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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

FREDERICK DENTON, DONTAY
HENDERSON, individually, and on behalf of
other members of the general public similarly
situated and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act;

Plaintiffs,

vs.

SLAKEY BROTHERS, INC., a California
corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 23CV010792
(Related Case No. 23CV002315)

CLASS AND REPRESENTATIVE ACTION

*Assigned for All Purposes to:
Judge Jill Talley, Department 23*

**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 Brian J. St. John, the
Declaration of Plaintiff Denton, the
Declaration of Plaintiff Henderson, and
[Proposed] Preliminary Approval Order]*

PRELIMINARY APPROVAL HEARING:

Date: April 25, 2025
Time: 9:00 a.m.
Dept.: 23

Complaint Filed: October 30, 2023
Trial Date: Not Set

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10 Attorneys for Plaintiff Dontay Henderson
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1 **TO THE COURT, AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on April 25, 2025 at 9:00 a.m. in Department 23 of the Gordon
3 D. Schaber Sacramento County Courthouse located at 720 9th Street, Sacramento, California 95814,
4 pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 *et seq.*,
5 plaintiffs Dontay Henderson (“Plaintiff Henderson”) and Frederick Denton (“Plaintiff Denton”)
6 (together, “Plaintiffs”) will move the Court for an order granting preliminary approval of the
7 proposed class action settlement between Plaintiffs and defendant Slakey Brothers, Inc.
8 (“Defendant”)

9 Plaintiffs will further move the Court for an order:

- 10 1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement;
- 11 2. Certifying a Class, for settlement purposes only;
- 12 3. Approving the Class Notice and plan for its distribution;
- 13 4. Appointing Plaintiffs as the class representatives, for settlement purposes only;
- 14 5. Appointing Moon Law Group, PC and Lawyers *for* Justice, PC as Class Counsel, for
15 settlement purposes only;
- 16 6. Appointing ILYM Group, Inc. as the Settlement Administrator; and
- 17 7. Scheduling a Final Approval Hearing no earlier than 160 days from the date of
18 preliminary approval.

19 The motion will be based upon this notice, the attached memorandum of points and
20 authorities, the supporting Declarations of Kane Moon (and exhibits attached thereto), Brian J. St.
21 John, Plaintiff Henderson, and Plaintiff Denton, and the records and files in this action, and any other
22 further evidence or argument that the Court may properly receive at or before the hearing.

23 Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this
24 matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative ruling may
25 be downloaded off the court’s website. If the party does not have online access, they may call the
26 dedicated phone number for the department as referenced in the local telephone directory between
27 the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative
28 ruling. If you do not call the court and the opposing party by 4:00 p.m. the court day before the

1 hearing, no hearing will be held.

2 Respectfully submitted,

3 Dated: April 2, 2025

MOON LAW GROUP, PC

4 By: _____

5 Kane Moon
6 Lilit Ter-Astvatsatryan

7 *Attorneys for Plaintiff Henderson*

8 **LAWYERS for JUSTICE, PC**

9 Dated: April 2, 2025

10 By: _____

11 Arby Aiwarzian
12 Joanna Ghosh
13 Brian J. St. John
14 Maria Halwadjian

15 *Attorneys for Plaintiff Denton*

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1 (*Id.*) Plaintiff Henderson worked for Defendant, first as an hourly-paid, non-exempt Warehouse
2 worker, and then as an Inside Sales Representative, from approximately July 2021, to June 2024.
3 (Declaration of Plaintiff Dontay Henderson in Support of Approval of Class Action and PAGA
4 Settlement [“Henderson Decl.”], ¶ 2.) Plaintiff Denton worked for Defendant from approximately
5 March 2018, to approximately May 2022 as an hourly-paid Inventory Controller. (Declaration of
6 Plaintiff Frederick Denton in Support of Approval of Class Action and PAGA Settlement [“Denton
7 Decl.”], ¶ XX.) During their employment, Plaintiffs Henderson and Denton were employed as
8 non-exempt employees. (Henderson Decl., ¶ 6; Denton Decl., ¶ XX.) Plaintiffs contend they and
9 their coworkers were subjected to the same unlawful labor practices, including failure to pay
10 wages for all hours worked. (Henderson Decl., ¶ 5; Denton Decl., ¶ XX.)

11 Plaintiffs’ claim for unpaid wages stems from Defendant’s alleged failure to compensate
12 employees for off-the-clock work and Defendant’s alleged failure to incorporate all non-
13 discretionary bonuses into its regular rate of pay when calculating the correct overtime rate of pay,
14 meal break premium rate of pay, and sick day rate of pay. (Moon Decl., ¶ 4.) Moreover, Plaintiffs
15 bring claims against Defendant for meal and rest period violations, unreimbursed business
16 expenses, Defendant’s failure to pay timely wages during employment and failure to keep requisite
17 payroll records, and derivative claims for waiting time penalties, wage statement violations, unfair
18 business practices, and civil penalties under PAGA. (*Id.*)

19 On May 25, 2023, David Morton (“Former Plaintiff Morton”) filed a Class Action
20 Complaint against Defendant in the Superior Court of the State of California, County of
21 Sacramento. (*Id.* at ¶ 5.) Former Plaintiff Morton filed a First Amended Complaint (“FAC”) on
22 September 18, 2023, adding a claim under the California Private Attorneys General Act, California
23 Labor Code §§ 2698 *et seq.* (“PAGA”). (*Id.*) On October 2, 2023, Former Plaintiff Morton
24 dismissed the individual and class claims, leaving only Former Plaintiff Morton’s PAGA claim
25 remaining. (*Id.*) On November 18, 2024, by stipulation of the Parties, Former Plaintiff Morton
26 filed a Second Amended Complaint (“SAC”) adding Plaintiff Henderson as a named plaintiff.
27 (*Id.*) Counsel for Former Plaintiff Morton and Plaintiff Henderson dismissed Former Plaintiff
28 Morton’s claims against Defendant on December 16, 2024, due to Former Plaintiff Morton’s death

1 during the pendency of the action. (*Id.*) Therefore, Plaintiff Henderson became the only named
2 plaintiff in the action entitled *David Lyn Morton, Dontay Henderson v. Slakey Brothers, Inc.*, Case
3 No. 23CV002315 (the “Henderson Action”). (*Id.*) The Henderson Action only involves a claim
4 under PAGA. (*Id.*) In addition to a PAGA claim related to all current and former non-exempt
5 employees in California during the PAGA Period, the PAGA claim is also based on the contention
6 that Defendant’s current and former employees in the roles of Technical Product Specialist and
7 Specialized Inside Sales Representative were misclassified as exempt employees for at least part
8 of the PAGA Period. (*Id.*)

9 On October 30, 2023, Plaintiff Denton filed a class and representative action complaint
10 against Defendant in the Superior Court of the State of California, County of Sacramento, thereby
11 commencing the action *Frederick Denton v. Slakey Brothers, Inc.*, Case No. 23CV010792 (the
12 “Denton Action”). (*Id.* at ¶ 6.) The Denton Action includes both class claims and a PAGA claim.
13 (*Id.*)

