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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

DIANE DE LA CRUZ, individually, on behalf of all others similarly situated, and on behalf of the State of California and other aggrieved persons, *Plaintiff*, v. JAMES NICHOLSON ENTERPRISES dba DINSMORE LANDSCAPE COMPANY, a California corporation; and DOES 1 through 10, inclusive, *Defendants*.	Case No.: 23CV421709 *[Assigned for All Purposes to the Hon. Theodore C. Zayner, Dept. 19]* **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** Preliminary Approval Hearing: Date: April 1, 2026 Time: 1:30 p.m. Dept: 19 Action Filed: August 30, 2023

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

PLEASE TAKE NOTICE that on April 1, 2026, at 1:30 p.m., in Department 19 of the Superior Court of California, County of Santa Clara, located 191 North First Street, San Jose, California 95113, pursuant to California Code of Civil Procedure § 382 and California Rules of Court, Rule 3.769, *et seq*., Plaintiff Diane De La Cruz ("Plaintiff") will move the Court for an Order granting preliminary approval of the proposed class action settlement between Plaintiff and Defendant James Nicholson Enterprises DBA Dinsmore Landscape Company ("Defendant"). Plaintiff further moves the Court for an Order:

1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement and Class Notice;
2. Certifying a Class for settlement purposes;
3. Approving the Notice and the plan for distribution of the Notice;
4. Appointing Plaintiff Diane De La Cruz and soon-to-be-named plaintiffs, Simon Perez Flores and Santos Andrade Nazario, as Class Representatives for settlement purposes;
5. Appointing Plaintiff's Counsel, Arrash T. Fattahi, Arman A. Salehi, Emily K. Borman, and Courtney M. Miller of Wilshire Law Firm, PLC and Harout Messrelian of Messrelian Law Inc. as Class Counsel for settlement purposes;
6. Appointing Phoenix Settlement Administrators as the Settlement Administrator;
7. Granting Plaintiff leave to amend to file a Second Amended Complaint; and
8. Scheduling a final approval hearing.

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The motion will be based upon this notice, the attached memorandum of points and authorities, the Declaration of Arrash T. Fattahi filed concurrently herewith, the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: March 9, 2026

WILSHIRE LAW FIRM, PLC

By: */s/ Courtney M. Miller*
Arrash T. Fattahi
Arman A. Salehi
Emily K. Borman
Courtney M. Miller
Attorneys for Plaintiff Diane De La Cruz

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I. INTRODUCTION

Plaintiff Diane De La Cruz ("Plaintiff") seeks preliminary approval of a proposed $250,000.00 non-reversionary, wage and hour class action settlement with Defendant James Nicholson Enterprises DBA Dinsmore Landscape Company ("Defendant," and together with Plaintiff, the "Parties"). This motion for preliminary approval is unopposed. The Settlement will provide substantial monetary payments to approximately 388 class members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, discovery, and negotiations. The negotiations were at arm's length and were facilitated by an experienced class action mediator, Michael Mandel, Esq., in multiple mediation sessions. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached a settlement. Accordingly, Plaintiff requests that the Court preliminarily approve the proposed Settlement, certify the proposed settlement class, approve the proposed Class Notice, and set a final approval hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims

This is a wage and hour class action and anticipated representative action pursuant to the Private Attorneys General Act ("PAGA") (Cal. Lab. Code §§ 2699, *et seq.*) Plaintiff and putative class members were current and former hourly non-exempt employees who worked for Defendant in California at any time during the class period. (Declaration of Arrash T. Fattahi in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ["Fattahi Decl."] at ¶ 2.) Defendant is a landscape management company offering landscape construction services to Silicon Valley properties. (*Id.*)

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

On August 30, 2023, Plaintiff filed a putative wage and hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to indemnify employees for expenditures; and (8) unfair business practices. (Fattahi Decl. at ¶ 4.)

On September 22, 2023, Plaintiff sent a notice to Defendant and the California Labor & Workforce Development Agency ("LWDA") alleging similar wage and hour violations pursuant to PAGA. (Fattahi Decl. at ¶ 4, **Ex. 1**.) On September 22, 2023, Simon Perez Flores sent a notice to Defendant and the LWDA alleging similar wage and hour violations pursuant to PAGA. (Fattahi Decl. at ¶ 4, **Ex. 2**.)

