 When determining whether a class is ascertainable, California courts focus on the following
27 three factors: “(1) the class definition, (2) the size of the class and (3) the means of identifying class
28 members.” (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, Plaintiffs maintain there is an

1 easily ascertainable Class, defined by objective and precise criteria. (Settlement, ¶ 1.7.) The proposed
2 Class that Plaintiffs seek to represent is ascertainable because (1) the Class definition is sufficiently
3 precise, (2) the Class consists of about 4,167 individuals, and (3) Class Members can be readily
4 identified by looking at Defendant’s records. (*Id.* at ¶¶ 1.7, 9, 1.9.) Because Class Members are
5 identified using specific criteria in the regular business records of Defendant—their employment by
6 Defendant in California, non-exempt classification, and actual work during the Class Period—the
7 Class is ascertainable. (*See Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 959–60 [class
8 membership defined by ownership of product that is the subject of the lawsuit is sufficient to make
9 the class ascertainable].) “The requirement of Code of Civil Procedure section 382 that there be
10 ‘many’ parties to a class action suit is indefinite and has been construed liberally.” (*Rose v. City of*
11 *Hayward* (1981) 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’
12 persons, an action may be maintained as a class action even where the parties are numerous and it is
13 in fact practicable to join them all.” (*Id.*) “No set number is required as a matter of law for the
14 maintenance of a class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the
15 10 beneficiaries of a trust in an action for removal of the trustees.” (*Id.* [citing *Bowles v. Super. Ct.*
16 (1955) 44 Cal.2d 574]; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a class of 9 plaintiffs
17 and 35 members].) Therefore, numerosity is plainly satisfied.

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

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

25 Here, Plaintiffs maintain their claims satisfy all three requirements. The employment practices
26 at issue include whether Defendant: had legally compliant policies and practices to pay employees
27 all minimum and overtime wages owed; reimbursed employees for necessary business expenses; had
28 legally compliant policies and practices to provide employees with and authorize meal and rest

1 periods; paid all final wages to employees at the time of termination; intentionally failed to pay all
2 final wages; provided inaccurate itemized wage statements; engaged in unfair business practices; and
3 violated civil penalty provisions recoverable under PAGA. (Moon Decl., ¶¶ 3-4.) Plaintiffs contend
4 the factual and legal issues are the same for all Class Members, and further that all Class Members
5 suffered from and seek redress for the same alleged injuries. (Manu Decl., ¶¶ 4-5; Grant Decl., ¶¶ 4-
6 5; Asuncion Decl., ¶¶ 4-5; Pereyra Decl., ¶¶ 4-5.) Considering Class Members would need to prove
7 the same issues of law and fact to prevail, and their legal remedies are identical, it would be preferable
8 to resolve all claims through a settlement than to force each Class Member to litigate their own
9 individual claims. Thus, the Court should grant conditional class certification for settlement purposes
10 because common questions of law and fact predominate over any individual questions within the
11 Class.

12 **3. Plaintiffs' Claims Are Typical of the Claims of the Class**

13 The typicality requirement does not focus on the individual characteristics or circumstances
14 of the representative plaintiff compared to those of the remainder of the class, but rather, upon the
15 typicality of the proposed representative's claims as they relate to the defendant's conduct and
16 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["The only requirements a re [sic] that
17 common questions of law and fact *predominate* and that the class representative be *similarly* situated"
18 vis-à-vis the class.] [emphasis in original].) A representative plaintiff's claims are typical of the class
19 if they arise from the same event, practice, or course of conduct, and if the claims rest on the same
20 legal theories. (*Id.*) Plaintiffs contend that is precisely the case here. Plaintiffs are former employees
21 of Defendant; as such, they allege they were subject to the same policies and practices as other
22 similarly situated employees. (Manu Decl., ¶ 6; Grant Decl., ¶ 6; Asuncion Decl., ¶ 6; Pereyra Decl.,
23 ¶ 6.)

24 **4. Plaintiffs and Their Counsel Meet the Adequacy Requirement**

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

1 Here, Plaintiffs maintain all requirements are met. Plaintiffs retained counsel with extensive
2 experience in prosecuting complex class actions, including similar class actions that previously
3 settled. (Moon Decl., ¶¶ 38–58; Ferraro Decl., ¶¶ 18-29, Exh. 4.) With their experience, Plaintiffs’
4 Counsel unquestionably are “qualified, experienced and generally able to conduct the proposed
5 litigation.” (*Miller, supra*, 148 Cal.App.3d at p. 874.) In addition, Plaintiffs and their Counsel have
6 no conflicts with one another, other Class Members, the proposed Administrator. (Manu Decl., ¶¶ 7–
7 8; Grant Decl., ¶¶ 7–8; Asuncion Decl., ¶¶ 7–8; Pereyra Decl., ¶¶ 7-8; Moon Decl., ¶ 60; Ferraro
8 Decl., ¶ 16.) Further, Plaintiffs have, with counsel, litigated this case and diligently reviewed the
9 settlement terms, showing dedication, and with full knowledge and acceptance of duties, they have
10 committed to their role as Class Representatives. (Manu Decl., ¶¶ 7–8; Grant Decl., ¶¶ 7–8; Asuncion
11 Decl., ¶¶ 7–8; Pereyra Decl., ¶¶ 7-8.)

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

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

23 V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND

24 A. The Proposed Notice Plan Satisfies Due Process

25 Class Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,
26 rule 3.766(e)–(f).) California law vests the Court with broad discretion in fashioning an appropriate
27 notice program. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 970, 973–74.) There is no statutory
28 or due process requirement that all class members receive actual notice, but in this matter, the Class

1 Members will receive direct mailed notice. (Settlement, ¶ 7.4.2.) As the Court of Appeals has
2 explained, “[t]he notice given should have a reasonable chance of reaching a substantial percentage
3 of the Class Members . . .” (*Cartt*, 50 Cal.App.3d at p. 974.) In this case, notice of the proposed
4 Settlement will be provided by direct mailing, the best possible form of notice under the
5 circumstances. (Settlement, ¶ 7.4.2.)

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

7 The proposed Class Notice should be approved. It will be disseminated through direct U.S.
8 first-class mail to the current address for each Class Member. (*Id.* at ¶ 7.4.2.) It informs the Class of
9 the terms of the Settlement and the right to be excluded. (*Id.* at ¶ 7.5.) And if there are Class Members
10 who wish to object to the proposed Settlement, they are informed of their right to submit written
11 objections and/or be heard at the Final Approval Hearing. (*Id.* at ¶ 7.7.)

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

21 **VI. CONCLUSION**

22 For the foregoing reasons, Plaintiffs respectfully request the Court grant this motion, enter the
23 proposed order submitted herewith regarding preliminary approval, and set a final approval hearing
24 no earlier than 130 days from the preliminary approval order.

Respectfully submitted,

Dated: July 1, 2025

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