

Kane Moon (SBN 249834)
H. Scott Leviant (SBN 200834)
Mariam Ghazaryan (SBN 341119)
MOON LAW GROUP, PC
725 S. Figueroa St., 31st Floor
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
E-mail: kmoon@moonlawgroup.com
E-mail: hsleviant@moonlawgroup.com
E-mail: mghazaryan@moonlawgroup.com

Attorneys for Plaintiff Jose Luis Cruz Lopez

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

JOSE LUIS CRUZ LOPEZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

JKT ASSOCIATES, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: SCV-273893

[Assigned for all purposes to the Honorable
Patrick Broderick, Courtroom 16]

CLASS AND REPRESENTATIVE ACTION

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

*[Filed with the Declaration of Kane Moon,
the Declaration of Plaintiff, Declaration of
Lisa Mullins Regarding Settlement
Administration, and [Proposed] Preliminary
Approval Order]*

PRELIMINARY APPROVAL HEARING:

Date:

Time:

Dept.: Courtroom 16

Judge: Hon. Patrick Broderick

Action Filed: August 9, 2023

FAC Filed: November 28, 2023

Trial Date: Not set

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

2 PLEASE TAKE NOTICE that on _____, 2026 at _____ in Courtroom 16 of
3 this Court located at 3055 Cleveland Avenue, Santa Rosa, CA 95403 pursuant to Code of Civil
4 Procedure section 382 and California Rules of Court, rule 3.769 *et seq.*, Plaintiff Jose Luis Cruz
5 Lopez (“Plaintiff”) will, and hereby does, move the Court for an order granting preliminary approval
6 of the proposed class action settlement between Plaintiff and Defendant JKT Associates, Inc.
7 Specifically, Plaintiff moves the Court for an order:

- 8 1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement;
- 9 2. Certifying a Class, for settlement purposes only;
- 10 3. Approving the Class Notice and plan for its distribution;
- 11 4. Appointing Plaintiff as the Class Representative, for settlement purposes only;
- 12 5. Appointing Moon Law Group, PC as Class Counsel, for settlement purposes only;
- 13 6. Appointing ILYM Group, Inc. as the Administrator; and
- 14 7. Scheduling a Final Approval Hearing no earlier than 120 days from the date of
15 preliminary approval.

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

20 Respectfully submitted,

21 Dated: April 3, 2026

MOON LAW GROUP, PC

22 By: _____

23 Kane Moon
24 H. Scott Leviant
25 Mariam Ghazaryan

Attorneys for Plaintiff

TABLE OF CONTENTS

1		
2	TABLE OF CONTENTS	ii
3	TABLE OF AUTHORITIES.....	iv
4	I. INTRODUCTION.....	1
5	II. SUMMARY OF THE LITIGATION AND SETTLEMENT	1
6	A. Plaintiff’s Claims and Procedural History	1
7	B. Discovery and Investigation	4
8	C. Settlement Negotiations and Notice of Settlement to the LWDA	4
9	D. Key Terms of the Proposed Settlement	5
10	III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL.....	7
11	A. The Settlement Is Fair, Reasonable, Adequate, and the Product of Investigation,	
12	Litigation, and Negotiation.....	8
13	1. The Settlement Is the Product of Discovery, Investigation, Informed and Non-	
14	Collusive Arm’s-Length Negotiations, and Realistic Claims Analysis	8
15	2. The Class Settlement Is Fair Considering the Parties’ Respective Positions and	
16	Significant Risks to Certification and Proof on the Merits	9
17	3. The PAGA Settlement Is Fair Considering the Parties’ Respective Positions	
18	and Significant Risks	10
19	4. Plaintiff’s Counsel Have Extensive Experience in Class and PAGA Action	
20	Litigation, Which Was Integral to Negotiating the Settlement	12
21	B. The Proposed Attorneys’ Fees and Costs Are Reasonable.....	12
22	1. Counsel Request a Fees Award Based On the “Common Fund” Method.....	12
23	2. The Requested Fee Award Is in Line with Typical Cases.....	13
24	3. This Matter Involves a “Fee-Shifting” Provision of the Labor Code	14
25	4. Counsel’s Experience, Reputation, and Ability Support the Fees Request.....	14
26	C. The Service Payment to Plaintiff Is Reasonable.....	15
27	IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED	16
28	A. Legal Standard	16

1	B. The Criteria for Class Certification Are Satisfied	17
2	1. The Class Is Ascertainable and Numerous	17
3	2. There Are Many Common Issues of Law and Fact Which Predominate	18
4	3. Plaintiff's Claims Are Typical of the Claims of the Class	18
5	4. Plaintiff and His Counsel Meet the Adequacy Requirement.....	19
6	5. A Class Action Is Superior to a Multiplicity of Litigation	19
7	V. THE PROPOSED CLASS NOTICE IS CONSTITUTIONALLY SOUND AND	
8	SATISFIES RULES OF COURT.....	20
9	VI. CONCLUSION	21

TABLE OF AUTHORITIES

FEDERAL CASES

Angeles v. United States Airways, Inc. (N.D. Cal. Feb. 19, 2013,
No. C 12-05860 CRB) 2013 WL 622032..... 3

Frank v. Eastman Kodak Co. (W.D.N.Y. 2005) 228 F.R.D. 174 15

Leyva v. Medline Industries Inc. (9th Cir. 2013) 716 F.3d 510..... 19

Pedroza v. PetSmart, Inc. (C.D. Cal. June 14, 2012,
No. ED CV 11–298 GHK (DTBx)) 2012 WL 9506073 3

Priddy v. Edelman (6th Cir. 1989) 883 F.2d 438 8

Rodriguez v. West Publishing Corp. (9th Cir. 2009) 563 F.3d 948..... 15

Van Vranken v. Atlantic Richfield Co. (N.D. Cal. 1995) 901 F.Supp. 294..... 14

Vincent v. Hughes Air West, Inc. (9th Cir. 1977) 557 F.2d 759 13

OTHER AUTHORITIES

Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*
(2006) 53 UCLA L. Rev. 1303..... 16