14 On April 2, 2025, Plaintiff Denton filed a First Amended Class Action Complaint for
15 damages and enforcement under the PAGA (the “Operative Complaint”) in the Denton Action,
16 which added Plaintiff Henderson as a named plaintiff, as well as all claims and factual allegations
17 asserted in the Henderson Action. (*Id.* at ¶ 7; Exhibit 2.) Plaintiff Denton also filed a Joint
18 Stipulation regarding the filing of the Operative Complaint with the Court. (*Id.*; Exhibit 3.)
19 Plaintiff Henderson has agreed to promptly dismiss the Henderson Action so the Operative
20 Complaint in the Denton Action becomes the operative pleading and upon which the release of
21 claims in this global settlement, as described in the Parties’ Settlement Agreement, are based. (*Id.*)
22 The Operative Complaint includes causes of action alleging: (1) failure to pay overtime wages;
23 (2) unpaid meal period premiums; (3) unpaid rest period premiums; (4) failure to pay minimum
24 wage; (5) waiting time penalties; (6) wages not timely paid during employment; (7) wage
25 statement violations; (8) failure to keep requisite payroll records; (9) failure to reimburse
26 employees’ business expenses; (10) unfair competition; and (11) civil penalty liability under
27 PAGA. (*Id.*)

28 Defendant ardently opposes the merits of this case and denies Plaintiffs’ factual allegations.

Page 3

PLAINTIFFS’ NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

Commented [SA1]: Counsel, can you please file the Stip and FAC today, and attach them as exhibits to this motion?

1 (*Id.* at ¶ 8.) Defendant asserts it complied with all of its compensation obligations, including
2 compensating Class Members for all off-the-clock work and paying overtime and double time,
3 and therefore, Plaintiffs and other Class Members were paid all wages owed. (*Id.*) Defendant also
4 argues that Defendant did not fail to incorporate any bonuses into Plaintiffs' and Class Members'
5 regular rate for purposes of overtime, meal and rest break premiums, and sick pay as such bonuses
6 were discretionary. (*Id.*) Defendant maintains compliance with all its meal and rest period
7 obligations and provides non-exempt employees with compliant meal and rest periods. (*Id.*)
8 Defendant asserts it complied with all of its reimbursement obligations, and therefore, Plaintiffs
9 and other Class Members were compensated for any and all necessary business expenses incurred.
10 (*Id.*) Defendant also maintains that it kept requisite payroll records, provided accurate wage
11 statements, and paid employees all compensation owed during employment and at termination.
12 (*Id.*) Defendant also maintains that it has properly classified its exempt employees. To the extent
13 Class Members received wage statements that were allegedly inaccurate, Defendant asserts Class
14 Members suffered no actual damage or harm as a result. (*Id.*; *see, e.g., Angeles v. U.S. Airways,*
15 *Inc.* (N.D. Cal. Feb. 19, 2013, No. C 12-05860 CRB) 2013 WL 622032, at *10 ["A plaintiff must
16 adequately plead an injury arising from an employer's failure to provide full and accurate wage
17 statements, and the omission of the required information alone is not sufficient."].) With respect
18 to Plaintiffs' claim for waiting time penalties, Defendant alleges its good-faith belief that it paid
19 all wages precludes the imposition of waiting time penalties since Plaintiffs cannot prove
20 Defendant's alleged failure to pay all final wages at the time of separation was "willful." (Moon
21 Decl., ¶ 8; *see, e.g., Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012, No. ED CV 11-298 GHK
22 (DTBx)) 2012 WL 9506073, *5.) For these reasons, among others, Defendant denies all of
23 Plaintiffs' claims and allegations, and further claims it did not engage in any unfair business
24 practices and denies liability under PAGA. (Moon Decl., ¶ 8.) Defendant also maintains Plaintiffs'
25 claims are improper for class treatment, in part due to the individualized and testimony-intensive
26 nature of the wage claims that could bar class certification or significantly reduce Defendant's
27 overall liability. (*Id.*)
28

1 **B. Discovery and Investigation**

2 The Parties agreed to mediate the Action, and participated in private mediation with Steven
3 Rottman, Esq., an experienced class and PAGA action mediator. (*Id.* at ¶ 9.) In preparation for
4 mediation, the Parties agreed to a protocol for an informal exchange of documents and information
5 before mediation. (*Id.*) Prior to mediation, Plaintiffs obtained from Defendant, through informal
6 discovery, documents and data that were necessary and helpful to evaluate the claims asserted in this
7 action. (*Id.*) Defendant produced all time and pay records for the putative Class from April 27, 2020
8 through July 21, 2024, a list with putative Class Members' anonymized hire and termination
9 information, sample meal break waivers and arbitration agreements, Plaintiffs' personnel files and
10 wage statements, and policies relevant to Plaintiffs' claims that were in effect during the relevant
11 time period. (*Id.*) Defendant also provided information regarding the estimated number of current
12 and formerly employed Class Members, PAGA Group Members, Class Workweeks, and PAGA Pay
13 Periods. (*Id.*)

14 In preparation for mediation, Plaintiffs' counsel reviewed and analyzed all the information
15 Defendant provided, including the pay and time records and documents regarding Defendant's wage
16 and hour policies. (*Id.* at ¶ 10.) Plaintiffs' counsel retained a statistics expert to analyze the sample
17 records and prepare a damage analysis prior to the mediation. (*Id.*) In conjunction with their extensive
18 factual investigation, Plaintiffs' counsel also investigated the applicable law regarding the claims and
19 defenses asserted in the litigation. (*Id.*) Accordingly, Plaintiffs' counsel was able to evaluate the
20 probability of class certification, success on the merits, and Defendant's maximum and realistic
21 monetary exposure for all claims. (*Id.*) Thus, Plaintiffs' and their counsel's familiarity with the facts
22 of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating
23 the Settlement. (*Id.*)

24 **C. Settlement Negotiations**

25 9. On November 19, 2024, the Parties participated in a full day of private mediation
26 before experienced wage and hour mediator Steven Rottman, Esq. (*Id.* at ¶ 11.) The negotiations
27 were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*)
28 The Parties went into the mediation willing to explore the potential for a settlement of the dispute,

1 but each side was also prepared to litigate their position through trial and appeal if a settlement
2 had not been reached. (*Id.*) The Parties engaged in extensive negotiations and discussions
3 regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses; however,
4 a settlement was not reached at mediation. (*Id.*) Following mediation, Mr. Rottman issued a
5 mediator's proposal, which the Parties accepted on November 26, 2024. (*Id.*) The material terms
6 of the settlement are set out in the Settlement (*Id.* at ¶ 11, Exh. 1.)

7 Plaintiffs' counsel have conducted a thorough investigation into the facts of this case. (*Id.*
8 at ¶ 29.) Based on the foregoing document and information exchange and on their own independent
9 investigation and evaluation, Plaintiffs' counsel are of the opinion that the proposed Settlement is
10 fair, reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and circumstances,
11 the risk of significant delay, trial risk, appellate risk, and the defenses that Defendant may assert
12 both to certification and on the merits, the Settlement is in the best interests of the Class. (*Id.*; *see*
13 *also Id.* at ¶¶ 29–42.) **Indeed, the \$1,600,000.00 gross settlement figure represents roughly**
14 **73% of the realistic recovery estimated to be \$2,186,173.94.** (*Id.* at ¶ 37.)