On October 22, 2024, Plaintiff filed a First Amended Complaint in this action adding a cause of action for civil penalties under PAGA. (Fattahi Decl. at ¶ 4.) On January 5, 2024, Simon Perez Flores filed a representative action against Defendant for civil penalties under PAGA in the Superior Court of California, County of Santa Clara, Case No. 24CV428669. As part of this Motion, Plaintiff requests leave to amend to file a Second Amended Complaint to add Simon Perez Flores and Santos Andrade Nazario as named plaintiffs in this action. (*Id.*)

B. <u>Discovery and Investigation</u>

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

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

C. Settlement Negotiations

On March 13, 2025, and April 3, 2025, the Parties participated in a private mediation with experienced class action mediator, Michael Mandel, Esq. (Fattahi Decl. at ¶ 7.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached a settlement, the material terms of which are encompassed within the Settlement. (*Id.* at ¶ 8, **Ex. 4** [Class Action and PAGA Settlement Agreement and Release].)

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

Indeed, the $250,000.00 Settlement represents approximately **82%** of the **realistic maximum recovery** of $306,420.65. (Fattahi Decl. at ¶ 22.) Although Class Counsel estimated that Defendant's maximum potential liability for all claims was approximately $3,850,647.50, when the risk of prevailing at certification and trial are factored into the equation, Class Counsel believes that Defendant's realistic exposure was approximately $190,744.65, meaning the Settlement achieves a significant recovery. (*Id.* at ¶¶ 13-26.) Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class. (*Id.* at ¶ 22.) Indeed, because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id.*)

D. <u>Key Terms of the Proposed Settlement</u>

The Settlement's key terms include:

1. <u>Class Definition</u>: For settlement purposes only, the Parties agree to the certification of a class pursuant to California Code of Civil Procedure § 382 defined as: "all current and former hourly, non-exempt employees who worked for Defendant in California at any time during the Class Period." (Settlement, § 1.c.)

2. <u>Class Period</u>: "means any time between January 1, 2021 and April 3, 2025" (Settlement, § 1.g.)

3. <u>Settlement Class or Settlement Class Member</u>: "means all current and former hourly, non-exempt employees who worked for Defendant in California at any time during the Class Period and excluding any opt-outs." (Settlement, § 1.ee.)

4. <u>Aggrieved Employee</u>: "means all current and former hourly, non-exempt employees who worked for Defendant in California at any time during the PAGA Period." (Settlement, § 1.b.)

5. <u>PAGA Period</u>: "means any time between September 22, 2022 through April 3, 2025." (Settlement, § 1.v.)

6. <u>Gross Settlement Amount:</u> "means the non-reversionary total amount that Defendant shall pay in connection with this Settlement, including any interest earned on such funds, in exchange for the release of the Settlement Class Members' and Aggrieved Employees' Released Claims. The Gross Settlement Amount is the gross sum of Two Hundred-Fifty Thousand Dollars ($250,000.00), plus amounts paid pursuant to the Escalator Clause in Section 22(b) below, if any. The Gross Settlement Amount includes: (a) all Settlement Awards to Settlement Class Members; (b) PAGA Payment; (c) Service Award; (d) Attorneys' Fees and Costs to Class Counsel, and (e) Settlement Administration Costs to the Settlement Administrator. Except for the Defendant's employer's portion of payroll taxes on Settlement Awards to Class Members ("Defendant's Payroll Taxes"), the Parties agree that Defendant will have no obligation to pay any

amount in connection with this Settlement Agreement apart from the Gross Settlement Amount and Defendant's Payroll Taxes.” (Settlement, § 3.p.)

7. Uncashed Checks: Any settlement checks remaining uncashed after 180 days shall be cancelled and the funds represented by such checks shall, consistent with the requirements of California Code of Civil Procedure section 384, be remitted to the Katharine & George Alexander Community Law Center. (Settlement, § 33.)

8. Released Class Claims:

> The Settlement Class Members release the Releasees from the following rights or claims: all claims arising between January 1, 2021 and April 3, 2025, inclusive, under state, federal, or local law, arising out of the facts pleaded in the operative Second Amended Complaint filed in the De La Cruz Action (including, but not limited to: claims for violation of Labor Code sections 201-204, 226, 226.7, 510-512, 1174, 1174.1, 1182.11, 1182.12, 1194, 1197, 1197.1, 1198 and 2699 et seq. and Business and Professions Code § 17200 et seq. and claims based on alleged violations of these Labor Code provisions) and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that were or could have been pleaded based on the facts asserted in the Action, including: (1) failure to pay for all hours worked; (2) failure to pay minimum wages; (3) failure to pay overtime wages; (4) failure to authorize and permit and/or make available meal and rest periods; (5) failure to provide timely and accurate itemized wage statements; (6) waiting time penalties; and (7) unlawful business practices. The enumeration of these specific statutes and theories shall neither enlarge nor narrow the scope of res judicata based on the claims that were asserted in the Action or could have been asserted in the Action based on the facts and theories alleged in any complaint on file in the Action..

(Settlement, § 12.)

9. Released PAGA Claims:

> For the State of California, and, to the extent permitted by law, the Aggrieved Employees, the PAGA release includes all claims asserted in the PAGA Notices and as alleged in the First Amended Complaint filed in the De La Cruz Action and as alleged in the Complaint for the Flores Action, for PAGA civil penalties pursuant to Labor Code sections 2699, et seq. in connection with alleged violations of Labor Code sections 201-203, 204, 226, 226.7, 510, 1182.12, 1174, 1194, 1197, 1198, and 2802 (the PAGA Released Claims")

(Settlement, § 13.)

10. No Reversion, No Claims Made: The Gross Settlement amount is non-reversionary. (Settlement, § 1.p.)

11. PAGA Allocation: The settlement includes $3,600.00 allocated to Plaintiff’s claims under PAGA, with 75% ($2,700.00) being paid to the LWDA and 25% ($900.00) being paid to the

Aggrieved Employees. (Settlement, § 23.c.) Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for Preliminary Approval. (Fattahi Decl. at ¶ 9.)

12. Net Settlement Amount: "means the Gross Settlement Amount less: (i) Service Awards; (ii) Fee Award; (iii) Class Counsel's Costs; (iv) Settlement Administrator Costs; (v) the payment to Labor and Workforce Development Agency ("LWDA") for its share of PAGA penalties; (vi) and the Net PAGA Amount. The Parties acknowledge that all of these amounts are subject to the Court's approval.." (Settlement, § 1.s.)

13. Distribution Formula: "The total number of settlement shares for all Settlement Class Members will be added together and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar figure. That figure will then be multiplied by each Participatin g Individual's number of settlement shares to determine the Settlement Class Member's pro rata portion of the Net Settlement Amount." (Settlement, § 27.iii.) As to PAGA, "The total number of settlement shares for all Aggrieved Employees will be added together and the resulting sum will be divided into the Net PAGA Amount to reach a per share dollar figure. That figure will then be multiplied by each Aggrieved Employee's number of settlement shares to determine the Aggrieved Employee's pro rata portion of the Net PAGA Amount." (Settlement, § 27.b.i.)

14. Tax Allocation: 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The remaining 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). (Settlement, § 29.)

15. Class Representative Service Payments: Defendant agrees not to oppose Plaintiff's request for a service payment to each of the Plaintiffs of up to $5,000.00 each ($15,000.00 total). (Settlement, § 1.aa.) This payment shall be in addition to the *pro rata* recovery received by Plaintiff as part of the Settlement.

16. Attorneys' Fees and Costs: The Settlement provides that Defendant will not oppose a fee application of up to one third (1/3) of the Gross Settlement Amount (currently estimated to be $83,333.33), plus out-of-pocket costs estimated at $15,000.00. (Settlement, §§ 23.bi.i, 23.b.ii.)

17. Notice of Proposed Class Action Settlement: The Class Notice sets forth in plain

terms, a statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys' fees, costs, and service payment being sought, and an explanation of how the settlement allocations are calculated. (Settlement, Ex. A, Class Notice.) Class Members will be notified of the settlement by mail and email, if email addresses are available. (Settlement, § 15.e.) Phoenix Settlement Administrators ("Phoenix"), the proposed Settlement Administrator, will undertake its best efforts to ensure that the class notice is provided to the current addresses of class members, including conducting a national change of address search and re-mailing the class notice to updated addresses. (*Id.*; Fattahi Decl. at ¶ 10, **Ex. 6** [Phoenix's Bid].)

III. DISCUSSION

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

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

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

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

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

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

The Settlement was reached following extensive negotiations following multiple mediation sessions with experienced class action employment mediator, Michael Mandel, Esq. (Fattahi Decl. at ¶ 7.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached an agreement. (*Id.* at ¶ 8.)

Prior to reaching this settlement, Class Counsel conducted informal discovery concerning the claims set forth in the litigation, such as a sampling of timekeeping and payroll records for the class members, Defendant's handbook in effect during the class period, and information regarding the total number of current and former employees in its informal discovery responses. (Fattahi Decl. at ¶¶ 5-6.) In conjunction with their extensive factual investigation, Class Counsel investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.* at ¶ 6.) Thus, Plaintiff and Class Counsel were able to act intelligently and effectively in negotiating the proposed Settlement.

Class Counsel also has considerable experience and has demonstrated competence with litigating wage and hour class actions. (Fattahi Decl. at ¶¶ 37-48.) Again, this supports the position that the terms of the Settlement are premised on objective evidence that has been considered and weighed in light of the risks, expenses, and time consumption to both sides of continued litigation of this action.

2. The Settlement Is Fair and Reasonable in Light of the Parties' Respective Legal Positions

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

This settlement avoids the risks and the accompanying expense of further litigation. (Fattahi Decl. at ¶ 24.) While Plaintiff is confident in the merits of her claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 23.) Plaintiff also recognizes that proving the amount of wages due to each class member would be an expensive, time-consuming, and uncertain proposition. (*Id.*)

The proposed settlement of $250,000.00 therefore represents a substantial recovery when compared to Plaintiff's reasonably forecasted recovery. (Fattahi Decl. at ¶¶ 13-26.) Because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. When considering the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement amount of $250,000.00 is well within the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) ***Indeed, each Settlement Class Member is eligible to receive an average net benefit of approximately $296.56.*** (*Id.* at ¶ 25.)

3. Class Counsel Has Extensive Experience in Class Action Litigation

The settlement negotiations were conducted by highly capable and experienced counsel. Class Counsel has a strong record of vigorous and effective advocacy for their clients and are experienced in handling complex wage and hour class action litigation. (Fattahi Decl. at ¶¶ 37-48.) Although Plaintiff and Class Counsel were prepared to litigate the claims alleged in the litigation, they support the proposed Settlement as being in the best interests of the class.

B. The Proposed Class Notice of Settlement Should Be Approved

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

C. The Proposed Attorneys' Fees and Costs Are Reasonable

Under the Settlement, subject to the Court's approval, the Parties agreed to allocate reasonable attorneys' fees in an amount currently estimated to be $83,333.33, and up to an estimated $15,000.00 in costs (however, the estimated costs have since increased to approximately $25,000.00 after taking the cost of mediation into account, among other costs). (Settlement, §§ 23.bi.i, 23.b.ii.) These amounts are disclosed to all class members in the proposed Class Notice and are reasonable.

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

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

Class Counsel seeks an award of attorneys' fees on the "percentage of recovery/common fund" theory. The purpose of this approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air West, Inc*. (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1995) 15 Cal.3d 162, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." (*Id.* at p. 110.)

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

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

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

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

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

Labor Code § 1194 (a) provides for the recovery of "minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Under this section, Plaintiff would be permitted to recover her actual attorneys' fees, even if those fees were larger than the total class recovery at the conclusion of this case. This settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Class Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action involved significant financial risk for Class Counsel. (Fattahi Decl. at ¶¶ 35-36.) Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class ahead of all other concerns.

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

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possesses considerable expertise in litigating class actions. (Fattahi

Decl. at ¶¶ 37-48.) Class Counsel has been involved as lead counsel or co-counsel in several class actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class counsel commensurate with their skill, reputation and experience, Class Counsel's requested fee award is supported here.

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

D. <u>The PAGA Allocation is Reasonable</u>

Where settlements negotiate a good faith amount for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of other" class members, such amounts are generally considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133 at *1, 9.) Courts have approved amounts for PAGA penalties in the range of zero to two percent of the total maximum amount of the Settlement. (*Id*. [approving a PAGA payment of 0.3%, or $1,500]; *see also Jack v. Hartford Fire Ins. Co.* (S.D. Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a PAGA payment of 0.25%]; *McKenzie v. Fed. Express Corp*. (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5 [acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement].) Here, the amount to be paid to the LWDA is larger than many other PAGA settlement amounts approved by the courts where seemingly nominal amounts were allocated for such claims. (*See, e.g., Zubia v. Shamrock Foods Co*. (C.D. Cal. Dec. 21, 2017) No. CV1603128ABAGRX, 2017 WL 10541431, at *14 [approving a PAGA settlement of 0.1%]; *Hopson*, 2008 WL 3385452, at *1 [approving a PAGA settlement of 0.3% or $1,500]; *Garcia v. Gordon Trucking, Inc*. (E.D. Cal. Oct. 31, 2012) No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 [approving a PAGA settlement of 0.27%].) Here, the Parties negotiated a good faith amount of $3,600.00, 75% percent of which

($2,700.00) will be paid to the LWDA and 25% ($900.00) to be distributed to the Aggrieved Employees. (Settlement, § 23.c.) The Parties negotiated to allocate the portion of the Settlement to PAGA penalties in good faith and the $3,600.00 allocation equates to approximately 1.4% of the Gross Settlement Amount, which is larger than amounts that are routinely approved. Moreover, the $3,600.00 allocation for PAGA penalties represents approximately 10% of the realistic maximum recovery ($3,600.00 / $36,000.00). (Fattahi Decl. at ¶ 22.)

E. <u>The Service Payments to Named Plaintiffs Are Reasonable</u>

Named plaintiffs in class action lawsuits "are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz, supra,* 186 Cal.App.4th at p. 412.) Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class, and are appropriate given the benefit the class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp*. (9th Cir. 2009) 563 F.3d 948, 958-59.)

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

Under the Settlement, subject to the Court's approval, Defendant agreed to pay a Class Representative Service Payment to each of the Plaintiffs in the amount of $5,000.00 ($15,000.00 total). (Settlement, § 1.aa.) Courts routinely approve $5,000 and greater enhancement awards for plaintiffs represented by Class Counsel. (*See, e.g., Moreno v. Pretium Packaging, L.L.C.* (C.D.

Cal. Aug. 6, 2021) 2021 WL 3673845, *3 ["The Court concludes a $10,000 incentive award is appropriate."]; *Suarez v. Bank of America, National Association* (N.D. Cal., Jan. 11, 2024, No. 18-CV-01202-LB) 2024 WL 150721, at *4 ["The court approves awards of $10,000 for each class representative."].) Class Counsel represents that Plaintiffs devoted a great deal of time and work assisting counsel in the case, communicated with counsel very frequently for litigation and to prepare for mediation, and was frequently in contact with Class Counsel during the mediation. (Fattahi Decl. at ¶¶ 27-31; *see generally* Plaintiffs' declaration.) This amount is reasonable particularly in light of the substantial benefits Plaintiffs generated for all class members. (*Id.*)

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

IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

A. Legal Standard

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

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

B. Plaintiff Maintains That the Criteria for Class Certification Are Satisfied for Settlement Purposes.

1. The Class is Ascertainable and Numerous

The proposed class that Plaintiff seeks to represent is easily ascertainable and includes approximately 388 employees of Defendant.

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

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

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

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

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

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

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

4. Plaintiff and Her Counsel Meet the Adequacy Requirement

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

All of these requirements are met here for settlement purposes. Plaintiff retained counsel with extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Fattahi Decl. at ¶¶ 37-48.) Class Counsel unquestionably is "qualified, experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 875.) In addition, Plaintiff has no conflicts, and Plaintiff has, with counsel, litigated this case and diligently reviewed the settlement terms, showing her dedication. Plaintiff's willingness to serve as a representative demonstrates her serious commitment to bringing about the best results possible for the class. (*McGhee*, *supra,* 60 Cal.App.3d at p. 451.)

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

Finally, in making its class certification decision, the Court must determine that a class action would be superior to alternative means for the fair and efficient adjudication of the litigation. By consolidating many potential individual actions into a single proceeding, this Court's use of the class action device enables it to manage this litigation in a manner that serves the economics of time, effort and expense for the litigants and the judicial system. 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. (*Gentry, supra,* 42 Cal.4th at pp. 457-62; *Leyva v. Medline Ind.* (9th Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the superiority concerns are essentially non-existent.

V. THE PROPOSED CLASS NOTICE IS CONSTITUTIONALLY SOUND

A. The Proposed Class Notice Plan Satisfies Due Process

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

B. The Class Notice is Accurate and Informative

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

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

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VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant leave to amend to file a Second Amended Complaint, grant preliminary approval of the proposed settlement and set a Final Approval Hearing.

Respectfully submitted,

Dated: March 9, 2026

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