Stats. 2024, ch. 44 (Assem. Bill No. 2288), § 1, eff. Jul. 1, 2024 6

COURT RULES

California Rules of Court, rule 3.766(e), (f)..... 20

California Rules of Court, rule 3.769(f)..... 14

TREATISES

Newberg, Newberg on Class Actions (3rd ed. 1992) § 8.39 20

Newberg, Newberg on Class Actions (3rd ed. 1992) § 11.51 8

Newberg, Newberg on Class Actions (3rd ed. 1992) § 14.03 14

STATE CASES

Cartt v. Superior Court (1975) 50 Cal.App.3d 960..... 20, 21

Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43..... 14

City and County of San Francisco v. Sweet (1995) 12 Cal.4th 105..... 13

Classen v. Weller (1983) 145 Cal.App.3d 27 19

1	<i>Clothesrigger, Inc. v. GTE Corp.</i> (1987) 191 Cal.App.3d 605	18
2	<i>Collins v. Rocha</i> (1972) 7 Cal.3d 232	18
3	<i>Daar v. Yellow Cab Co.</i> (1967) 67 Cal. 2d 695.....	16
4	<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	7, 18
5	<i>Gentry v. Superior Court</i> (2007) 42 Cal.4th 443.....	15, 20
6	<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	7, 10
7	<i>Laffitte v. Robert Half International Inc.</i> (2016) 1 Cal.5th 480	13
8	<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429.....	17
9	<i>Mallick v. Superior Court</i> (1979) 89 Cal.App.3d 434.....	7
10	<i>McGhee v. Bank of America</i> (1976) 60 Cal.App.3d 442	19
11	<i>Miller v. Woods</i> (1983) 148 Cal.App.3d 862	17, 19
12	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399	7, 10, 15
13	<i>Neary v. Regents of University of California</i> (1992) 3 Cal.4th 272	7
14	<i>Quinn v. State of California</i> (1975) 15 Cal.3d 162	13
15	<i>Richmond v. Dart Industries, Inc.</i> (1981) 29 Cal. 3d 462	17
16	<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	17
17	<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25.....	12
18	<i>Stamburgh v. Superior Court</i> (1976) 62 Cal.App.3d 231.....	8, 20
19	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224.....	9
20	<i>Wilner v. Sunset Life Insurance Co.</i> (2000) 78 Cal.App.4th 952	17
21	STATE STATUTES	
22	California Code of Civil Procedure § 382.....	16
23	California Labor Code § 90.5.....	15
24	California Labor Code § 218.5.....	14
25	California Labor Code § 226.....	14
26	California Labor Code § 1194.....	14
27	California Labor Code §§ 2698, <i>et seq.</i>	11
28	California Labor Code § 2699(e)(2).....	11

1	California Labor Code § 2699(k)(1)	14
2	California Labor Code § 2802(d)	14
3	California Labor Code § 2699(m)	6
4	California Labor Code § 2699(v)(1)	6

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jose Luis Cruz Lopez (“Plaintiff”) seeks preliminary approval of a proposed
4 \$250,000.00 non-reversionary, wage-and-hour class action settlement (the “Settlement”) with
5 Defendant JKT Associates, Inc. (“Defendant”) (together with Plaintiff, the “Parties”). The
6 Settlement will provide substantial monetary payments to an estimated 139 Class Members who
7 worked an estimated aggregate of 8,000 Workweeks, of which roughly 79 are Aggrieved
8 Employees who worked an estimated aggregate of 4,724 PAGA Pay Periods. As set forth more
9 fully below, the proposed Settlement satisfies all the criteria for settlement approval under
10 California law. The Settlement was reached after extensive investigation, informal discovery, and
11 negotiations between the Parties. The negotiations were at arm’s-length and were facilitated
12 through private mediation by an experienced and neutral class action mediator, Darren M. Cohen,
13 Esq. Accordingly, Plaintiff requests the Court preliminarily approve the Settlement, certify the
14 proposed Class, approve the proposed Class Notice to Class Members, and set a final approval
15 hearing no earlier than 120 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 as hourly-paid or non-
23 exempt employees in the State of California during the Class Period, as set forth in the Class
24 Action and PAGA Settlement Agreement and Class Notice (the “Settlement”). (*Id.*)

25 Defendant is a landscaping company based in Sonoma, California, providing full range of
26 services, from design, installation, and maintenance. (*Id.* at ¶ 3.) Defendant employed Plaintiff
27 and other non-exempt, hourly-paid employees during the Class Period. (*Id.*) Plaintiff worked for
28 Defendant in a non-exempt, hourly-paid position from approximately April 2021 to February 2022

1 as a laborer. (Declaration of Plaintiff Jose Luis Cruz Lopez in Support of Class Action and PAGA
2 Settlement [“Plaintiff Decl.”], ¶ 2.) Plaintiff contends he and his coworkers were subjected to the
3 same unlawful labor practices, including failure to pay wages for all hours worked. (*Id.* at ¶ 6;
4 Moon Decl., ¶ 3.)

5 Plaintiff’s claim for unpaid minimum and overtime wages stem from allegations that
6 Defendant failed to compensate Plaintiff and others for off-the-clock work, failed to incorporate all
7 remuneration into employees’ regular rate of pay for purposes of paying overtime, meal break premium,
8 and sick pay, and that Defendant failed to accurately record employees’ time, resulting in underpayment
9 to the Class. (Moon Decl., ¶ 4.) Plaintiff’s meal and rest period claims are based on allegations
10 that due to Defendant’s policies and practice, Class Members’ breaks were often short, late,
11 interrupted, and sometimes missed altogether, and that Defendant did not pay all premium wages
12 for non-compliant breaks. (*Id.*) Plaintiff further brings a claim for unreimbursed necessary
13 business expenses based on allegations that Class Members were required to maintain purchase
14 steel-toed boots and incur cellphone usage expenses for work-related purposes, without
15 reimbursement from Defendant. (*Id.*) Finally, Plaintiff also brings derivative claims for waiting
16 time penalties, wage statement violations, unfair business practices, and civil penalties under
17 PAGA. (*Id.*)

18 Because of the foregoing alleged violations of various provisions of the Labor Code,
19 Plaintiff filed a class action on August 9, 2023, which alleges Defendant systematically: (1) failed
20 to pay minimum wages, (2) failed to pay overtime compensation, (3) failed to provide meal
21 periods, (4) failed to authorize and permit rest periods, (5) failed to indemnify necessary business
22 expenses, (6) failed to timely pay final wages at termination, (7) failed to provide accurate
23 itemized wage statements, and (8) engaged in unfair business practices. (*Id.* at ¶ 5.)