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

16 Under the Settlement, Defendant will pay a non-reversionary, all-inclusive amount of
17 \$1,600,000.00 to resolve this action. (Settlement, ¶ 2.20.) The key terms include:

18 1. Non-reversionary Gross Settlement Amount: This amount is \$1,600,000.00, excluding
19 Defendant's share of employer payroll taxes. (Settlement, ¶¶ 2.20, 3.1.)

20 2. Net Settlement Amount: The Net Settlement Sum means the Gross Settlement Amount
21 less the following: (a) the Fee and Expense Award, (b) the PAGA Settlement Amount, (c) the Service
22 Payments, and (d) the Settlement Administration Costs. (*Id.* at ¶ 2.23.) The Net Settlement Sum is
23 estimated to be \$891,716.67 as discussed *infra* at paragraph 41. (Moon Decl., ¶ 42.)

24 3. Tax Treatment: Pursuant to the Settlement, Class Settlement Awards shall be allocated
25 20% to wages subject to Withholdings and Taxes and 80% to interest, penalties, and non-wage
26 damages. (Settlement, ¶ 4.6.1.) The entirety of each PAGA Settlement Award shall be allocated as
27 penalties. (*Id.*)
28

1 4. No Claim Form: Class Members will not need to submit any claim form as a condition
2 of receiving a Class Settlement Award. (*See id.* at ¶ 4.4.3.) Each Class Member who does not submit
3 a Request for Exclusion on or prior to the deadline set by the Court is a Settlement Class Member
4 and shall be bound by the Class Settlement. (*Id.*) Each Class Member who does not opt-out will be
5 entitled to a pro rata share of the Net Settlement Sum based on the total number of Class Workweeks
6 worked by the Class Member in proportion to the total number of Class Workweeks worked by all
7 Class Members. (*Id.* at ¶ 4.5.2.) Likewise, each PAGA Group Member will be entitled to a pro rata
8 share of the PAGA Fund directly proportional to the number of PAGA Pay Periods worked. (*Id.* at ¶
9 4.5.4.)

10 5. Class Members or Settlement Class, and Class Period: “Class Members” or the “Class”
11 is defined as: (a) all current and former non-exempt employees who worked for Defendant in
12 California as a non-exempt employee at any time during the Class Period; and (b) all current and
13 former employees who were employed, classified, and paid as exempt employees in the job title
14 Technical Product Specialist (“TPS”) or Specialized Inside Sales Representative (“Specialized ISR”)
15 by Defendant in California during the Class Period. (*Id.* at ¶ 2.6.) “Class Period” means from April
16 27, 2020 to and including the date the Court grants preliminary approval of the Class Settlement and
17 PAGA Settlement. (*Id.* at ¶ 2.8.) Defendant estimated that the Class included approximately 898
18 Class Members as of November 19, 2024. (*Id.*) Class Members will be paid a pro-rata share based on
19 the number of Class Workweeks worked by the Class Member during the Class Period. (*Id.* at ¶
20 4.5.2.) “Class Workweeks” means Workweeks worked by each Class Member as an hourly-paid,
21 non-exempt employee in California during the Class Period and excludes any Workweeks during
22 which a Class Member was on a leave of absence or otherwise absent from work. (*Id.* at ¶ 2.11.)
23 “Class Workweeks” also means Workweeks worked by Class Members as an exempt TPS or
24 Specialized ISR during the Class Period, excluding any Workweeks during which a Class Member
25 was on a leave of absence or otherwise absent from work. (*Id.*) “Workweek” means any week during
26 which a Class Member worked for Defendant in California for at least one day, during the Class
27 Period. (*Id.* at ¶ 2.51.) Defendant estimated that Class Members collectively worked 68,705
28

1 Workweeks as of November 19, 2024. (*Id.* at ¶ 3.1.) Class certification prerequisites have been met
2 as discussed *infra* at Section IV.

3 6. PAGA Group and PAGA Period: “PAGA Group Members” or “PAGA Group” means:
4 (a) all current and former non-exempt employees who worked for Defendant in California as a non-
5 exempt employee at any time during the PAGA Period; and (b) all current and former employees
6 who were employed, classified, and paid as exempt employees in the job titles TPS or Specialized
7 ISR by Defendant in California during the PAGA Period. (*Id.* at ¶ 2.27.) The “PAGA Period” is from
8 May 20, 2022 through and including the date the Court grants Preliminary Approval of the Class
9 Settlement and PAGA Settlement. (*Id.* at ¶ 2.29.) Defendant estimated that the Class contained an
10 estimated 641 PAGA Group Members as of November 19, 2024 (Moon Decl., ¶ 23.)

11 7. Released Parties: “Released Parties” means Defendant Slakey Brothers, Inc., and all
12 affiliated predecessor and successor entities, and each such entity’s respective present and former
13 subsidiaries, affiliates, parents, agents, executive-, management-, and supervisor-level employees,
14 members, investors, partners, owners, directors, officers, attorneys, trustees, insurers,
15 representatives, predecessors, successors and assigns. (*Id.* at ¶ 2.41.)

16 8. Settlement Class Release: Upon the Effective Date, and Defendant has fully funded the
17 Gross Settlement Amount and all employer payroll taxes, all Settlement Class Members shall be
18 deemed to have, and by operation of the Final Approval Order and Judgment shall have, expressly
19 released, waived, and relinquished the Released Class Claims. (*Id.* at ¶ 5.4.) “Released Class
20 Claims” means all claims, debts, liabilities, demands, obligations, damages, and actions or causes
21 of action of any kind, for the duration of the Class Period, that are alleged in the Operative
22 Complaint, or that could have been alleged against any of the Released Parties based on the facts
23 asserted in the Denton Action complaint, Henderson Action SAC, or the Operative Complaint,
24 including (without limitation) claims for any and all alleged or actual failures to timely, fully,
25 properly, or completely pay any minimum wages, regular wages, overtime or double time premium
26 wages, meal or rest period premiums, or other alleged wages owed, including failure to pay
27 overtime or double time wages at the regular rate of pay (including but not limited to Labor Code
28 sections 510, 1198, 1194, 1194.2, 1197, 1197.1); any and all alleged or actual failures to comply

1 with meal or rest period requirements (including but not limited to Labor Code sections 226.7 and
2 512); any and all alleged or actual failures to provide proper, accurate, timely, adequately
3 descriptive, or complete wage statements or pay stubs (including but not limited to Labor Code
4 section 226); any and all alleged or actual failures to pay all wages or compensation owed to fired,
5 resigning, or otherwise terminated employees (including but not limited to Labor Code sections
6 201, 202, and 203); any and all alleged or actual failure to fully or properly reimburse or indemnify
7 employment-related expenses (including but not limited to Labor Code Sections 2800 and 2802);
8 any and all alleged or actual unfair business practices; any and all alleged or actual failure to
9 properly classify employees as exempt from overtime and other requirements under California
10 and federal law; any and all alleged or actual failure to keep accurate payroll records (including
11 but not limited to Labor Code section 1174); any and all alleged or actual failures to pay employees
12 in compliance with Labor Code section 204; any and all claims that employees were misclassified
13 as exempt; and any and all alleged or actual failures to pay any interest or penalties owed as a result
14 of any and all of the foregoing (including but not limited to Labor Code sections 210, 226.3, and
15 558). (*Id.* at ¶ 2.39.)

