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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JUAN MARCHELL KING, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

LOS ANGELES REGIONAL FOOD BANK, a
California corporation; and DOES 1 through 10,
inclusive,

Defendants

Case No.: 23STCV17761

*[Assigned for all purposes to the Honorable
Lawrence P. Riff, Dept. 7]*

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

*[Filed with the Declarations of Kane Moon
and Plaintiff in Support of Motion, and
[Proposed] Preliminary Approval Order]*

PRELIMINARY APPROVAL HEARING:

Date: November 22, 2024

Time: 10:00 am

Dept.: 7

Action Filed: July 27, 2023

FAC Filed: October 31, 2023

Trial Date: Not Set

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

2 PLEASE TAKE NOTICE that on November 22, 2024, at 10:00 am in Department 7 of this
3 Court located at 312 North Spring Street, Los Angeles, California 90012, pursuant to Code of Civil
4 Procedure section 382 and California Rules of Court, rule 3.769 *et seq.*, Plaintiff Juan Marchell King
5 (“Plaintiff”) will move the Court for an order granting preliminary approval of the proposed class
6 action settlement between Plaintiff and Defendant Los Angeles Regional Food Bank.

7 Plaintiff will further move the Court for an order:

- 8 1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement;
- 9 2. Certifying a Class, for settlement purposes only;
- 10 3. Approving the Class Notice and plan for its distribution;
- 11 4. Appointing Plaintiff as the Class Representative, for settlement purposes only;
- 12 5. Appointing Moon Law Group, PC as Class Counsel, for settlement purposes only;
- 13 6. Appointing Simpluris Legal Administration Services as the Settlement Administrator;
- 14 and
- 15 7. Scheduling a Final Approval Hearing.

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

20 Respectfully submitted,

21 Dated: October 7, 2024

MOON LAW GROUP, PC

22 By: 

Kane Moon

Lilit Ter-Astvatsatryan

Nichelle Christopherson

Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Juan Marchell King (“Plaintiff”) seeks preliminary approval of a proposed
4 \$591,000.00 non-reversionary, wage and hour class action and PAGA settlement (the
5 “Settlement”) with Defendant Los Angeles Regional Food Bank (“Defendant”) (collectively, the
6 “Parties”). The Settlement will provide substantial monetary payments to an estimated 251 Class
7 Members who worked an estimated aggregate of 29,566 Workweeks, of which roughly 201 are
8 Aggrieved Employees who worked an estimated aggregate of 6,446 PAGA Pay Periods. As set
9 forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval
10 under California law. The Settlement was reached after extensive investigation, informal
11 discovery, and negotiations between the Parties. The negotiations were at arm’s-length and were
12 facilitated through a mediation session by an experienced and neutral class action mediator,
13 Tripper Ortman, Esq. Accordingly, Plaintiff requests the Court preliminarily approve the
14 Settlement, certify the proposed Settlement Class, approve the proposed Notice to Class Members,
15 and set a final approval hearing no earlier than 130 days from the date of preliminary approval.

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

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

18 This is a wage and hour class action and representative action for alleged Labor Code
19 violations and claims for civil penalties pursuant to the California Private Attorneys General Act,
20 Labor Code sections 2698, *et seq.* (“PAGA”). (Declaration of Kane Moon in Support of Plaintiff’s
21 Motion for Preliminary Approval of Class Action and PAGA Settlement [“Moon Decl.”], ¶ 2.)
22 Plaintiff seeks to represent a class of all persons employed by Defendant in California and
23 classified as non-exempt who worked for Defendant during the period from July 27, 2019 to
24 September 1, 2024, for various alleged violations of the California Labor Code. (*Id.*) Defendant is
25 a nonprofit organization. (*Id.*) Plaintiff worked for Defendant from approximately May 2016 until
26 August 2022. (*Id.*) Plaintiff was employed as a forklift operator by Defendant. (*Id.*) Throughout
27 his employment, Plaintiff was employed in an hourly paid, non-exempt position. (*Id.*) Plaintiff
28 contends both he and his coworkers were subject to the same unlawful labor practices, including

1 failure to pay wages for all hours worked. (*Id.*)

2 Plaintiff's claim for unpaid wages is three-fold, stemming from Defendant's alleged
3 unlawful time-rounding practice, required off-the-clock work, and Defendant's failure to
4 accurately incorporate the regular rate of pay for overtime, sick, and meal premiums. (*Id.* at ¶ 3.)
5 Moreover, Plaintiff brings claims against Defendant for alleged meal and rest period violations,
6 and derivative claims for waiting time penalties, wage statement violations, unfair business
7 practices, and civil penalties under PAGA. (*Id.*)

8 Because of the foregoing alleged violations of various provisions of the Labor Code,
9 Plaintiff filed a class action on July 27, 2023, which, as amended, alleges Defendant
10 systematically: (1) failed to pay minimum wages, (2) failed to pay overtime compensation, (3)
11 failed to provide meal periods, (4) failed to authorize and permit rest periods, (5) failed to pay
12 final wages at termination, (6) failed to provide accurate itemized wage statements, (7) engaged
13 in unfair business practices, and (8) violated civil penalty provisions recoverable as PAGA
14 penalties pursuant to Labor Code sections 2698, *et seq.* (*Id.* at ¶ 4.) On July 27, 2023, Plaintiff
15 gave written notice to the California Labor and Workforce Development Agency (the "LWDA")
16 of the alleged Labor Code violations, with certified mail service on Defendant. (*Id.* at ¶ 5, Exh.
17 2.) On October 31, 2023, Plaintiff filed his first amended complaint adding a ninth cause of action
18 for civil penalties under PAGA, and subsequently submitted a copy to the LWDA in compliance
19 with Labor Code section 2699, subd. (l)(1). (*Id.* at ¶ 5.) To date, the LWDA has not indicated its
20 intent to investigate the alleged violations or intervene in this Action. (*Id.*)