24 Pursuant to PAGA, on August 8, 2023, Plaintiff gave written notice to the California Labor
25 and Workforce Development Agency (the “LWDA”) of the alleged Labor Code violations, with
26 certified mail service on Defendant, and paid the required filing fee. (*Id.* at ¶ 6, Ex. 2.) On
27 November 28, 2023, Plaintiff timely filed a First Amended Class and Representative Action
28 Complaint to add a ninth cause of action for civil penalties under PAGA (the “Operative

1 Complaint”). (*Id.* at ¶ 6.) In compliance with Labor Code section 2699(s)(1), Plaintiff
2 subsequently submitted to the LWDA a file-stamped copy of the Operative Complaint containing the
3 Court-assigned case number. (*Id.*) To date, the LWDA has not indicated its intent to investigate the
4 alleged violations or intervene in this Action. (*Id.*)

5 Defendant ardently opposes the merits of this case and denies Plaintiff’s factual allegations.
6 (*Id.* at ¶ 7.) Defendant asserts it complied with all its compensation obligations, including
7 compensating Class Members for any and all off-the-clock work and overtime work, and therefore,
8 Plaintiff and other Class Members were paid all wages owed. (*Id.*) Defendant argues it did not fail
9 to incorporate any non-discretionary bonuses into the regular rate of pay for purposes of paying
10 overtime, meal break premium, and sick pay, and that all bonuses were discretionary. (*Id.*)
11 Defendant argues its time-keeping practice is lawful and accurately records employees’ time and
12 that it shifted from paper to electronic time recording in October 2024. (*Id.*) Defendant maintains
13 compliance with all its meal and rest period obligations. (*Id.*) Defendant asserts it complied with
14 all its reimbursement obligations, and that Plaintiff and other employees were compensated for
15 any and all business expenses necessarily incurred. (*Id.*) To the extent employees received wage
16 statements that were allegedly inaccurate, Defendant asserts employees suffered no actual damage
17 or harm as a result. (*Id.*; *see, e.g., Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013, No. C
18 12–05860 CRB) 2013 WL 622032, at *10 [“A plaintiff must adequately plead an injury arising
19 from an employer’s failure to provide full and accurate wage statements, and the omission of the
20 required information alone is not sufficient.”].) With respect to Plaintiff’s claim for waiting time
21 penalties, Defendant alleges its good-faith belief that it paid all wages precludes the imposition of
22 waiting time penalties since Plaintiff cannot prove Defendant’s alleged failure to pay all final
23 wages at the time of separation was “willful.” (Moon Decl., ¶ 7; *see, e.g., Pedroza v. PetSmart,*
24 *Inc.* (C.D. Cal. June 14, 2012, No. ED CV 11–298 GHK (DTBx)) 2012 WL 9506073, *5.) For
25 these reasons, among others, Defendant denies all of Plaintiff’s claims and allegations, and further
26 claims it did not engage in any unfair business practices and denies liability under PAGA. (Moon
27 Decl., ¶ 7.) Defendant also maintains the claims are improper for class treatment, in part, due to
28 the individualized and testimony-intensive nature of the wage claims that could bar class

1 certification or significantly reduce Defendant's overall liability. (*Id.*)

2 **B. Discovery and Investigation**

3 The Parties agreed to mediate this action with Darren M. Cohen, Esq., an experienced class
4 and PAGA action mediator. (*Id.* at ¶ 8.) In preparation for mediation, the Parties agreed to a protocol
5 for an informal production of documents and information before mediation. (*Id.*) Prior to mediation,
6 Plaintiff obtained from Defendant, through informal discovery, documents, testimony, electronic
7 time and pay records, policy documents and data that were necessary and helpful to evaluate the
8 claims asserted in this action. (*Id.*) Defendant produced a statistically sound sample of time and pay
9 records for approximately 26.62% of the putative Class. (*Id.*) Defendant also provided information
10 regarding the estimated number of current and formerly employed Class Members, Aggrieved
11 Employees, and PAGA Pay Periods. (*Id.*)

12 In preparation for mediation, Plaintiff's Counsel reviewed and analyzed all the information
13 Defendant provided, including the sample records and documents regarding Defendant's wage-and-
14 hour policies. (*Id.* at ¶ 9.) Plaintiff's Counsel retained a statistics expert to analyze the sample records
15 and prepare a damage analysis prior to the mediation. (*Id.*) The sample time and pay records analyzed
16 contained 5,036 actual shifts worked (representing roughly 14.80% of total shifts worked in the Class
17 Period), which allowed Plaintiff's expert to prepare an analysis with a reasonable degree of certainty.
18 (*Id.*) In conjunction with their extensive factual investigation, Plaintiff's Counsel also investigated
19 the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly,
20 Plaintiff's Counsel was able to evaluate the probability of class certification, success on the merits,
21 and Defendant's maximum and realistic monetary exposure for all claims. (*Id.*) Thus, Plaintiff's and
22 his Counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed
23 them to act intelligently in negotiating the Settlement. (*Id.*)

24 **C. Settlement Negotiations and Notice of Settlement to the LWDA**

25 On November 18, 2025, the Parties participated in a full day of private mediation with
26 Darren M. Cohen, Esq. (*Id.* at ¶ 10.) The negotiations were at arm's length and, although conducted
27 in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to
28 explore the potential for a settlement of the dispute, but each side was also prepared to litigate

1 their position through trial and appeal if a settlement had not been reached. (*Id.*) After a full
2 discussion regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses
3 and with the assistance of the mediator, the Parties reached a resolution. (*Id.*) The material terms
4 of the settlement are set out in the Settlement. (*Id.* at ¶¶ 2, 10, Ex. 1.)