16 9. PAGA Group Release: Upon the Effective Date, and Defendant has fully funded the
17 Gross Settlement Amount and all employer payroll taxes, all PAGA Group Members and the State of
18 California shall be deemed to have, and by operation of the Final Approval Order and Judgment shall
19 have, expressed released, waived, and relinquished the Released PAGA Claims. (*Id.* at ¶ 5.5.)
20 “Released PAGA Claims” means all claims for civil penalties under PAGA for the duration of the
21 PAGA Period that were alleged in the Denton Action complaint filed on October 30, 2023, in the
22 Henderson Action SAC filed on November 18, 2024, in the Operative Complaint, or any of the PAGA
23 Notices, or that could have been alleged based on the facts asserted in the Denton Action complaint
24 filed on October 30, 2023, in the Henderson Action SAC filed on November 18, 2024, in the
25 Operative Complaint, or in any of the PAGA Notices, against any of the Released Parties, including
26 (without limitation) for any and all alleged or actual failures to timely, fully, properly, or completely
27 pay any minimum wages, regular wages, overtime or double time premium wages, meal or rest period
28 premiums, or other alleged wages owed, including failure to pay overtime or double time wages at

1 the regular rate of pay (including but not limited to Labor Code sections 510, 1198, 1194, 1194.2,
2 1197, 1197.1); any and all alleged or actual failures to comply with meal or rest period requirements
3 (including but not limited to Labor Code sections 226.7 and 512); any and all alleged or actual failures
4 to provide proper, accurate, timely, adequately descriptive, or complete wage statements or pay stubs
5 (including but not limited to Labor Code section 226); any and all alleged or actual failures to pay all
6 wages or compensation owed to fired, resigning, or otherwise terminated employees (including but
7 not limited to Labor Code sections 201, 202, and 203); any and all alleged or actual failure to fully
8 or properly reimburse or indemnify employment-related expenses (including but not limited to Labor
9 Code Sections 2800 and 2802); any and all alleged or actual unfair business practices; any and all
10 alleged or actual failure to properly classify employees as exempt from overtime and other
11 requirements under California and federal law; any and all alleged or actual failure to keep accurate
12 payroll records (including but not limited to Labor Code section 1174); any and all alleged or actual
13 failures to pay employees in compliance with Labor Code section 204; any and all claims that
14 employees were misclassified as exempt; and any and all alleged or actual failures to pay any interest
15 or penalties owed as a result of any and all of the foregoing (including but not limited to Labor Code
16 sections 210, 226.3, and 558). (*Id.* at ¶ 2.40.)

17 10. PAGA Settlement Amount: The Settlement provides for a PAGA Settlement Amount of
18 \$100,000.00. (*Id.* at ¶ 2.31.) Pursuant to PAGA, 75% or \$75,000.00 is allocated to the LWDA and
19 25% of \$25,000.00 is allocated to PAGA Group Members (the “PAGA Fund”). (*Id.*) On May 20,
20 2023, Former Plaintiff Morton gave written notice to the California Labor and Workforce
21 Development Agency (the “LWDA”) of the alleged Labor Code violations, with certified mail service
22 on Defendant. (Moon Decl., ¶ 20, Exh. 2A.) On October 16, 2024, Former Plaintiff Morton and
23 Plaintiff Henderson provided an amended notice to the LWDA and Defendant to add Plaintiff
24 Henderson as a named plaintiff in the Morton Action. (*Id.* at ¶ 20, Exh. 2B.) On August 24, 2023,
25 Plaintiff Denton provided notice to the LWDA and Defendant. (*Id.* at ¶ 20, Exh. 2C.) The Parties
26 paid the required filing fee. (*Id.* at ¶ 20.) To date, the LWDA has not indicated its intent to investigate
27 the alleged violations or intervene in this Action. (*Id.*) In compliance with Labor Code section 2699,
28

subdivision (l)(2), Plaintiffs' counsel submitted to the LWDA a notice of settlement and a copy of the proposed Settlement. (*Id.* at ¶ 21.)

11. Funding: Within 15 business days from the Effective Date, Defendant will remit the Gross Settlement Amount, with its share of withholding and taxes arising from the Class Settlement Awards, to the Settlement Administrator. (Settlement, ¶ 4.9.1.)

12. Individual Payments: As of November 19, 2024, there were an estimated 898 Class Members who worked approximately 68,705 Class Workweeks, with an estimated 641 PAGA Group Members who worked approximately 37,982 PAGA Pay Periods. (Moon Decl., ¶ 23.) Class Members are estimated to receive an average of \$993.00, with an average Class Workweek value of \$12.98. PAGA Group Members are estimated to receive an average of \$38.40, with an average PAGA Pay Period value of \$0.66. (*Id.* at ¶ 42)

13. Uncashed Settlement Checks: The Settlement does not provide for a *cy pres* distribution. (Moon Decl., ¶ 24.) Uncashed, unclaimed, or abandoned checks shall be transmitted by the Settlement Administrator the California Controller's Office Unclaimed Property Division, with an identification of the person to whom the funds belong, in accordance with Code of Civil Procedure section 384, to be held in trust for those persons who did not timely cash their settlement checks. (*Id.* at ¶ 4.9.3.)

14. Settlement Administrator and Costs: "Settlement Administrator" means ILYM Group, Inc., or such other administrator as may be approved by the Court which shall be responsible for administering the Settlement pursuant to the terms of the Agreement, the Class Notice, the Preliminary Approval Order, and the Final Approval Order and Judgment (*Id.* at ¶ 2.46.) It is estimated that the Settlement Administration Costs will not exceed \$9,950.00. (*Id.* at ¶ 2.45.)

15. Class Notice: 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 Settlement Amount, and service awards being sought, an explanation of how the individual payments are calculated, and the Final Approval Hearing information. (Settlement, Exh. A.) The Settlement Administrator will mail the Notice to Class Members in English and Spanish by First Class United States Mail using data provided by Defendant and after running a check of the data from Defendant

1 against those on file with the U.S. Postal Service’s National Change of Address List (*Id.* at ¶ 4.2.2.)
2 Defendant will provide the Class Information List to the Settlement Administrator within 30 calendar
3 days from the date of preliminary approval, and the Settlement Administrator will mail the Notices
4 within 10 business days following receipt of the Class Information List. (*Id.* at ¶ 4.2.3.)