21 Defendant opposes the merits of this case and denies Plaintiff's factual allegations. (*Id.* at
22 ¶ 6.) Defendant argues the putative Class Members and Aggrieved Employees were paid all
23 minimum and overtime wages owed, and that its time-rounding practice did not harm them given
24 that it was neutral on its face and as applied, therefore lawful. (*Id.*) Defendant maintains
25 compliance with all its meal and rest period obligations and asserts that employees were provided
26 with options to report issues related to noncompliant breaks. (*Id.*) To the extent Class Members
27 and Aggrieved Employees received wage statements that were allegedly inaccurate, Defendant
28 asserts that its alleged failure was neither knowing nor intentional, and employees suffered no

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

14 **B. Discovery and Investigation**

15 Following the filing of the complaint, the Parties engaged in meet and confer efforts and an
16 informal exchange of documents and information regarding the matter (*Id.* at ¶ 7.) The Parties later
17 agreed to mediate the claims with Tripper Ortman, Esq., an experienced class and PAGA mediator.
18 (*Id.*) In preparation for mediation, the Parties agreed to a protocol for an informal exchange of further
19 documents and information. (*Id.*) Prior to mediation, Plaintiff obtained from Defendant, documents
20 and data that was necessary and helpful to evaluate the claims asserted in this action. (*Id.*) Defendant
21 produced a statistically significant sample of time and pay records for the putative Class, Plaintiff’s
22 personnel file, and Defendant’s written policies. (*Id.*) Defendant also provided information regarding
23 the estimated number of current and formerly employed Class Members, Workweeks, Aggrieved
24 Employees, and PAGA Pay Periods. (*Id.*)

25 In preparation for mediation, Plaintiff’s Counsel reviewed and analyzed all the information
26 Defendant provided, including the sample records and documents regarding Defendant’s wage and
27 hour policies. (*Id.* at ¶ 8.) Plaintiff’s Counsel retained a statistics expert to analyze the sample records
28 and prepare a damage analysis prior to the mediation. (*Id.*) The sample time and pay records analyzed

1 contained approximately 50 individuals' time and pay data (representing roughly 20% of the total
2 employees worked during the Class Period), which allowed Plaintiff's expert to prepare a damage
3 analysis with a high degree of certainty. (*Id.*) In conjunction with their extensive factual investigation,
4 Plaintiff's Counsel also investigated the applicable law regarding the claims and defenses asserted in
5 the litigation. (*Id.*) Accordingly, Plaintiff's Counsel were able to evaluate the probability of class
6 certification, success on the merits, and Defendant's maximum and realistic monetary exposure for
7 all claims. (*Id.*) Thus, Plaintiff's and his Counsel's familiarity with the facts of the case and the legal
8 issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement. (*Id.*)

9 **C. Settlement Negotiations**

10 On May 29, 2024, the Parties participated in a full day of private mediation before Tripper
11 Ortman, Esq., an experienced, professional, and neutral class action mediator. (*Id.* at ¶ 9.) The
12 negotiations were at arm's length and, although conducted in a professional manner, were
13 adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a
14 settlement of the dispute, but each side was also prepared to litigate their position through trial
15 and appeal if a settlement had not been reached. (*Id.*) The Parties did reach a settlement following
16 mediation, the material terms of which have been memorialized within the Class Action and
17 PAGA Settlement Agreement and Class Notice (*Id.*, Exh. 1 [the "Settlement"].) Plaintiff's Counsel
18 represent they are not aware of any related case that would be extinguished or adversely affected by
19 approval of this Settlement. (*Id.* at ¶ 10.)

20 Plaintiff's Counsel have conducted a thorough investigation into the facts of this case. (*Id.*
21 at ¶ 17.) Based on the foregoing document and information exchange and on their own independent
22 investigation and evaluation, Plaintiff's Counsel are of the opinion that the proposed Settlement
23 is fair, reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and
24 circumstances, the risk of significant delay, trial risk, appellate risk, and the defenses that
25 Defendant may assert both to certification and on the merits, the Settlement is in the best interests
26 of the Class. (*Id.*; *see also id.* at ¶ ¶ 19–32.) **Indeed, the \$591,000.00 gross settlement figure**
27 **represents roughly 97.6% of the realistic recovery estimated to be \$605,553.29.** (*Id.* at ¶ 26.)
28 This is an outstanding result for the Class and Aggrieved Employees, as it not only maximizes

1 their financial recovery but also ensures timely and guaranteed relief. (*Id.*) Moreover, the
2 Settlement is also fair to all other affected parties, including the LWDA, as it addresses statutory
3 claims the LWDA could have pursued, thereby upholding public enforcement objectives and
4 enhancing compliance with labor laws. (*Id.* at ¶ ¶ 33 -36.) Additionally, it offers a practical
5 resolution for the Defendant, mitigating litigation risks and costs while acknowledging Plaintiff’s
6 counsel’s contributions, thus promoting effective representation and ensuring that the interests of
7 all stakeholders are considered. (*Id.*)