5 In compliance with Labor Code section 2699(s)(2), notice of settlement and a copy of the
6 proposed Settlement has been submitted to the LWDA along with a copy of Plaintiff’s preliminary
7 approval motion and the hearing date. (*Id.* at ¶ 11, Ex. 3.) To date, the LWDA has not indicated
8 any objection to the Settlement. (*Id.*)

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

10 Under the Settlement, Defendant will pay a non-reversionary, all-inclusive amount of *no*
11 *less than \$250,000.00* (“GSA”) to resolve this action. (Settlement, ¶ 3.1.) Other key terms of the
12 Settlement are outlined in the counsel declaration submitted concurrently herewith. (Moon Decl.,
13 ¶¶ 12–30.) The proposed Settlement Administrator—ILYM Group, Inc.—was jointly selected by
14 the Parties based on its bid of \$6,450.00. (*Id.* at ¶ 16, Ex. 5; Settlement, ¶ 1.2.)

15 The Class is defined as all persons employed by Defendant or one of the Released Parties
16 as hourly-paid or non-exempt employees in the State of California from August 9, 2019, through
17 February 16, 2026,¹ or an earlier date pursuant to the Settlement’s escalator clause. (Settlement,
18 ¶¶ 1.5, 1.12, 8.) “Aggrieved Employees” is defined as all persons employed by Defendant or one
19 of the Released Parties as hourly-paid or non-exempt employees in the State of California
20 September 24, 2022, to February 16, 2026,² or an earlier date pursuant to the Settlement’s escalator
21 clause. (*Id.* at ¶¶ 1.4, 1.30, 8.) The Settlement allocates \$24,000.00 from the GSA for settlement
22 of the Released PAGA Claims, which will be distributed 75% (\$18,000.00) to the LWDA and 25%

23
24 _____
25 ¹ The Class Period is defined as the period from August 9, 2019, to the earlier of February 16,
26 2026, or the date of preliminary approval. (Settlement, ¶ 1.12.) February 16, 2026 is earlier than the
date of preliminary approval. (Moon Decl., ¶ 20, n.4.)

27 ² The PAGA Period is defined as the period from September 24, 2022, to the earlier of February
28 16, 2026, or the date of preliminary approval. (Settlement, ¶ 1.30.) February 16, 2026 is earlier than
the date of preliminary approval. (Moon Decl., ¶ 17, n.1.)

1 (\$6,000.00) to Aggrieved Employees pursuant to PAGA law governing Plaintiff's claims.³
2 (Settlement, ¶ 1.33.) Each Aggrieved Employee will be entitled to a pro rata share of the 25%
3 share of the PAGA Penalties directly proportional to their number of PAGA Pay Periods. (*Id.* at ¶
4 3.2.5.1.) This results in an average Individual PAGA Payment of roughly **\$75.95** for each of the
5 estimated 79 Aggrieved Employees (\$6,000.00 / 79), and a PAGA Pay Period value of roughly
6 **\$1.27** for each of the 4,724 estimated Pay Periods in the PAGA Period (\$6,000.00 / 4,724). (Moon
7 Decl., ¶ 18.)

8 After deducting the Class Representative Enhancement Award, the Class Counsel
9 Attorneys' Fees and Litigation Costs Payments, the PAGA Penalties allocation, and the
10 Administration Expenses Payment from the GSA, in the amounts specifically approved by the
11 Court, any difference in the amounts requested and the amounts awarded will be allocated to the
12 Net Settlement Amount for distribution to Participating Class Members. (Settlement, ¶ 1.27.)
13 Accordingly, the Net Settlement Amount will be *no less than* **\$110,166.67** for an estimated Class
14 of **139 individuals**.⁴ (Moon Decl., ¶ 19.) Each Class Member who does not opt-out will be entitled
15 to a pro rata share of the Net Settlement Amount that is directly proportional to the number of
16 Workweeks worked during the Class Period. (Settlement, ¶ 3.2.4.) The estimated **\$110,116.67** Net
17 Settlement Amount results in an average Individual Class Payment of roughly **\$792.57** for each of the
18 estimated 139 Class Members (\$110,116.67 / 139),⁵ and a Workweek value of roughly **\$13.77** for each
19

20
21 ³ On July 1, 2024, new legislation was enacted to amend PAGA in several respects, including as to
22 the recovery split for civil penalties. (Stats. 2024, ch. 44 (Assem. Bill No. 2288), § 1, eff. Jul. 1, 2024.)
23 As amended, PAGA now provides for a 65%-LWDA/45%-aggrieved employee split. (Lab. Code §
2699(m).) However, PAGA reform only applies to PAGA actions initiated on or after June 19, 2024.
(*Id.* at § 2699(v)(1).)

24 ⁴ The Net Settlement Amount was calculated by deducting the following from the \$250,000.00
25 GSA: up to \$2,500.00 for the Class Representative Service Payment, up to \$10000.00 for the
26 Administration Expenses Payment, \$24,000.00 for the PAGA Penalties to the LWDA and Aggrieved
Employees, \$83,333.33 for the Class Counsel Fees Payment, and up to \$20,000.00 for the Class
Counsel Litigation Expenses Payment. (Moon Decl., ¶ 19, n.3; Settlement, ¶¶ 3.1–3.2.5.)

27 ⁵ At this time, the actual amounts to Class Members and/or Aggrieved Employees are unknown
28 and will be calculated by the Administrator following preliminary approval and receipt and processing
of the Class Data. (Settlement, ¶ 7.5.2.) The high and low range of payments will be provided to the
Court in a motion for final approval. (Moon Decl., ¶ 21, n.5.)