5 16. Procedure for Disputing Workweeks and Pay Periods, Opting Out, or Objecting: The
6 Notice explains the procedure under which a Class Member can dispute the number of individual
7 Class Workweeks and/or PAGA Pay Periods credited to them. (*Id.* at Exh. A.) Additionally, the Notice
8 explains how Class Members may, should they choose to do so, opt-out or otherwise object to the
9 Settlement. Class Members need not file or serve, or state in any written objection, a notice of
10 intention to appear at the Final Approval Hearing. (*Id.* at Exh. A.) Class Members will have 60 days
11 after the Settlement Administrator initially mails the Notice to submit a Request for Exclusion,
12 Workweek or Pay Period dispute, or written objections to the Settlement. (*Id.* at ¶ 2.2.4.) In the case
13 of a re-mailed Notice, Class Members will have an additional 15 calendar days from re-mailing. (*Id.*)
14 Requests for Exclusion, Workweek or Pay Period disputes, and objections will be mailed to and
15 handled by the Settlement Administrator. (*See id.* at ¶ 4.3.)

16 17. Attorneys’ Fees and Expenses: The Settlement provides attorneys’ fees up to one-third
17 of the Gross Settlement Amount (currently estimated to be \$533,333.33) plus reimbursement for
18 actual litigation costs not to exceed \$50,000.00, payable from the Gross Settlement Amount, subject
19 to Court Approval. (*Id.* at ¶ 3.5.) At this time, Plaintiffs’ counsel have incurred \$39,702.54 in total
20 litigation costs, with \$25,078.93 incurred by Moon Law Group, PC (“MLG”) and \$14,623.61 incurred
21 by Lawyers *for* Justice, PC (“LFJ”). (Moon Decl., ¶ 26., Exh. 5; Declaration of Brian J. St. John in
22 Support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement [“John
23 Decl.”], ¶ XX.). Class Counsel expects to incur approximately \$1,000.00 or less in additional costs
24 from preliminary approval to final approval for filing and service fees. (Moon Decl., ¶ 26.) Pursuant
25 to a joint prosecution and fee-sharing agreement between the two law firms representing Plaintiffs,
26 and as consented to in a signed writing by Plaintiffs (the “JPA”), the firms will split the award for
27 attorneys’ fees with 40% to MLG and 60% to LFJ, regardless of the amount awarded or whether the
28 award is based on a common fund or lodestar analysis. (*Id.* at ¶ 68.) As to costs, the JPA states that

1 the two firms will be reimbursed in full to the extent possible for their respective costs actually
2 incurred. (*Id.*)

3 18. Service Payments: The Settlement includes Service Payments of up to \$7,500.00 to each
4 Plaintiff (for a total of \$15,000.00) payable from the Gross Settlement Amount, subject to the Court's
5 approval, in addition to the amount they are eligible to receive as Class Members and PAGA Group
6 Members. (Settlement, ¶ 3.7.) This award is compensation for Plaintiffs' efforts as class and PAGA
7 representatives in furtherance of litigating and resolving the Action, and in consideration of
8 Plaintiffs' general release of claims. (*Id.*)

9 19. No Impact on Pending Litigation: Plaintiffs' counsel represent they are not aware of any
10 related case that would be adversely affected by approval of this Settlement. (Moon Decl., ¶ 28.)

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

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

23 In evaluating a settlement, the trial court considers the following factors: (1) the strength of
24 Plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk
25 of maintaining class action status through trial; (4) the settlement amount offered; (5) the extent of
26 discovery completed and the stage of the proceedings; (6) counsel's experience and views; (7) the
27 presence of a governmental participant; and (8) the class members' reaction to the proposed
28 settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) To approve a class

1 action settlement, “the court must satisfy itself that the class settlement is within the ‘ballpark’ of
2 reasonableness.” (*Id.* at p. 133.) The record need not contain an explicit statement of the maximum
3 theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App.4th 399,
4 408–09 [holding that *Kullar* does not require “an explicit statement of the maximum amount the
5 plaintiff class could recover if it prevailed on all its claims,” but instead, only an “understanding
6 of the amount that is in controversy and the realistic range of outcomes of the litigation”].)

7 As discussed below, Class Counsel has provided materials and information exceeding the
8 threshold required for this Court to conclude the Settlement is fair, reasonable, and adequate.

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

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

13 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
14 evidence to the contrary is offered. (Newberg, *Newberg on Class Actions* (3rd ed. 1992) § 11.51.)
15 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super. Ct.*
16 (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The fact that
17 the plaintiff might have received more if the case had been fully litigated is no reason not to approve
18 the settlement.”].) Thus, there is a presumption here that negotiations were conducted in good faith.

19 The proposed Settlement at issue was reached following extensive negotiations and
20 discussions regarding the strengths and weaknesses of Plaintiffs’ claims and Defendant’s defenses
21 with an experienced and neutral class action mediator. (Moon Decl., ¶ 11.) Class Counsel performed
22 an extensive investigation into the facts, claims, and defenses at issue, including by reviewing the
23 governing law, analyzing Defendant’s written policies and sampling time/pay data, and retaining a
24 statistics expert to prepare a damage analysis regarding Defendant’s potential liability. (*Id.* at ¶¶ 9–
25 10.) Once an agreement to mediate was made, Plaintiffs obtained, through informal discovery,
26 documents and data necessary and helpful to evaluate the claims and defenses at issue, including time
27 and pay records for the putative Class from April 27, 2020 through July 21, 2024, a list with putative
28 Class Members’ anonymized hire and termination information, Plaintiffs’ personnel files and wage

1 statements, sample meal break waivers and arbitration agreements, and policies relevant to Plaintiffs’
2 claims. (*Id.* at ¶ 9.) At the time of mediation on November 19, 2024, there were an estimated: 898
3 Class Members who worked an aggregate of 68,705 Class Workweeks, at an average hourly rate of
4 \$24.66. (*Id.* at ¶ 30.) Additionally, there were an estimated: 421 former employees falling within the
5 three-year statute of limitations (“SOL”) period for waiting time penalties, 651 employees falling
6 within the one-year SOL period for inaccurate wage statement penalties and PAGA penalties, and
7 37,982 PAGA Pay Periods. (*Id.*) Based on Plaintiffs’ counsel’s review of the time, payroll, and
8 additional data provided by Defendant, on Plaintiffs’ expert’s analysis of the sampling records
9 provided by Defendant, and on information from Plaintiffs, Plaintiffs’ counsel evaluated the
10 estimated maximum and risk-adjusted exposure that Defendant faced. (*Id.*)

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

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

20 Here, based on the information provided at mediation, Defendant’s **realistic exposure**
21 (adjusted for risks at certification and proof on the merits) for the alleged claims, including penalties,
22 is estimated to be **\$2,193,168.94**. (Moon Decl., ¶¶ 30, 37.) This amount was calculated as follows:
23 **\$191,094.04** (85% discount) for the off-the-clock work claim; **\$29,484.80** (50% discount) for the
24 regular rate claim; **\$365,695.47** (50% discount) for the meal period claim; **\$1,116,535.75** (85%
25 discount) for the rest period claim; **\$38,646.56** (85% discount) for the unreimbursed business expense
26 claim; **\$124,582.32** (95% discount) for the waiting time penalties claim; **\$130,200.00** (95% discount)
27 for the wage statement claim; **\$25.00** (95% discount) for the record-keeping claim; and **\$189,910.00**
28 (95% discount) for the PAGA penalties claim. (*Id.* at ¶¶ 30-36.) The foregoing discounts were based