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

9 Under the Settlement, Defendant will pay \$591,000.00 and no more as the Gross Settlement
10 Amount to resolve this action. (Settlement, ¶ ¶ 1.21, 3.1.) The key terms include:

11 1. Class Member or Settlement Class Member, and Class Period: The proposed Class for
12 purposes of the Settlement contains approximately 251 members and is defined as: all current and
13 former non-exempt, hourly paid employees who worked for Defendant Los Angeles Regional Food
14 Bank in California during the Class Period. (*Id.* at ¶ 1.5; Moon Decl., ¶ 31.) The “Class Period” means
15 the period from July 27, 2019 to September 1, 2024. (Settlement, ¶ 1.12.) The Settlement Class will
16 exclude any Class Member who opts out of the Class portion of the Settlement by sending the
17 Administrator a valid and timely Request for Exclusion. (*Id.* at ¶ 1.28.)

18 2. Aggrieved Employees and PAGA Period: The Settlement Class contains an estimated
19 201 Aggrieved Employees, defined as means all current and former non-exempt, hourly paid
20 employees who worked for Defendant Los Angeles Regional Food Bank, a California corporation,
21 in California during the PAGA Period. (*Id.* at ¶ 1.4; Moon Decl., ¶ 31.) The “PAGA Period” is July
22 27, 2022 through September 1, 2024. (Settlement, ¶ 1.30.) Aggrieved Employees collectively worked
23 an estimated 6,446 PAGA Pay Periods. (*Id.* at ¶ 4.1; Moon Decl., ¶ 31.)

24 3. Gross Settlement Amount: This amount is \$591,000.00, which is the total amount
25 Defendant agrees to pay under the Settlement except as provided in Paragraphs 3.1 and 8 of the
26 Settlement. (Settlement, ¶ 1.21.) The Gross Settlement Amount will be used to pay Individual Class
27 Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment,
28

1 Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the
2 Administration Expenses Payment. (*Id.*) No portion will revert to Defendant. (*Id.* at ¶ 3.1.)

3 4. Escalator Clause: In the event the actual count of Workweeks during the Class Period
4 increases by more than 10% from original estimate of 29,566 Workweeks, (i.e., by more than 2,956.6
5 Workweeks, or in other words, if the Workweeks worked between July 27, 2019, to September 1,
6 2024, exceeds 32,522.6), Defendant shall increase the Gross Settlement Amount on a pro-rata basis
7 equal to the percentage increase in the number of Workweeks worked by Participating Class
8 Members above 10%. (*Id.* at ¶ 8.)

9 5. Net Settlement Amount: means the Gross Settlement Amount, less the following
10 payments in the amounts approved by the Court: (i) PAGA Penalties in the amount of \$30,000.00,
11 which will be distributed as 75% (\$22,500.00) to the LWDA (“LWDA PAGA Payment”) and 25%
12 (\$7,500.00) to Aggrieved Employees (“Individual PAGA Payments”); (ii) the Class Representative
13 Service Payment of up to \$10,000.00 to Plaintiff; (iii) the Class Counsel Fees Payment of not more
14 than thirty-three and one third percent (33.33%) of the Gross Settlement Amount (currently estimated
15 to be \$196,980.30); (iv) the Class Counsel Litigation Expenses Payment of up to \$25,000.00 (currently
16 estimated to be \$17,516.66), and (v) the Administration Expenses Payment not to exceed \$7,000. (*Id.*
17 at ¶¶ 1.28, 3.2.1.) In the event the amounts finally approved are less, the remainder will revert to
18 Participating Class Members. (*Id.* at ¶¶ 1.27, 3.1; Moon Decl., ¶ 13.)

19 6. Administrator and Costs: The Parties jointly appointed Simpluris Legal Administration
20 Services (“Simpluris”) as the neutral entity to administer this Settlement. (*Id.* at ¶ 1.2.) At this time,
21 the Administrator estimates costs will not exceed \$7,000.00. (Moon Decl., ¶ 15, Exh 5.)

22 7. Individual Class Payment: A Participating Class Member’s pro rata share of the Net
23 Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
24 (Settlement, ¶ 1.22.) “Workweek” means any week during which a Class Member worked for
25 Defendant for at least one day, during the Class Period. (*Id.* at ¶ 1.44.)

26 8. Individual PAGA Payment: An Aggrieved Employee’s pro rata share of 25% of the PAGA
27 Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.

(*Id.* at ¶ 1.23.) “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant or at least one day during the PAGA Period. (*Id.* at ¶ 1.29.)

9. Tax Treatment: Individual Settlement Payments will be treated 20% as unpaid wages, which is subject to applicable tax withholdings and deductions, 80% to interest and penalties; and, Individual PAGA Payments will be treated 100% as penalties. (*Id.* at ¶¶ 3.2.4.1, 3.2.5.1.)

10. Released Parties: Defendant, including each of its past, present, and future parent companies, subsidiaries, affiliated and related companies, successors, employees, and predecessors, as well as their respective past, present, and future owners, officers, directors, shareholders, employees, managers, agents, principals, representatives, administrators, accountants, auditors, consultants, fiduciaries, insurers and reinsurers, company-sponsored employee benefit plans, and attorneys, both individually and in their official capacities, as well as all persons acting by, through, under, or in concert with any of these persons or entities. (*Id.* at ¶ 1.40.)