1 of the 8,000 estimated Workweeks in the Class Period (\$110,116.67 / 8,000). (Moon Decl., ¶ 21.)

2 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any
3 other pending matter or action asserting claims that will be extinguished or affected by the
4 Settlement. (Settlement, ¶ 2.6.)

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

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

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

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

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

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

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

13 Here, Plaintiff's Counsel have conducted a thorough investigation into the facts of this case.
14 (Moon Decl., ¶ 31.) As previously noted, the Settlement at issue was reached through arms'-length
15 negotiations, private mediation, and the assistance of a statistics expert. (*Id.*) Based on Defendant's
16 informal class-wide discovery production, on Plaintiff's Counsel independent investigation and
17 evaluation, and on counsel's extensive experience in wage-and-hour litigation, Plaintiff's Counsel are
18 of the opinion that the proposed Settlement is fair, reasonable, and adequate. (*Id.*)

19 Based on Plaintiff's Counsel's review of the time, payroll, and additional data provided by
20 Defendant, on Plaintiff's expert's analysis of the sample records provided by Defendant, and on
21 information from Plaintiff, Plaintiff's Counsel evaluated the estimated maximum and risk-adjusted
22 exposure that Defendant faced. (*Id.* at ¶ 32.) Specifically, based on the information provided for
23 mediation and Plaintiff's Counsel's and expert's analysis, the total estimated **realistic recovery**
24 (adjusted for risks at certification and proof on the merits) for the alleged claims, including penalties,
25 is estimated to be **\$273,394.23**. (*Id.*) This amount was calculated as follows: the rounding claim is
26 **negligible, if any, value; \$37,181.00** (85% discount) for the off-the-clock work claim; **\$2,324.00**
27 (50% discount) for the regular rate claim; **\$6,271.12** (50% discount) for the meal period claim;
28 **\$152,735.22** (85% discount) for the rest period claim; **\$7,500.00** (85% discount) for the unreimbursed

1 business expenses claim; **\$27,962.90** (95% discount) for the waiting time penalties claim; **\$15,800.00**
2 (95% discount) for the wage statement claim; and **\$23,620.00** (95% discount) for the PAGA penalties
3 claim. (*Id.* at ¶¶ 33–39.) The foregoing discounts were based on the evidence presented for mediation
4 and arguments made during arm’s-length settlement negotiations. (*Id.*)

5 **The \$250,000.00 gross settlement figure represents roughly 91.4% of the total realistic**
6 **recovery.** (*Id.* at ¶ 40.) This is an excellent result for the Class, particularly because, under the
7 Settlement, Class Members will receive timely and guaranteed relief, avoiding the risk of not being
8 able to recover anything. (*Id.*)

9 **2. The Class Settlement Is Fair Considering the Parties’ Respective Positions**
10 **and Significant Risks to Certification and Proof on the Merits**

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

19 Here, considering all known facts and circumstances, the risk of significant delay, trial risk,
20 appellate risk, and the defenses Defendant may assert both to certification and on the merits, the
21 Settlement is in the best interest of the Class and LWDA. (Moon Decl., ¶ 31.) While Plaintiff is
22 confident in the merits of his claims, a legitimate controversy exists as to each cause of action. (*Id.*
23 at ¶ 43.) Plaintiff also recognizes that proving the amount owed to each Class Member would be an
24 expensive, time-consuming, and uncertain proposition. (*Id.*)

25 The Settlement obviates the significant risk that this Court may deny certification of all or
26 some of Plaintiff’s claims. (*Id.* at ¶ 44.) Plaintiff’s Counsel took into account the risk of not prevailing
27 at trial due to low or no participation by Class Members. (*Id.*) Indeed, the individualized and testimony-
28 intensive nature of the claims could bar manageability of the representative claims or otherwise

1 significantly reduce any recovery whatsoever. (*Id.*) For example, the rest period and unreimbursed
2 expense claims are testimony-driven claims and assume a 100% violation rate, which would not
3 likely be demonstrated at trial, as it assumes either the participation of all employees (which would
4 be difficult given the reality that many, if not all, employees would be unwilling to participate due to
5 fear of retaliation), or alternatively, the use of surveys or statistical data as a surrogate (which would
6 still require the participation of a majority of employees to establish a sound representation of all
7 non-exempts). (*Id.*) Even assuming employees would be willing to participate, obtaining declarations
8 would potentially reveal that each individual employee had a different experience. (*Id.*)

9 Furthermore, even if Plaintiff was able to pursue his claims on a class-wide basis and obtain
10 certification of all or some of the claims, continued litigation would be expensive, involving a trial
11 and possible appeals, and would substantially delay and reduce any recovery by the Class. (*Id.* at ¶
12 45.) Although the Parties have engaged in a significant amount of investigation, informal discovery,
13 and class-wide data analysis, they have not conducted extensive formal discovery. (*Id.*) Moreover,
14 preparation for class certification and a trial would remain for the Parties as well as the prospect of
15 appeals in the wake of a disputed class certification ruling for Plaintiff and/or any summary judgment
16 ruling. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through
17 trial. (*Id.*) In sum, this Settlement avoids the risks, burdens, and the accompanying expense of further
18 litigation. (*Id.*)

19 The proposed \$250,000.00 Settlement therefore represents a substantial recovery when
20 compared to the reasonably forecasted recovery for the Class. (*Id.* at ¶ 46.) When considering the
21 risks of litigation, the uncertainties involved in continued litigation, the burdens of proof necessary
22 to establish liability, and the probability of appeal, it is clear the Settlement amount is within the
23 "ballpark" of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*; (*Kullar*,
24 *supra*, 168 Cal.App.4th at p. 133; *see Munoz, supra*, 186 Cal.App.4th at pp. 408–09.)