1 on the evidence presented and arguments made during arm’s-length settlement negotiations. (*Id.* at
2 ¶¶ 9, 30–36.) **The \$1,600,000.00 gross settlement figure represents roughly 73% of the total**
3 **realistic recovery.** (*Id.* at ¶ 37.) This is an excellent result for the Class, particularly because, under
4 the Settlement, Class Members will receive timely and guaranteed relief, avoiding the risk of not
5 being able to recover anything. (*Id.*)

6 With regard to the PAGA claims, Plaintiffs and their counsel believe the Settlement is a fair
7 and reasonable resolution that satisfies PAGA’s dual statutory purposes of deterrence and
8 punishment, on the one hand, and providing PAGA Members with genuine and meaningful relief, on
9 the other. (Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendant has had to hire legal
10 counsel, engage in informal discovery, and participate in mediation. (Moon Decl., ¶ 38.) Defendant is
11 also now having to pay civil penalties to the LWDA under the Settlement, assuming final settlement
12 approval is granted. (Settlement, ¶ 3.6.) Not including its own attorneys’ fees and costs as well as the
13 employer’s share of payroll taxes, Defendant will pay no less than \$1,600,000.00 to resolve this
14 matter—of which \$100,000.00 is allocated toward the PAGA claims and will be distributed, in
15 compliance with Labor Code section 2699 as 75% (\$75,000.00) to the LWDA and 25% (\$25,000.00)
16 to PAGA Group Members. The PAGA Settlement Amount represents approximately 53% of the
17 realistic damage estimate for PAGA civil penalties (\$100,000.00 / \$189,910.00). (Moon Decl., ¶ 38.)
18 Moreover, Class Counsel is of the opinion that because the issues here are fairly contested, there is a
19 possibility of the Court not awarding the PAGA penalties even if Plaintiffs prevailed on the merits
20 due to the largely discretionary nature of awarding PAGA penalties. (*Id.*) Indeed, under Labor Code
21 section 2699, subdivision (e)(2), a Court can reduce PAGA penalties “if, based on the facts and
22 circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary
23 and oppressive, or confiscatory.” (Lab. Code § 2699(e)(2).) In other words, were this matter to go to
24 trial, any award granted would be at the discretion of the Court and subject to a substantial reduction.
25 (Moon Decl., ¶ 38.)

26 While Plaintiffs are confident in the merits of their claims, a legitimate controversy exists as
27 to each cause of action. (*Id.* at ¶ 39.) Plaintiffs also recognize that proving the amounts of wages
28 owed to each Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id.*)

1 The Settlement obviates the significant risk that this Court may deny certification of all or some of
2 Plaintiffs' claims. (*Id.* at ¶ 37.) Furthermore, even if Plaintiffs were able to pursue their claims on a
3 class-wide basis and obtain certification of all or some of the claims, continued litigation would be
4 expensive, involving a trial and possible appeals, and would substantially delay and reduce any
5 recovery by the Class. (*Id.*) This Settlement avoids the risks, burdens, and the accompanying expense
6 of further litigation. (*Id.* at ¶ 41.) Although the Parties have engaged in a significant amount of
7 investigation, informal discovery, and class-wide data analysis, they have not conducted extensive
8 formal discovery, including depositions. (*Id.*) Moreover, preparation for class certification and a trial
9 would remain for the Parties as well as the prospect of appeals in the wake of a disputed class
10 certification ruling for Plaintiff and/or any summary judgment ruling. (*Id.*) As a result, the Parties
11 would incur considerably more attorneys' fees and costs through trial. (*Id.*)

12 30. The Net Settlement Sum available for settlement payments is estimated to be *no less*
13 *than* **\$891,716.67** for an estimated Class of **898 individuals**, calculated as of November 19, 2024.¹
14 (*Id.* at ¶ 42.) As a result, it is estimated each Settlement Class Member will receive an average gross
15 benefit of approximately **\$993.00** prior to tax withholdings on the wage portion of payments. (*Id.*)
16 Considering Class Members' average hourly rate is \$24.66, the average benefit is roughly **40.3 hours**
17 **of work**. (*Id.*) This amounts to **an estimated Class Workweek value of roughly \$12.98** for the
18 currently estimated **68,705 Workweeks**. (*Id.*) Additionally, it is currently estimated, there are **651**
19 **PAGA Group Members** who will receive an estimated average of approximately **\$38.40** from their
20 \$25,000.00 total share of the PAGA Settlement Award, which results in an estimated per **PAGA Pay**
21 **Period value of \$0.66** based on the currently estimated **37,982 PAGA Pay Periods**. (*Id.*) The actual
22 amounts to Settlement Class Members and PAGA Group Members will vary based on each
23 individual's duration of work during the Class Period or PAGA Period, respectively; thus, those who
24

25
26
27 ¹ The Net Settlement Sum is at least \$1,600,000.00 less the following: \$7,500.00 for the
28 Service Payments to each Plaintiff (\$15,000.00), \$9,950.00 for Settlement Administration Costs,
\$100,000.00 for the PAGA Settlement Award to the LWDA and PAGA Group Members,
\$533,333.33 for attorneys' fees to Class Counsel, and up to \$50,000.00 for reimbursement of
litigation costs to Class Counsel. (Settlement, ¶ 2.23,)

1 worked longer will receive a gross benefit greater than the average estimated amount. (*Id.*) At this
2 time, the high and low range of payments to Class Members is unknown. (*Id.*) These ranges will be
3 calculated by the Settlement Administrator following preliminary approval and receipt and
4 processing of the Class Information List and will be provided to the Court in a motion for final
5 approval. (*Id.*)

6 The proposed Settlement of \$1,600,000.00 therefore represents a substantial recovery when
7 compared to Plaintiffs' reasonably forecasted recovery. (*Id.* at ¶ 43.) When considering the risks of
8 litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to
9 establish liability, and the probability of appeal, it is clear the Settlement amount of \$1,600,000.00 is
10 within the "ballpark" of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*)

11 **3. Plaintiffs' Counsel Have Extensive Experience in Class and PAGA**
12 **Action Litigation, Which Was Integral to Negotiating the Settlement**

13 The Settlement negotiations were conducted by highly capable counsel with considerable
14 experience and demonstrated competence with litigating wage and hour class actions. (*Id.* at ¶¶ 48–
15 65; *John Decl.*, ¶ XX.) Class Counsel have a strong record of vigorous and effective advocacy for
16 their clients and are experienced in handling complex wage and hour class action litigation. (Moon
17 Decl., ¶¶ 48–65; *John Decl.*, ¶ XX.) The experience of Class Counsel was helpful in assessing the
18 reasonableness of the Settlement at issue here, and from this experience they concluded that this
19 litigation could not have been settled on better terms than provided under the Settlement. (Moon
20 Decl., ¶ 66.) Although Plaintiffs and their counsel were prepared to try the claims alleged in the
21 litigation, they support the proposed Settlement as being in the best interest of the Class based on
22 objective evidence that has been considered and weighed against the risks, expenses, and time
23 consumption to both sides of continued litigation. (Moon Decl., ¶¶ 11, 29, 39–40.)