11. Release by Participating Class Members: Upon remittance of the Gross Settlement Amount by Defendant to the Settlement Administrator and entry of Judgment by the Court, the Settlement Class Members, other than those who timely submit valid requests for exclusion, will fully and finally release and discharge Defendant and all Released Parties from any and all claims, causes of action, demands, damages, or liabilities arising at any time during the Class Period that were pled or which could have been pled based on the factual allegations contained in Plaintiff’s First Amended Complaint, or any subsequent amended complaint including but not limited to claims for: (i) failure to pay minimum wages in violation of Labor Code §§ 204, 1194, 1194.2 and 1197; (ii) failure to pay overtime compensation in violation of Labor Code §§ 1194 and 1198; (iii) failure to provide meal periods in violation of Labor Code §§ 226.7 and 512 or failure to provide adequate compensation in lieu of meal periods; (iv) failure to authorize and permit rest breaks in violation of Labor Code §§ 226.7; (v) failure to pay the correct rate of pay for paid sick leave; (vi) failure to indemnify necessary business expenses in violation of Labor Code §§ 2802; (vii) failure to timely pay final wages at termination in violation of Labor Code §§ 201-203; (viii) failure to provide accurate itemized wage statements in violation of Labor Code §

226; (ix) unfair business practices in violation of Cal. Business & Professions Code §§ 17200 (collectively, the “Released Claims”). The Released Claims extend to all theories of relief, whether under California law, federal law, state law or common law (including, without limitation, as alleged violations of the California Labor Code, the IWC Wage Orders, applicable regulations, or California’s Business and Professions Code §§ 17200). The Released Claims include all types of relief available for the Released Claims, including without limitation any claims for damages, restitution, losses, penalties, fines, liens, attorneys’ fees, costs, expenses, debts, interest, injunctive relief, declaratory relief, or liquidated damages. This Settlement shall constitute, and may be pleaded as, a complete and total defense to any such Released Claims if raised in the future. (*Id.* at ¶ 5.2.)

12. Release by Class Members Who Are Aggrieved Employees: Upon remittance of the Gross Settlement Amount by Defendant to the Settlement Administrator and entry of Judgment by the Court, PAGA Class Members, whether they timely submit valid requests for exclusion from the Settlement Class or not, will fully and finally release and discharge Defendant and all Released Parties from any and all claims, causes of action, demands, damages, or liabilities arising at any time during the PAGA Period that were pled or which could have been pled based on the factual allegations contained in Plaintiff’s First Amended Complaint (collectively, the “PAGA Released Claims”). (*Id.* at ¶ 5.3.)

Uncashed Settlement Checks: Settlement checks to Class Members will be valid for 180 days after issuance, and any checks that remain uncashed will be voided and transmitted to Legal Aid at Work (“Cy Pres Recipient”) thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure § 384(b). (*Id.* at ¶¶ 4.4.1, 4.4.3.)

13. Class Notice: means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL. (*Id.* at ¶ 1.11; Moon Decl., ¶ 9, Exh. A to Exh. 1.) The proposed Class Notice sets forth, in plain terms, a statement of case, the terms of the Settlement, the approximate amounts of attorneys’ fees, costs, PAGA penalties, and service award being sought, an explanation of how the individual payments are calculated, and the Final Approval Hearing information. (*Id.* at ¶ 1.11, Exh. A; Moon Decl., ¶ 9.) The proposed

method for providing notice of the proposed Settlement and distribution thereof is the one most likely to give actual notice to the greatest number, if not all, of the Class Members. (Settlement, ¶ 7.4.2.) Class Members will be notified of the proposed Settlement by first-class mail in English and Spanish. (*Id.*) The Administrator will undertake its best efforts to ensure the Class Notice is provided to the current address of Class Members, including conducting a national change of address search and re-mailing the notice to updated addresses. (*Id.* at ¶¶ 7.4.2, 7.4.3.)

14. Procedure for Disputing Workweeks and/or Pay Periods, Opting Out, or Objecting: The Class Notice explains the procedure under which a Class Member can dispute the number of individual Workweeks and/or Pay Periods credited to them. Additionally, the Notice explains how Class Members may, should they choose to do so, opt-out or otherwise object to the Settlement. Class Members need not file or serve, or state in any written objection, a notice of intention to appear at the Final Approval Hearing. (*Id.* at ¶¶ 7.5-7, Exh. A.)

15. Funding: Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant’s share of payroll taxes by transmitting the funds to the Administrator no later than 30 days after the Effective Date. (*Id.* at ¶ 4.3.)

III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL

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

1 In evaluating a settlement, the trial court considers the following factors: (1) the strength of
2 plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk
3 of maintaining class action status through trial; (4) the settlement amount offered; (5) the extent of
4 discovery completed and the stage of the proceedings; (6) counsel’s experience and views; (7) the
5 presence of a governmental participant; and (8) the class members’ reaction to the proposed
6 settlement. (*Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116, 128.) To approve a class
7 action settlement, “the court must satisfy itself that the class settlement is within the ‘ballpark’ of
8 reasonableness.” (*Id.* at p. 133.) The record need not contain an explicit statement of the maximum
9 theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App.4th 399,
10 408–09 [holding that *Kullar* does not require “an explicit statement of the maximum amount the
11 plaintiff class could recover if it prevailed on all its claims,” but instead, only an “understanding
12 of the amount that is in controversy and the realistic range of outcomes of the litigation”].)