25 **3. The PAGA Settlement Is Fair Considering the Parties' Respective Positions** 26 **and Significant Risks**

27 With regard to the PAGA claims, the Settlement is a fair and reasonable resolution that
28 satisfies PAGA's dual statutory purposes of deterrence and punishment, on the one hand, and

1 providing Aggrieved Employees with genuine and meaningful relief, on the other. (Moon Decl., ¶ 41;
2 Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendant has had to hire legal counsel, engage
3 in informal class-wide discovery, and participate in mediation. (Moon Decl., ¶ 41.) Defendant will also
4 have to pay civil penalties to the LWDA under the Settlement, assuming final settlement approval is
5 granted. (*Id.*) Not including its own attorneys’ fees and costs as well as the employer’s share of payroll
6 taxes, Defendant will pay no less than \$250,000 to resolve this matter—of which \$24,000.00 is
7 allocated toward the PAGA claims and will be distributed, in compliance with PAGA law governing
8 the claims in this action, as 75% (\$18,000.00) to the LWDA and 25% (\$6,000.00) to Aggrieved
9 Employees—and the release obtained under the Settlement does not preclude Aggrieved Employees
10 from pursuing any individual claims they may have against Defendant or the other Released Parties.
11 (*Id.*)

12 Moreover, Plaintiff’s Counsel are of the opinion that because the issues here are fairly
13 contested, there is a possibility of the Court not awarding the PAGA penalties even if Plaintiff
14 prevailed on the merits due to the largely discretionary nature of awarding PAGA penalties. (*Id.*)
15 Indeed, under PAGA, a Court can reduce penalties “if, based on the facts and circumstances of the
16 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
17 confiscatory.” (Lab. Code § 2699(e)(2).) In other words, were this matter to go to trial, any award
18 granted would be at the discretion of the Court and subject to a substantial reduction. (Moon Decl., ¶
19 41.) Further, Plaintiff’s Counsel took into account the risk of not being able to proceed on a representative
20 basis due to the potential manageability issues and that even if Plaintiff prevailed at trial, penalties would
21 likely be limited due to the largely discretionary nature of awarding PAGA penalties and in light of other
22 defenses available to Defendant. (*Id.* at ¶ 42.) Thus, it is entirely possible that even if Plaintiff would be
23 successful at trial, assuming he is first able to certify the claims and defeat the manageability issues
24 presented at litigation, Plaintiff could be awarded substantially less than what was obtained through the
25 Settlement. (*Id.*)

26 In sum, the \$24,000.00 PAGA Penalties allocation under the Settlement constitutes “genuine
27 and meaningful” that is “consistent with the underlying purpose of the statute to benefit the public.”
28

(See *O'Connor v. Uber Tech., Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133–35 [denying settlement approval where allocation for PAGA claims was 0.1% of the estimated full worth].)

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

The Settlement negotiations were conducted by highly capable counsel with considerable experience and demonstrated competence with litigating wage-and-hour class actions. (Moon Decl., ¶¶ 51–76.) Plaintiff’s Counsel have a strong record of vigorous and effective advocacy for their clients and are experienced in handling complex wage-and-hour class action litigation. (*Id.*) Their experience was helpful in assessing the reasonableness of the Settlement at issue here, and from this experience they concluded that this litigation could not have been settled on better terms than provided under the Settlement. (*Id.* at ¶ 77.) Although Plaintiff and his counsel were prepared to try the claims alleged in the litigation, they support the proposed Settlement as being in the best interest of the Class based on objective evidence that has been considered and weighed against the risks, expenses, and time consumption to both sides of continued litigation. (*Id.* at ¶¶ 10, 31.)

B. The Proposed Attorneys’ Fees and Costs Are Reasonable

Subject to the Court’s approval, the Settlement provides a fee application of up to 33 1/3% of the GSA for Class Counsel’s attorneys’ fees, plus reimbursement for out-of-pocket litigation costs not to exceed \$20,000.00.⁶ (Settlement, ¶ 3.2.2.) These amounts are disclosed to Class Members in the proposed Class Notice and are reasonable. (*Id.* at Ex. A.)

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

California courts have long awarded attorneys’ fees as a percentage of the benefit created by counsel in pursuing claims on behalf of a class. (See, e.g., *Serrano v. Priest* (1977) 20 Cal.3d 25.) The California Supreme Court has held, “when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the

⁶ Plaintiff’s Counsel’s current litigation costs are \$16,353.19, and they anticipate incurring additional costs up to final approval. (Moon Decl., ¶ 84, Ex. 4.)

1 creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out
2 of the fund.” (*Id.* at p. 34.)

3 Plaintiff’s Counsel seek an award of attorneys’ fees on the “percentage of recovery/common
4 fund” theory. (Moon Decl., ¶ 79.) The purpose of this approach is to “spread litigation costs
5 proportionately among all the beneficiaries so that the active beneficiary does not bear the entire
6 burden alone.” (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State*
7 *of California* (1975) 15 Cal.3d 162, the California Supreme Court stated, “one who expends
8 attorneys’ fees in winning a suit which creates a fund from which others derive benefits, may require
9 those passive beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in
10 *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court
11 recognized that the common fund doctrine has been applied “consistently in California when an
12 action brought by one party creates a fund in which other persons[] are entitled to share.” (*Id.* at pp.
13 110–11 [pincite omitted].)

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

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

26 According to a leading treatise on class actions: “No general rule can be articulated on what
27 is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a
28 reasonable fee award from a common fund in order to assure that the fees do not consume a

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

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

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

14 Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable
15 fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(k)(1),
16 2802(d).) Under these sections, Plaintiff would be permitted to recover his actual attorneys’ fees,
17 even if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) This
18 Settlement is beneficial in that it limits the risk of continued expenses and consumption of time,
19 energy, and resources facing Defendant while at the same time rewarding Plaintiff’s Counsel for their
20 decision to assume risk by taking on this matter on a contingent basis with no guarantee of recovery.
21 (Moon Decl., ¶¶ 80–85.) In fact, prosecution of this action involved significant financial risk for
22 Plaintiff’s Counsel. (*Id.*) Once Plaintiff’s Counsel undertook this litigation, they committed to pursue
23 it to its conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶ 82.)