24 **B. The Proposed Notice of Class and PAGA Settlement Should Be Approved**

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

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

4 Subject to the Court's approval, the Settlement provides a fee application of up to one third
5 for Class Counsel's attorneys' fees, plus reimbursement for out-of-pocket litigation costs not to
6 exceed \$50,000.00. (Settlement, ¶ 3.5.) These amounts are disclosed to Class Members in the
7 proposed Notice and are reasonable. (*Id.* at Exh. A.)

8 **1. Counsel Will Request a Fees Award Based On the "Common Fund" Method**

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

15 Plaintiffs' counsel will seek an award of attorneys' fees on the "percentage of
16 recovery/common fund" theory. (Moon Decl., ¶ 68.) The purpose of this approach is to "spread
17 litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear
18 the entire burden alone." (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn*
19 *v. State of California* (1975) 15 Cal.3d 162, the California Supreme Court stated, "one who expends
20 attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require
21 those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in
22 *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court
23 recognized that the common fund doctrine has been applied "consistently in California when an
24 action brought by one party creates a fund in which other persons[] are entitled to share." (*Id.* at pp.
25 110–11 [pincite omitted].)

26 The California Supreme Court recently affirmed in *Laffitte v. Robert Half International Inc.*
27 (2016) 1 Cal.5th 480 that, "when class action litigation establishes a monetary fund for the benefit of
28 the class members, and the trial court in its equitable powers awards class counsel a fee out of that

1 fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage
2 of the fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the
3 percentage method—including relative ease of calculation, alignment of incentives between counsel
4 and the class, a better approximation of market conditions in a contingency case, and the
5 encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging
6 the litigation[]—convince us the percentage method is a valuable tool that should not be denied our
7 trial courts.” (*Id.* [internal citations omitted].) This line of legal authority supports a request for
8 attorneys’ fees based on the percentage of recovery/common fund method.

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

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

19 Here, Class Counsel will request fees equal to one-third of the Gross Settlement Amount,
20 which is in line with the prevailing guidelines established in California case law and academic
21 literature and is consistent with awards in California. (*Compare Settlement*, ¶ 3.5, *with Chavez v.*
22 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 [“Empirical studies show that, regardless whether
23 the percentage method or the lodestar method is used, fee awards in class actions average around
24 one-third of the recovery.”].) Accordingly, Plaintiffs request the Court preliminarily approve their
25 counsel’s ability to request attorneys’ fees as negotiated by the Parties.

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

27 Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable
28 fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(g)(1),

1 2802(d).) Under these sections, Plaintiffs would be permitted to recover their actual attorneys' fees,
2 even if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) This
3 Settlement is beneficial in that it limits the risk of continued expenses and consumption of time,
4 energy, and resources facing Defendant while at the same time rewarding Class Counsel for their
5 decision to assume risk by taking on this matter. (*See* Moon Decl., ¶¶ 40-41.) In fact, prosecution of
6 this action involved significant financial risk for Class Counsel. (*Id.* at ¶¶ 70-72.) Their Counsel
7 undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.* at ¶¶ 70-73.)
8 Once Plaintiffs' counsel undertook this litigation on behalf of the Class, they committed to pursue it
9 to its conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶ 71.)

10 **4. Counsel's Experience, Reputation, and Ability Support the Requested Fees**

11 As demonstrated by their past experience in pursuing class actions on behalf of consumers
12 and employees, Class Counsel possesses considerable expertise in litigating class actions. (*Id.* at ¶¶
13 48-65; John Decl., ¶ XX.) Class Counsel has been involved as lead counsel or co-counsel in
14 numerous class actions that resulted in millions in recovery. (Moon Decl., ¶¶ 48-65; John Decl., ¶
15 XX.) Class Counsel's experience in wage and hour litigation was integral in evaluating the strengths
16 and weaknesses of the case against Defendant and the reasonableness of the settlement. (Moon Decl.,
17 ¶ 66.) Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning
18 the rapidly evolving substantive law (state and federal) as well as the procedural law of class action
19 litigation. (*Id.* at ¶ 64.) Based on these and other factors, Class Counsel have frequently received fee
20 awards of this percentage from the gross recovery for the class. (*See id.* at ¶¶ 52, 58; John Decl., ¶
21 XX.) Because it is reasonable to compensate counsel commensurate with their skill, reputation, and
22 experience, the requested fee award is supported here.

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

24 Named plaintiffs in class action lawsuits "are eligible for reasonable incentive payments to
25 compensate them for the expense or risk they have incurred in conferring a benefit on other members
26 of the class." (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Courts routinely grant approval of class
27 action settlement agreements containing enhancements for the class representatives, which are
28 necessary to provide incentive to represent the class and are appropriate given the benefit the class

1 representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir. 2009)
2 563 F.3d 948, 958–59.) Service awards are particularly important to plaintiffs in wage and hour cases
3 because they promote the important public policies underlying the wage and hour laws. This strong
4 policy is codified in California Labor Code section 90.5, which provides, “[i]t is the policy of this
5 state to vigorously enforce minimum labor standards in order to ensure employees are not required
6 or permitted to work under substandard unlawful conditions . . .” (Lab. Code § 90.5.) Nonetheless,
7 the California Supreme Court has noted that “retaliation against employees for asserting statutory
8 rights under the Labor Code is widespread,” despite anti-retaliation statutes designed to protect
9 employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61.) In this context, class
10 representatives should be rewarded for assuming the risk of retaliation for the sake of class members.
11 (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

12 Under the Settlement here, subject to the Court’s approval, Defendant agrees to pay a Service
13 Payment of \$7,500.00 to each Plaintiff for a total of \$15,000.00, which will be in addition to any
14 Class Settlement Awards and/or PAGA Settlement Awards to be paid to Plaintiffs. (Settlement, ¶
15 3.7.) The awards are compensation for Plaintiffs’ efforts as class and PAGA representatives in
16 furtherance of litigating and resolving the action, and in consideration of Plaintiffs’ general release
17 of claims (*Id.*) Plaintiffs have devoted a great deal of time and work assisting counsel in the case and
18 communicated with counsel frequently for litigation and to prepare for the mediation session. (Moon
19 Decl., ¶¶ 44–47; Henderson Decl., ¶¶ 19–25; Denton Decl., ¶ XX.) The requested award is fair and
20 reasonable, particularly considering the substantial benefits Plaintiffs generated for all Class
21 Members. (*See* Moon Decl., ¶¶ 37–47.)

22 When compared with the amounts awarded in typical class action cases, the amount requested
23 here is particularly reasonable. A 2006 study examining the average incentive award given to class
24 action plaintiffs from 1993 to 2002 found that the “average award per class representative was
25 \$15,992 and the median award per class representative was \$4357.” (Eisenberg & Miller, *Incentive*
26 *Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L. Rev. 1303, 1307–08.)
27 The same study found that named plaintiffs in employment discrimination class actions received an
28 average award of \$69,850 and a median award of \$31,081, while named plaintiffs in other

1 employment class actions received an average award of \$12,121 and a median award of \$13,059. (*Id.*
2 at p. 1333.) The authors of the study found that higher awards in employment cases reflected the
3 “courts’ wish to make representative plaintiffs whole by compensating them for the high costs of
4 their service to the class, including risks of stigmatization or retaliation on the job.” (*Id.* at p. 1308.)

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

6 **A. Legal Standard**

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

22 California law and policy favor the fullest and most flexible use of the class action device.
23 (*Id.* at pp. 469–73.) Indeed, “Courts long have acknowledged the importance of class actions as a
24 means to prevent a failure of justice in our judicial system” particularly where the rights of consumers
25 are at issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434.) Any doubt as to the
26 appropriateness of class treatment should be resolved in favor of certification. (*Richmond, supra*, 29
27 Cal.3d at pp. 473–75.)
28

1 Defendant maintains that Plaintiffs’ claims are not suitable for class certification but agrees
2 to certify a class solely for the purpose of effectuating the Settlement. (Settlement, ¶ 3.3.) Defendant
3 does not consent to certification of the Settlement Class or any settlement class for any other purpose
4 than to effectuate the settlement of this Action. (*Id.*) If, for any reason, the Settlement does not
5 become final, any certification of the Settlement Class or any settlement class in this Action will be
6 vacated and the Parties will be returned to their positions with respect to the Action as if the
7 Settlement had not been entered into. (*Id.*)

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

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

10 When determining whether a class is ascertainable, California courts focus on the following
11 three factors: “(1) the class definition, (2) the size of the class and (3) the means of identifying class
12 members.” (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, Plaintiffs maintain there is an
13 easily ascertainable Class, defined by objective and precise criteria. (Settlement, ¶¶ 2.6, 2.8.) The
14 proposed Class that Plaintiffs seek to represent is ascertainable because (1) the Class definition is
15 sufficiently precise, (2) the Class consists of about 898 individuals, and (3) Class Members can be
16 readily identified by looking at Defendant’s records. (*Id.* at ¶¶ 3.1, 2.5.) Because Class Members are
17 identified using specific criteria in the regular business records of Defendant—their employment by
18 Defendant in California, non-exempt classification or exempt classification in the position as TPS or
19 Specialized ISR, and actual work during the Class Period—the Class is ascertainable. (*See Wilner v.*
20 *Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 959–60 [class membership defined by ownership of
21 product that is the subject of the lawsuit is sufficient to make the class ascertainable].) “The
22 requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a class action suit
23 is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926,
24 934.) “Where a question is of common interest to ‘many’ persons, an action may be maintained as a
25 class action even where the parties are numerous and it is in fact practicable to join them all.” (*Id.*)
26 “No set number is required as a matter of law for the maintenance of a class action.” (*Id.*) “Thus, our
27 Supreme Court has upheld a class representing the 10 beneficiaries of a trust in an action for removal
28 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, Plaintiffs assert that their claims satisfy all three requirements. The employment practices at issue include whether or not Defendant paid proper wages to the Class; whether or not Defendant provided meal periods to the Class; whether or not Defendant provided rest periods to the Class; whether or not Defendant paid proper meal or rest period pay to the Class; whether or not Defendant reimbursed any and all business expenses incurred by the Class; whether or not Defendant paid proper compensation timely upon separation of employment to Class Members; whether or not Defendant timely paid proper compensation throughout Class Members' employment; whether or not Defendant provided accurate and complete itemized wage statements to the Class; whether or not waiting time penalties are available to Class Members who are no longer employed by Defendant for violation of *Labor Code* § 203; whether or not Defendant maintained adequate and requisite records; and whether or not Defendant engaged in unlawful or unfair business practices affecting the Class in violation of *Business and Professions Code* §§ 17200-17208. (Moon Decl., ¶¶ 3–4, 7; Settlement, ¶ 1.5.) Plaintiffs contend the factual and legal issues are the same for all Class Members, and further that all Class Members suffered from and seek redress for the same alleged injuries. (Henderson Decl., ¶¶ 4–5; Denton Decl., ¶ XX.) Considering Class Members would need to prove the same issues of law and fact to prevail, and their legal remedies are identical, it would be preferable to resolve all claims through a settlement than to force each Class Member to litigate their own individual claims. Thus, the Court should grant conditional class certification for settlement purposes because common questions of law and fact predominate over any individual questions within the Class.

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

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

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

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

17 Here, Plaintiffs assert that all requirements are met. Plaintiffs retained counsel with extensive
18 experience in prosecuting complex class actions, including similar class actions that previously
19 settled. (Moon Decl., ¶¶ 48–63; John Decl., ¶ XX.) With their experience, Plaintiffs' counsel
20 unquestionably are "qualified, experienced and generally able to conduct the proposed litigation."
21 (*Miller, supra*, 148 Cal.App.3d at p. 874.) In addition, Plaintiffs and their counsel have no conflicts
22 with one another, other Class Members, or the proposed Settlement Administrator. (Henderson Decl.,
23 ¶¶ 7–8; Moon Decl., ¶ 67; Denton Decl., ¶ XX; John Decl., ¶ XX.) Further, Plaintiffs have, with
24 counsel, litigated this case and diligently reviewed the settlement terms, showing dedication, and
25 with full knowledge and acceptance of duties, they have committed to their role as Class
26 Representatives. (Henderson Decl., ¶¶ 16–25; Denton Decl., ¶ XX.)

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

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

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

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

14 Class Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,
15 rule 3.766(e)–(f).) California law vests the Court with broad discretion in fashioning an appropriate
16 notice program. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 970, 973–74.) There is no statutory
17 or due process requirement that all class members receive actual notice, but in this matter, the Class
18 Members will receive direct mailed notice. (Settlement, ¶ 4.2.3.) As the Court of Appeals has
19 explained, “[t]he notice given should have a reasonable chance of reaching a substantial percentage
20 of the Class Members . . .” (*Cartt*, 50 Cal.App.3d at p. 974.) In this case, notice of the proposed
21 Settlement will be provided by direct mailing, the best possible form of notice under the
22 circumstances. (Settlement, ¶ 33.)

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

24 The proposed Notice should be approved. It will be disseminated through direct U.S. first-
25 class mail to the current address for each Class Member. (*Id.* at ¶ 4.2.3.) It informs the Class of the
26 terms of the Settlement and the right to be excluded. (*Id.* at ¶ 4.3, Exh. A.) And if there are Class
27 Members who wish to object to the proposed Settlement, they are informed of their right to submit
28 written objections and/or be heard at the Final Approval Hearing. (*Id.* at ¶ 4.3, Exh. A.)

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

9 **VI. CONCLUSION**

10 For the foregoing reasons, Plaintiffs respectfully request the Court grant this motion, enter the
11 proposed order submitted herewith regarding preliminary approval, and set a final approval hearing
12 no earlier than 160 days from the preliminary approval order.

13 Respectfully submitted,

14 Dated: April 2, 2025

MOON LAW GROUP, PC

15 By: _____

16 Kane Moon
17 Lilit Ter-Astvatsatryan

18 *Attorneys for Plaintiff Henderson*

19 **LAWYERS for JUSTICE, PC**

20 Dated: April 2, 2025

By: _____

21 Arby Aiwarzian
22 Joanna Ghosh
23 Brian J. St. John
24 Maria Halwadjian

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