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

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

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

19 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
20 evidence to the contrary is offered. (Newberg, *Newberg on Class Actions* (3rd ed. 1992) § 11.51.)
21 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super. Ct.*
22 (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The fact that
23 the plaintiff might have received more if the case had been fully litigated is no reason not to approve
24 the settlement.”].) Thus, there is a presumption here that negotiations were conducted in good faith.

25 The proposed Settlement at issue was reached following extensive negotiations and
26 discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses
27 with an experienced and neutral class action mediator. (Moon Decl., ¶ 9.) Plaintiff’s Counsel
28 performed an extensive investigation into the facts, claims, and defenses at issue, including by

1 reviewing the governing law, analyzing’ Defendant’s written policies and sample time/pay data, and
2 retaining a statistics expert to prepare a damage analysis regarding Defendant’s potential liability.
3 (*Id.* at ¶¶ 7–8.) Prior to mediation, the Parties participated in informal discovery. (*Id.* at ¶ 7.) Once
4 an agreement to mediate was made, Plaintiff obtained, through further informal discovery, documents
5 and data necessary and helpful to evaluate the claims and defenses at issue, including a statistically
6 significant sample of time and pay records for the putative Class and Aggrieved Employees as well
7 as demographic data. (*Id.*) At the time of mediation, there were an estimated: 251 Class Members
8 who worked an aggregate of 29,115 Workweeks and 134,792 shifts at an average hourly rate of
9 \$22.12. (*Id.* at ¶ 18.) Additionally, there were an estimated: 76 former employees falling within the
10 three-year statute of limitations (“SOL”) period for waiting time penalties, 201 employees falling
11 within the one-year SOL period for inaccurate wage statement penalties and PAGA penalties, and
12 6,446 PAGA Pay Periods. (*Id.*) Based on Plaintiff’s Counsel’s review of the time, payroll, and
13 additional data provided by Defendant, Plaintiff’s expert’s analysis of the sample records provided
14 by Defendant, and information from Plaintiff, Plaintiff’s Counsel evaluated the estimated maximum
15 and risk-adjusted exposure that Defendant faced. (*Id.*)

16 2. **The Settlement Is Fair Considering the Parties’ Respective Positions**

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

25 Here, based on the information provided at mediation, Defendant’s **realistic exposure**
26 (adjusted for risks at certification and proof on the merits) for the alleged claims, including penalties,
27 is estimated to be **\$605,553.29**. (Moon Decl., ¶¶ 18, 26.) This amount was calculated as follows:
28 **\$23,171** (50% discount) for the unpaid rounding claim; **\$35,764.64** (90% discount) for the unpaid

1 off-the-clock claim; **\$8,778.20** (80% discount) for the regular rate claim; **\$79,304.62** (80% discount)
2 for the meal period claim; **\$289,077.43** (90% discount) for the rest period claim; **\$41,542.40** (90%
3 discount) for the waiting time penalties claim; **\$63,455.00** (90% discount) for the inaccurate wage
4 statement claim; and **\$64,460.00** (90% discount) for the PAGA penalties claim. (*Id.* at ¶¶ 18–25.)
5 The foregoing discounts were based on the evidence presented and arguments made during arm’s-
6 length settlement negotiations. (*Id.* at ¶¶ 9, 18–25.) **The \$591,000.00 gross settlement figure**
7 **represents roughly 97.6% of the total realistic recovery.** (*Id.* at ¶ 26.) This is an excellent result
8 for the Class, particularly because, under the Settlement, Class Members and Aggrieved Employees
9 will receive timely and guaranteed relief, avoiding the risk of not being able to recover anything. (*Id.*)

10 With regards to the PAGA claims, Plaintiff and his Counsel believe the Settlement is a fair
11 and reasonable resolution that satisfies PAGA’s dual statutory purposes of deterrence and
12 punishment, on the one hand, and providing PAGA Members with genuine and meaningful relief, on
13 the other. (Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendant has had to hire legal
14 counsel, engage in informal discovery, and participate in mediation. (Moon Decl., ¶ 27.) Defendant is
15 also now having to pay civil penalties to the LWDA under the Settlement, assuming final settlement
16 approval is granted. (Settlement, ¶ 3.2.5.) Not including its own attorneys’ fees and costs as well as
17 the employer’s share of payroll taxes, Defendant will pay \$591,000.00 to resolve this matter—of which
18 \$30,000.00 is allocated toward the PAGA claims and will be distributed, in compliance with Labor
19 Code section 2699 as 75% (\$22,500.00) to the LWDA and 25% (\$7,500.00) to Aggrieved
20 Employees—and the release obtained under the Settlement does not preclude Aggrieved Employees
21 from seeking remedies based on any underlying individual claims they may have against Defendant or
22 the other Released Parties. (Lab. Code § 2699(i).) Further, the \$30,000.00 total amount allocated for
23 the released PAGA Claims represents roughly **46.5%** of the total realistic recovery estimated for the
24 alleged PAGA claims (\$64,4600.00) at the time of mediation. (Moon Decl., ¶ 27.) Moreover,
25 Plaintiff’s Counsel are of the opinion that because the issues here are fairly contested, there is a
26 possibility of the Court not awarding the PAGA penalties even if Plaintiff prevailed on the merits
27 due to the largely discretionary nature of awarding PAGA penalties. (*Id.*) Indeed, under Labor Code
28 section 2699, subdivision (e)(2), a Court can reduce PAGA penalties “if, based on the facts and

1 circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary
2 and oppressive, or confiscatory.” (Lab. Code § 2699(e)(2).) In other words, were this matter to go to
3 trial, any award granted would be at the discretion of the Court and subject to a substantial reduction.
4 (Moon Decl., ¶ 27.)

5 While Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to
6 each cause of action. (*Id.* at ¶ 28.) Plaintiff also recognizes that proving the amounts of wages owed
7 to each Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id.*) The
8 Settlement obviates the significant risk that this Court may deny certification of all or some of
9 Plaintiff’s claims. (*Id.* at ¶ 29.) Furthermore, even if Plaintiff was able to pursue his claims on a class-
10 wide basis and obtain certification of all or some of the claims, continued litigation would be
11 expensive, involving a trial and possible appeals, and would substantially delay and reduce any
12 recovery by the Class. (*Id.*) This Settlement avoids the risks, burdens, and the accompanying expense
13 of further litigation. (*Id.* at ¶ 30.) Although the Parties have engaged in a significant amount of
14 investigation, informal discovery, and class-wide data analysis, they have not conducted formal
15 discovery, including depositions. (*Id.*) Moreover, preparation for class certification and a trial would
16 remain for the Parties as well as the prospect of appeals in the wake of a disputed class certification
17 ruling for Plaintiff and/or any summary judgment ruling. (*Id.*) As a result, the Parties would incur
18 considerably more attorneys’ fees and costs through trial. (*Id.*)

19 The Net Settlement Amount available for settlement payments is estimated to be *no less than*
20 **\$322,019.70** for an estimated Class of **251 individuals**.¹ (Settlement, ¶ 3.1.) As a result, it is estimated
21 each Participating Class Member will receive an average gross benefit of approximately **\$1,282.95**.
22 (Settlement, ¶ 3.2.4.1; Moon Decl., ¶ 31.) Considering Class Members’ average hourly rate is \$22.12,
23 the average benefit is roughly **58 hours of work** per Class Member. (*Id.*) Additionally, it is currently
24

25
26 ¹ The Net Settlement Amount is at least \$591,000.00 less the following: \$10,000.00 for the
27 Class Representative Service Payment, \$7,000.00 for Administration Expenses Payment, \$30,000.00
28 for the PAGA Penalties to the LWDA and Aggrieved Employees, \$196,980.30 for the Class Counsel
Fees Payment, and up to \$25,000.00 for the Class Counsel Litigation Expenses Payment. (Settlement,
¶¶ 3.2.1-3.2.5.)

1 estimated there are **201 Aggrieved Employees** who will receive an estimated average of
2 approximately **\$37.31** from their \$7,500.00 total share of the PAGA Penalties. (*Id.*) The actual
3 amounts to Participating Class Members and PAGA Members will vary based on each individual's
4 duration of work during the Class Period or PAGA Period, respectively; thus, those who worked
5 longer will receive a gross benefit greater than the average estimated amount. (*Id.*) At this time, the
6 high and low range of payments to Class Members is unknown. (*Id.*) These ranges will be calculated
7 by the Administrator following preliminary approval and receipt and processing of the Class List and
8 will be provided to the Court in a motion for final approval. (*Id.*)

9 The proposed Settlement of \$591,000.00 therefore represents a substantial recovery when
10 compared to Plaintiff's reasonably forecasted recovery. (*Id.* at ¶ 32.) When considering the risks of
11 litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to
12 establish liability, and the probability of appeal, it is clear the Settlement amount of \$591,000.00 is
13 within the "ballpark" of reasonableness, and that preliminary settlement approval is both appropriate
14 and fair to Plaintiff, Class Members, and Aggrieved Employees. (*Id.*)

15 **3. The Settlement is Fair to All Other Affected Parties**

16 Not limited to Plaintiff, Class Members, and Aggrieved Employees, the Gross Settlement
17 Amount is fair to all other affected parties, including the Labor and Workforce Development
18 Agency ("LWDA"), Defendant, and Plaintiff's counsel, as it adheres to Labor Code § 2699(1)(2)
19 and the fairness standards applied to class action settlements. (*Williams v. Superior Court*, (2017)
20 3 Cal.5th 531, 549.) It addresses statutory claims the LWDA could have pursued, thus upholding
21 public enforcement objectives and enhancing labor law compliance in California. (Moon Decl., ¶
22 34.) For the Defendant, the \$591,000 settlement represents a reasonable 97.6% of their realistic
23 exposure, providing a practical resolution that mitigates litigation risks without overburdening
24 the company. (*Id.* at ¶ 35.) Additionally, the settlement compensates Plaintiff's counsel fairly for
25 their expertise, reinforcing effective representation for Class Members and promoting
26 accountability in wage and hour claims. (*Id.* at ¶ 36.)

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

3 The Settlement negotiations were conducted by highly capable counsel with considerable
4 experience and demonstrated competence with litigating wage and hour class actions. (*Id.* at ¶¶ 40–
5 59.) Plaintiff's Counsel have a strong record of vigorous and effective advocacy for their clients and
6 are experienced in handling complex wage and hour class action litigation. (*Id.*) The experience of
7 Plaintiff's Counsel was helpful in assessing the reasonableness of the Settlement at issue here, and
8 from this experience they concluded that this litigation could not have been settled on better terms
9 than provided under the Settlement. (*Id.* at ¶ 58.) Although Plaintiff and his counsel were prepared
10 to try the claims alleged in the litigation, they support the proposed Settlement as being in the best
11 interest of the Class based on objective evidence that has been considered and weighed against the
12 risks, expenses, and time consumption to both sides of continued litigation. (*Id.* at ¶¶ 9, 17, 28–30.)

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

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

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

20 Subject to the Court's approval, the Settlement provides a fee application of up to thirty-three
21 and one third percent (33.33%) for Class Counsel's attorneys' fees, plus reimbursement for out-of-
22 pocket litigation costs not to exceed \$25,000.00. (Settlement, ¶ 3.2.2.) These amounts are disclosed
23 to Class Members in the proposed Class Notice and are reasonable. (*Id.* at Exh. A.)

24 **1. Counsel Will Request a Fees Award Based On the "Percentage/Common**
25 **Fund" Method**

26 California courts have long awarded attorneys' fees as a percentage of the benefit created by
27 counsel in pursuing claims on behalf of a class. (*See, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25.)
28 The California Supreme Court has held, "when a number of persons are entitled in common to a

1 specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the
2 creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out
3 of the fund.” (*Id.* at p. 34.)

4 Plaintiff’s Counsel will seek an award of attorneys’ fees on the “percentage of
5 recovery/common fund” theory. (Moon Decl., ¶ 60.) The purpose of this approach is to “spread
6 litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear
7 the entire burden alone.” (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn*
8 *v. State of California* (1975) 15 Cal.3d 162, the California Supreme Court stated, “one who expends
9 attorneys’ fees in winning a suit which creates a fund from which others derive benefits, may require
10 those passive beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in
11 *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court
12 recognized that the common fund doctrine has been applied “consistently in California when an
13 action brought by one party creates a fund in which other persons[] are entitled to share.” (*Id.* at pp.
14 110–11 [pincite omitted].)

15 The California Supreme Court recently affirmed in *Laffitte v. Robert Half International Inc.*
16 (2016) 1 Cal.5th 480 that, “when class action litigation establishes a monetary fund for the benefit of
17 the class members, and the trial court in its equitable powers awards class counsel a fee out of that
18 fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage
19 of the fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the
20 percentage method—including relative ease of calculation, alignment of incentives between counsel
21 and the class, a better approximation of market conditions in a contingency case, and the
22 encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging
23 the litigation[]—convince us the percentage method is a valuable tool that should not be denied our
24 trial courts.” (*Id.* [internal citations omitted].) This line of legal authority supports a request for
25 attorneys’ fees based on the percentage of recovery/common fund method.

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

27 According to a leading treatise on class actions: “No general rule can be articulated on what
28 is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a

1 reasonable fee award from a common fund in order to assure that the fees do not consume a
2 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
3 are not unprecedented.” (Newberg, Newberg on Class Actions (3rd ed. 1992) § 14.03.) Attorneys’
4 fees that are fifty percent of the fund are typically considered the upper limit, with thirty to forty
5 percent commonly awarded in cases where the settlement is relatively small. (*Id.*; see also *Van*
6 *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 297 [stating that most cases
7 where 30–50% was awarded involved “smaller” settlement funds of under \$10 million].)

8 Here, Plaintiff’s Counsel will request fees equal to one-third of the Gross Settlement Amount,
9 which is in line with the prevailing guidelines established in California case law and academic
10 literature and is consistent with awards in California. (*Compare* Settlement, ¶ 3.2.2, with *Chavez v.*
11 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 [“Empirical studies show that, regardless whether
12 the percentage method or the lodestar method is used, fee awards in class actions average around
13 one-third of the recovery.”].) Accordingly, Plaintiff requests the Court preliminarily approve his
14 counsel’s ability to request attorneys’ fees as negotiated by the Parties.

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

16 Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable
17 fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(g)(1),
18 2802(d).) Under these sections, Plaintiff would be permitted to recover his actual attorneys’ fees,
19 even if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) This
20 Settlement is beneficial in that it limits the risk of continued expenses and consumption of time,
21 energy, and resources facing Defendant while at the same time rewarding Plaintiff’s Counsel for their
22 decision to assume risk by taking on this matter. (See Moon Decl., ¶ 63.) In fact, prosecution of this
23 action involved significant financial risk for Plaintiff’s Counsel. (*Id.* at ¶¶ 61–66.) His Counsel
24 undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.* at ¶ 61.) Once
25 Plaintiff’s Counsel undertook this litigation on behalf of the Class, they committed to pursue it to its
26 conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.*)

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

2 As demonstrated by their past experience in pursuing class actions on behalf of consumers
3 and employees, Plaintiff’s Counsel possess considerable expertise in litigating class actions. (*Id.* at ¶
4 ¶ 56–59.) Plaintiff’s Counsel have been involved as lead counsel or co-counsel in numerous class
5 actions that resulted in millions in recovery. (*Id.* at ¶ 57.) Plaintiff’s Counsel’s experience in wage
6 and hour litigation was integral in evaluating the strengths and weaknesses of the case against
7 Defendant and the reasonableness of the settlement. (*Id.* at ¶ 58.) Practice in the narrow field of wage
8 and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law
9 (state and federal) as well as the procedural law of class action litigation. (*Id.*) Based on these and
10 other factors, Plaintiff’s Counsel have frequently received fee awards of this percentage from the
11 gross recovery for the class. (*Id.* at ¶ ¶ 43, 47–48.) Because it is reasonable to compensate counsel
12 commensurate with their skill, reputation, and experience, the requested fee award is supported here.

13 **D. The Service Award to Plaintiff Is Reasonable**

14 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
15 compensate them for the expense or risk they have incurred in conferring a benefit on other members
16 of the class.” (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Courts routinely grant approval of class
17 action settlement agreements containing enhancements for the class representatives, which are
18 necessary to provide incentive to represent the class and are appropriate given the benefit the class
19 representatives help to bring about for the class. (*See Rodriguez v. W. Publ’g Corp.* (9th Cir. 2009)
20 563 F.3d 948, 958–59.) Service awards are particularly important to plaintiffs in wage and hour cases
21 because they promote the important public policies underlying the wage and hour laws. This strong
22 policy is codified in California Labor Code section 90.5, which provides, “[i]t is the policy of this
23 state to vigorously enforce minimum labor standards in order to ensure employees are not required
24 or permitted to work under substandard unlawful conditions . . .” (Lab. Code § 90.5.) Nonetheless,
25 the California Supreme Court has noted that “retaliation against employees for asserting statutory
26 rights under the Labor Code is widespread,” despite anti-retaliation statutes designed to protect
27 employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61.) In this context, class
28

1 representatives should be rewarded for assuming the risk of retaliation for the sake of class members.
2 (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

3 Under the Settlement here, subject to the Court’s approval, Defendant agrees to pay a Class
4 Representative Service Payment of \$10,000.00 to Plaintiff, which will be in addition to his amount
5 as a Class Member. (Settlement, ¶ 3.2.1.) This award is in recognition of Plaintiff’s time and effort,
6 as well as his exposure to substantial risk, in bringing and presenting the action, and for his general
7 release of claims, both known and unknown, and waiver of section 1542 rights. (*Id.* at ¶ ¶ 1.14 ,
8 3.2.1.) Plaintiff has devoted a great deal of time and work assisting counsel in the case and
9 communicated with counsel frequently for litigation and to prepare for the mediation session. (Moon
10 Decl., ¶¶ 37–39; Declaration of Plaintiff Juan Marchell King in Support of Motion for Preliminary
11 Approval of Class Action and PAGA Settlement [“Plaintiff Decl.”], ¶ ¶ 13–19.) The requested award
12 is fair and reasonable, particularly considering the substantial benefits Plaintiff generated for all Class
13 Members. (Moon Decl., ¶¶ 26–32.)

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

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

26 **A. Legal Standard**

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

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

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

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

1. The Class Is Ascertainable and Numerous

When determining whether a class is ascertainable, California courts focus on the following three factors: “(1) the class definition, (2) the size of the class and (3) the means of identifying class members.” (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, Plaintiff maintains there is an easily ascertainable Class, defined by objective and precise criteria. (Settlement, ¶¶ 1.5, 1.12.) The proposed Class that Plaintiff seeks to represent is ascertainable because (1) the Class definition is sufficiently precise, (2) the Class consists of about 251 individuals, and (3) Class Members can be readily identified by looking at Defendant’s records. (*Id.*; Moon Decl., ¶ 31.) Because Class Members

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

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

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

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

1 for the same alleged injuries. (Plaintiff Decl., ¶¶ 4, 8–9.) Considering Class Members would need to
2 prove the same issues of law and fact to prevail, and their legal remedies are identical, it would be
3 preferable to resolve all claims through a settlement than to force each Class Member to litigate their
4 own individual claims. Thus, the Court should grant conditional class certification for settlement
5 purposes because common questions of law and fact predominate over any individual questions
6 within the Class.

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

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

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

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

23 Here, all requirements are met. Plaintiff retained counsel with extensive experience in
24 prosecuting complex class actions, including similar class actions that previously settled. (Moon
25 Decl., ¶¶ 36–51.) With their experience, Plaintiff’s Counsel unquestionably are “qualified,
26 experienced and generally able to conduct the proposed litigation.” (*Miller, supra*, 148 Cal.App.3d
27 at p. 874.) In addition, Plaintiff and his Counsel have no conflicts with one another, other Class
28 Members, the proposed Settlement Administrator. (Plaintiff Decl., ¶¶ 9–10; Moon Decl., ¶ 59.)

Further, Plaintiff has, with counsel, litigated this case and diligently reviewed the settlement terms, showing dedication, and with full knowledge and acceptance of duties, he has committed to his role as Class Representative. (Plaintiff Decl., ¶¶ 11–19.)

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

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

V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND

A. The Proposed Notice Plan Satisfies Due Process

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

B. The Notice Is Accurate and Informative

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

1 of the Settlement and the right to be excluded. (*Id.* at ¶ 7.5, Exh. A.) And if there are Class Members
2 who wish to object to the proposed Settlement, they are informed of their right to submit written
3 objections and/or be heard at the Final Approval Hearing. (*Id.* at ¶ 7.7, Exh. A.)

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

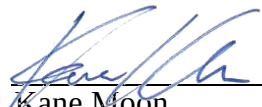
13 **VI. CONCLUSION**

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

17 Respectfully submitted,

18 Dated: October 7, 2024

MOON LAW GROUP, PC

19
20 By:  _____

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