24 **4. Counsel’s Experience, Reputation, and Ability Support the Fees Request**

25 As demonstrated by their past experience in pursuing class actions on behalf of consumers
26 and employees, Plaintiff’s Counsel possess considerable expertise in litigating class actions. (*Id.* at
27 ¶¶ 51–76.) Plaintiff’s Counsel have been involved as lead counsel or co-counsel in numerous class
28 actions that resulted in millions in recovery. (*Id.*) As noted above, their experience in wage-and-hour

1 litigation was integral in evaluating the strengths and weaknesses of the case against Defendant and
2 the reasonableness of the Settlement. (*Id.* at ¶ 77.) Practice in the narrow field of wage-and-hour
3 litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and
4 federal) as well as the procedural law of class action litigation. (*Id.* at ¶ 75.) Based on these and other
5 factors, Plaintiff’s Counsel have frequently received fee awards of this percentage from the gross
6 recovery for the class. (*See id.* at ¶ 55.) Because it is reasonable to compensate counsel commensurate
7 with their skill, reputation, and experience, the requested fee award is supported here.

8 **C. The Service Payment to Plaintiff Is Reasonable**

9 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
10 compensate them for the expense or risk they have incurred in conferring a benefit on other members
11 of the class.” (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Courts routinely grant approval of class
12 action settlement agreements containing enhancements for the class representatives, which are
13 necessary to provide incentive to represent the class and are appropriate given the benefit the class
14 representatives help to bring about for the class. (*See Rodriguez v. W. Publ’g Corp.* (9th Cir. 2009)
15 563 F.3d 948, 958–59.) Service awards are particularly important to plaintiffs in wage-and-hour cases
16 because they promote the important public policies underlying the wage-and-hour laws. This strong
17 policy is codified in California Labor Code section 90.5, which provides, “[i]t is the policy of this
18 state to vigorously enforce minimum labor standards in order to ensure employees are not required
19 or permitted to work under substandard unlawful conditions . . .” (Lab. Code § 90.5.) Nonetheless,
20 the California Supreme Court has noted that “retaliation against employees for asserting statutory
21 rights under the Labor Code is widespread,” despite anti-retaliation statutes designed to protect
22 employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61.) In this context, class
23 representatives should be rewarded for assuming the risk of retaliation for the sake of class members.
24 (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

25 Under the Settlement here, subject to the Court’s approval, a Class Representative
26 Enhancement Award of \$2,500.00 will go to Plaintiff, in addition to his amount as a Class Member
27 and Aggrieved Employee. (Settlement, ¶ 3.2.1.) This award is for having initiated the Action and
28 provided services in support of the Action. (*Id.* at ¶ 1.14.) Plaintiff has devoted a great deal of time

1 and work assisting counsel in the case and communicated with counsel frequently for litigation and
2 to prepare for mediation. (Moon Decl., ¶¶ 47–50; Plaintiff Decl., ¶¶ 19–22.) The requested payment
3 is fair and reasonable, particularly considering the substantial benefits Plaintiff generated for all Class
4 Members. (Moon Decl., ¶ 46.)

5 When compared with the amounts awarded in typical class action cases, the amount requested
6 here is particularly reasonable. A 2006 study examining the average incentive award given to class
7 action plaintiffs from 1993 to 2002 found that the “average award per class representative was
8 \$15,992 and the median award per class representative was \$4357.” (Eisenberg & Miller, *Incentive*
9 *Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L. Rev. 1303, 1307–08.)
10 The same study found that named plaintiffs in employment discrimination class actions received an
11 average award of \$69,850 and a median award of \$31,081, while named plaintiffs in other
12 employment class actions received an average award of \$12,121 and a median award of \$13,059. (*Id.*
13 at p. 1333.) The authors of the study found that higher awards in employment cases reflected the
14 “courts’ wish to make representative plaintiffs whole by compensating them for the high costs of
15 their service to the class, including risks of stigmatization or retaliation on the job.” (*Id.* at p. 1308.)

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

17 **A. Legal Standard**

18 The proposed Settlement Class is well suited for class certification. The claims all derive from
19 a core set of alleged violations of California’s wage and hour laws and regulations. (Moon Decl., ¶¶
20 3–4.) For the reasons set forth more fully below, the Class, for purposes of Settlement, satisfies the
21 prerequisites for certification under Code of Civil Procedure section 382. (Code Civ. Proc. § 382.)
22 Section 382 provides that “when the question is one of a common or general interest, of many
23 persons, or when the parties are numerous, and it is impracticable to bring them all before the court,
24 one or more may sue or defend for the benefit of all.” (*Id.*) There are two requirements to section
25 382: “(1) there must be an ascertainable class[]; and (2) there must be a well defined community of
26 interest in the questions of law and fact involved affecting the parties to be represented.” (*Daar v.*
27 *Yellow Cab Co.* (1967) 67 Cal. 2d 695, 704 [internal citations omitted].) To clarify these
28 requirements, the California Supreme Court has looked to Federal Rule of Civil Procedure 23 to

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

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

11 **B. The Criteria for Class Certification Are Satisfied**

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

13 When determining whether a class is ascertainable, California courts focus on the following
14 three factors: “(1) the class definition, (2) the size of the class and (3) the means of identifying class
15 members.” (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, Plaintiff maintains there is an
16 easily ascertainable Class, defined by objective and precise criteria. (Settlement, ¶¶ 1.5, 1.12.) The
17 proposed Class that Plaintiff seeks to represent is ascertainable because (1) the Class definition is
18 sufficiently precise, (2) the Class consists of about 139 individuals, and (3) Class Members can be
19 readily identified by Defendant’s records. (*Id.* at ¶¶ 1.5, 1.8, 1.12, 8.) Because Class Members are
20 identified using specific criteria in the regular business records of Defendant—their employment by
21 Defendant in California, non-exempt classification, hourly wage, and actual work during the Class
22 Period—the Class is ascertainable. (*See Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952,
23 959–60 [class membership defined by ownership of product that is the subject of the lawsuit is
24 sufficient to make the class ascertainable].) “The requirement of Code of Civil Procedure section 382
25 that there be ‘many’ parties to a class action suit is indefinite and has been construed liberally.” (*Rose*
26 *v. City of Hayward* (1981) 126 Cal.App.3d 926, 934.) “Where a question is of common interest to
27 ‘many’ persons, an action may be maintained as a class action even where the parties are numerous
28 and it is in fact practicable to join them all.” (*Id.*) “No set number is required as a matter of law for

1 the maintenance of a class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing
2 the 10 beneficiaries of a trust in an action for removal of the trustees.” (*Id.* [citing *Bowles v. Super.*
3 *Ct.* (1955) 44 Cal.2d 574]; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a class of 9
4 plaintiffs and 35 members].) Therefore, numerosity is plainly satisfied.

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

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

12 Here, Plaintiff’s claims satisfy all three requirements. The employment practices at issue
13 include whether Defendant: paid employees all minimum, overtime, and sick pay wages owed;
14 reimbursed employees for necessary business expenses; provided employees with and authorize meal
15 and rest periods or paid premiums for non-compliant breaks; paid all final wages to employees at the
16 time of termination; intentionally failed to pay all final wages; provided inaccurate itemized wage
17 statements and whether Class Members were harmed; engaged in unfair business practices; and
18 violated civil penalty provisions under PAGA. (Moon Decl., ¶¶ 3–4.) Plaintiff contends the factual
19 and legal issues are the same for all Class Members, and further that all Class Members suffered from
20 and seek redress for the same alleged injuries. (Plaintiff Decl., ¶¶ 3–6.) Considering Class Members
21 would need to prove the same issues of law and fact to prevail, and their legal remedies are identical,
22 it would be preferable to resolve all claims through a settlement than to force each Class Member to
23 litigate their own individual claims. Thus, the Court should grant conditional class certification for
24 settlement purposes because common questions of law and fact predominate over any individual
25 questions within the Class.

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

27 The typicality requirement does not focus on the individual characteristics or circumstances
28 of the representative plaintiff compared to those of the remainder of the class, but rather, upon the

1 typicality of the proposed representative’s claims as they relate to the defendant’s conduct and
2 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 [“The only requirements a re [sic] that
3 common questions of law and fact *predominate* and that the class representative be *similarly* situated”
4 vis-à-vis the class.] [emphasis in original].) A representative plaintiff’s claims are typical of the class
5 if they arise from the same event, practice, or course of conduct, and if the claims rest on the same
6 legal theories. (*Id.*) That is precisely the case here. Plaintiff is a former employee of Defendant and
7 alleges he was subject to the same policies and practices as other similarly situated employees.
8 (Plaintiff Decl., ¶¶ 2–7.)

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

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

14 Here, all requirements are met. Plaintiff retained counsel with extensive experience in
15 prosecuting complex class actions, including similar class actions that previously settled. (Moon
16 Decl., ¶¶ 51–76.) Based on their experience, Plaintiff’s Counsel unquestionably are “qualified,
17 experienced and generally able to conduct the proposed litigation.” (*Miller, supra*, 148 Cal.App.3d
18 at p. 874.) Plaintiff has, with counsel, litigated this case and diligently reviewed the settlement terms,
19 showing dedication, and with full knowledge and acceptance of duties, he has committed to his role
20 as Class Representative. (Plaintiff Decl., ¶¶ 11–22.) In addition, Plaintiff and his Counsel have no
21 conflicts with one another, other Class Members, or the proposed Administrator. (*Id.* at ¶¶ 8–10;
22 Moon Decl., ¶ 78.)

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

24 Finally, in making its class certification decision, the Court must determine that a class action
25 would be superior to alternative means for the fair and efficient adjudication of the litigation. (*See*
26 *Leyva v. Medline Indus. Inc.* (9th Cir. 2013) 716 F.3d 510, 514–15.) By consolidating many potential
27 individual actions into a single proceeding, this Court’s use of the class action device enables it to
28 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 CLASS NOTICE IS CONSTITUTIONALLY SOUND AND SATISFIES RULES OF COURT

Class Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court, rule 3.766(e)–(f), rule 3.769(f).) Here, the proposed Class Notice, in the form attached to the Settlement as **Exhibit A**, meets all the requirements of California Rules of Court. The Notice summarizes the proceedings to date and the terms and conditions of the proposed Settlement in an informative and coherent manner. (Settlement, ¶ 7.5-7.8.3, Ex. A.) It also states that the final approval decision has yet to be made, and provides the date, time, and location of the Final Approval Hearing. (*Id.*) It explains the right and procedures to opt-out or submit any written objections and/or arrange to appear at the Final Approval Hearing and verbally state any objections. (*Id.*) It makes clear the Settlement does not constitute an admission of liability by Defendant, who denies all liability, and it recognizes that this Court has not ruled on the merits of the action. (*Id.*) Thus, the proposed Notice meets all the requirements of California Rule of Court 3.769(f). (Cal. Rules of Court, rule 3.769(f).)

The Class Notice also fulfills the requirement of neutrality in class notices. (Newberg, *Newberg on Class Actions* (3rd ed. 1992) § 8.39.) Accordingly, the Class Notice complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

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, Class Members will receive direct mailed notice, which is the best possible form of notice under the circumstances. (Settlement, ¶ 7.5.2.) As the Court of Appeals has explained, “[t]he notice given should have a

1 reasonable chance of reaching a substantial percentage of the Class Members . . .” (*Cartt*, 50
2 Cal.App.3d at p. 974.)

3 **VI. CONCLUSION**

4 For the foregoing reasons, Plaintiff respectfully requests the Court grant this motion, enter the
5 proposed order submitted herewith regarding preliminary approval, and set a final approval hearing
6 no earlier than 120 days from the preliminary approval order.

7 Respectfully submitted,

8 Dated: April 3, 2026

MOON LAW GROUP, PC

9
10 By: _____

Kane Moon
H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff