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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA**

ZACHARY SCHENK, individually, on behalf of  
all others similarly situated, the State of  
California, and other aggrieved persons

*Plaintiff,*

v.

SMITH'S GTS, INC., a California corporation;  
and DOES 1 through 10, inclusive,

*Defendants.*

Case No. 23CV424953  
Assigned to Hon. Beth McGowen, Dept. 22

Complaint filed: October 26, 2023  
FAC filed: April 15, 2024  
Trial date: Not Set

**CLASS & REPRESENTATIVE ACTION**

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

**PRELIMINARY APPROVAL HEARING**

Date: May 21, 2026  
Time: 1:30 p.m.  
Dept: 22

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

3 PLEASE TAKE NOTICE that on May 21, 2026 at 1:30 p.m., in Department 22 of the  
4 Santa Clara County Superior Court, located at Old Courthouse, 161 North First Street, San Jose,  
5 CA 95113, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, *et seq.*,  
6 Plaintiff Zachary Schenk (“Plaintiff” or “Class Representative”) will move the Court for an Order  
7 granting preliminary approval of the proposed \$220,000.00 (the “Gross Settlement Amount”) Class  
8 Action and PAGA Settlement Agreement and Class Notice (the “Settlement” or “Settlement  
9 Agreement”) between Plaintiff and Defendant Smith’s GTS, Inc. (“Defendant,” and together with  
10 Plaintiff, the “Parties”) to resolve the wage and hour class action and Private Attorneys General  
11 Act (“PAGA”) (Cal. Lab. Code §§ 2699, *et seq.*) representative action between Plaintiff, on behalf  
12 of the Class (defined below), and Defendant (the “Action”). Plaintiff further moves the Court for  
13 an Order:

- 14 1. Granting preliminary approval of the Settlement Agreement;
- 15 2. Certifying the Class, defined as “all past and present non-exempt employees in the state  
16 of California who worked for Defendant at any time during the Class Period” for  
17 settlement purposes. The Class Period is the period from October 26, 2019, to August  
18 23, 2024 (the “Class Period”);
- 19 3. Approving the proposed class notice (the “Class Notice”) and the plan for distribution  
20 of the Class Notice. A true and correct copy of the Class Notice is attached to the  
21 Settlement Agreement as **Exhibit A**;
- 22 4. Appointing Plaintiff Zachary Schenk as Class Representative for settlement purposes;
- 23 5. Appointing Plaintiff’s Counsel, Benjamin H. Haber, Daniel J. Kramer, Chase M. Stern,  
24 Alan A. Wilcox, and Conor J.D. Gomez of Wilshire Law Firm, PLC (“WLF”) as “Class  
25 Counsel” for settlement purposes;
- 26 6. Appointing Apex Class Action Administration as the “Administrator”; and
- 27 7. Scheduling a final approval hearing.

28 The motion will be based upon this notice, the attached memorandum of points and

1 authorities, the Declarations of Alan Wilcox (the “Class Counsel Declaration”) and Zachary  
2 Schenk, filed concurrently herewith, the records and files in the Action, and any other further  
3 evidence or argument that the Court may properly receive at or before the hearing (the “Motion”).  
4

5 Respectfully submitted,

6 Dated: April 23, 2026

WILSHIRE LAW FIRM, PLC

7 By: 

8 Benjamin H. Haber

9 Daniel J. Kramer

Chase M. Stern

Alan A. Wilcox

10 Conor J.D. Gomez

11 *Attorneys for Plaintiff*  
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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Plaintiff seeks preliminary approval of the proposed Settlement Agreement entered into between Plaintiff (on behalf of the Class) and Defendant. The Settlement Agreement will provide substantial monetary payments to approximately 146 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 arms-length and after extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties executed the Settlement Agreement on March 19, 2026. Accordingly, Plaintiff requests that the Court preliminarily approve the proposed Settlement, certify the Class, approve the proposed Class Notice, and set a final approval hearing.

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

#### **A. Plaintiff's Claims**

Plaintiff alleges that Defendant's payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. (Class Counsel Decl., at ¶ 3.) Plaintiff alleges that Defendant failed to pay for all hours worked. (*Id.*) Specifically, Plaintiff alleges that Defendant failed to pay for all hours worked, failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages, failure to furnish accurate wage statements, and failure to indemnify employees for expenditures. (*Id.*)

Based on these allegations, on October 26, 2023, Plaintiff filed a putative wage and hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194 and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Labor Code § 226.7); (5) failure to timely pay final wages at termination (Labor Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Labor Code § 226); (7) failure to indemnify employees for expenditures (Labor Code § 2802); and (8) unfair business practices (Business and Professions Code §§

1 17200, *et seq.*). (Class Counsel Decl., at ¶ 4.) Plaintiff sent a notice to Defendant and the  
2 California Labor & Workforce Development Agency (“LWDA”) alleging similar wage and hour  
3 violations pursuant to the PAGA on December 12, 2023. (*Id.*) On April 15, 2024, Plaintiff filed  
4 a first amended complaint adding a cause of action for Civil Penalties Under the Private  
5 Attorneys General Act, Cal. Labor Code § 2699 *et seq.* in the Action, which alleged the PAGA  
6 claim against Defendant (the “Operative Complaint”). (*Id.*)

7 **B. Discovery and Investigation**

8 Following the filing of the Action, the Parties exchanged information, data, and  
9 documents before going to mediation. (Class Counsel Decl., at ¶ 5.) Defendant produced a  
10 sample of time and pay records for Class Members. (*Id.*) Defendant also provided documents of  
11 its wage and hour policies and practices during the Class Period, information regarding the total  
12 number of current and former employees in its informal discovery responses, and financial  
13 records. (*Id.*) The Parties have engaged in sufficient informal discovery and investigation to  
14 assess the relative merits of the claims and contentions of the Parties. (*Id.*)

15 After reviewing documents regarding Defendant’s wage and hour policies and practices  
16 and analyzing Defendant’s timekeeping and payroll records, Class Counsel was able to evaluate  
17 the probability of class certification, success on the merits, and Defendant’s maximum monetary  
18 exposure for all claims. (Class Counsel Decl., at ¶ 6.) Class Counsel also investigated the  
19 applicable law regarding the claims and defenses asserted in the Action. (*Id.*) Class Counsel  
20 reviewed these records and prepared a damage analysis prior to mediation. (*Id.*) This extensive  
21 investigation and discovery allowed Class Counsel to act intelligently and effectively in  
22 negotiating the Settlement. (*Id.*)

23 **C. Settlement Negotiations**

24 On May 24, 2024, the Parties participated in private mediation with experienced class  
25 action mediator Phillip K. Cha, Esq. (Class Counsel Decl., at ¶ 7.) The settlement negotiations  
26 were at arm’s length and, although conducted in a professional manner, were adversarial. (*Id.*)  
27 After extensive negotiations and discussions regarding the strengths and weaknesses of  
28 Plaintiff’s claims and Defendant’s defenses, the Parties reached the Settlement, the material

terms of which are encompassed within the Settlement Agreement. (*Id.* at ¶ 8, Ex. 1, Settlement Agreement.)

Class Counsel has conducted a thorough investigation into the facts of this case. (Class Counsel Decl., at ¶ 14.) Based on the foregoing discovery and their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, just, reasonable, and adequate and is in the best interests of the 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 Gross Settlement Amount represents approximately **46.5%** of the **realistic maximum recovery** of \$472,754.79. (Class Counsel Decl., at ¶ 22.) Although Class Counsel estimated that Defendant’s maximum potential liability for all claims was approximately \$1.3 million, when the risk of prevailing at certification and trial are factored into the equation, Class Counsel believes that Defendant’s realistic exposure was \$472,754.79, meaning the Settlement achieves a significant recovery. (*Id.* at ¶¶ 14-26.) Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class. (*Id.* at ¶ 26.) Indeed, because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id.* at ¶ 22.)

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

The Settlement’s key terms include:

1. Class Period: “means the period from October 26, 2019, to August 23, 2024.” (Settlement, § 1.12.)
2. Class: “means all past and present non-exempt employees in the state of California who worked for Defendant at any time during the Class Period.” (Settlement, § 1.5.)
3. Aggrieved Employee: “means a person employed by Defendant in California and classified as an hourly-paid or non-exempt employee who worked for Defendant during the PAGA Period.” (Settlement, § 1.4.)

1           4.     Gross Settlement Amount or GSA: “means \$220,000.00 which is the total amount  
2 Defendant agrees to pay under the Settlement, except as provided in Paragraph 8 [of the Settlement  
3 Agreement].” (Settlement, § 1.22.)

4           5.     Uncashed Checks: “For any Class Member whose Individual Class Payment check  
5 or Individual PAGA Payment check is uncashed and cancelled after the void date, the  
6 Administrator shall transmit the funds represented by such checks to a Court approved nonprofit  
7 organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) (“Cy  
8 Pres Recipient”) Legal Aid at Work.” (Settlement, § 4.4.3.)

9           6.     Released Class Claims: “All Participating Class Members, on behalf of themselves  
10 and their respective former and present representatives, agents, attorneys, heirs, administrators,  
11 successors, and assigns, release Released Parties from any and all claims asserted or that could have  
12 been asserted based on the facts pled in the operative complaints, including but not limited to, state  
13 wage and hour claims for any and all violations of California's Labor Code and Unfair Competition  
14 Law based on Defendant's failure to pay for all hours worked (including minimum, straight time, and  
15 overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure  
16 to timely pay final wages at termination, failure to furnish accurate itemized wage statements, failure  
17 to produce requested employment records, and failure to indemnify employees for expenditures  
18 based on the alleged Labor Code violations, and all damages, interest, penalties, attorneys' fees, costs,  
19 and other amounts recoverable under said causes of action under California law, to the extent  
20 permissible, including, but not limited to, the California Labor Code and the applicable Wage Orders.  
21 Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any  
22 other claims, including claims for vested benefits, wrongful termination, violation of the Fair  
23 Employment and Housing Act, unemployment insurance, disability, social security, workers’  
24 compensation, or claims based on facts occurring outside of the Class Period.” (Settlement, § 5.2.)

25           7.     Released PAGA Claims: “All Aggrieved Employees are deemed to release, on  
26 behalf of themselves and their respective former and present representatives, agents, attorneys,  
27 heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA  
28 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period

facts stated in the Operative Complaint and the PAGA Notice, including any and all claims involving any alleged failure to pay minimum wages or overtime, failure to provide meal and rest periods, failure to provide accurate wage statements, failure to pay all wages due at separation, failure to produce requested employment records, and failure to reimburse business expenses, including Labor Code sections 201, 202, 203, 210, 216, 223, 225.5, 226, 226.3, 226.7, 245-248.5, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 during the PAGA Period. Aggrieved Employees only release these claims for the duration of the PAGA Period.” (Settlement, § 5.3.)

8. No Reversion: “None of the Gross Settlement Amount will revert to Defendant.” (Settlement, § 3.1.)

9. PAGA Penalties: “means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount Amount, allocated 25% to the Aggrieved Employees (\$1,250.00) and the 75% to LWDA (\$3,750.00) in settlement of PAGA claims.” (Settlement, § 1.34.) Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for Preliminary Approval.” (Class Counsel Decl., ¶ 9.)

10. Net Settlement Amount: “means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.” (Settlement, § 1.28.)

11. Distribution Formula: As to Class: “An Individual Class Payment is calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period, and (b) multiplying the result by each individual Participating Class Member’s Workweeks.” (Settlement, § 3.2.4.) As to PAGA: “The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$1,250.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period, and (b) multiplying the result by each individual Aggrieved Employee’s PAGA Pay Periods. Aggrieved

Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.” (Settlement, § 3.2.5.1.)

12. Tax Allocation of Individual Class Payments: “20% of each Participating Class Member’s Individual Class Payment will be allocated to the settlement of wage claims (the “Wage Portion”). The Wage Portion is subject to tax withholding and will be reported on an IRS W-2 Form. The remaining 80% of each Participating Class Member’s Individual Class Payment will be allocated to the settlement of claims for interest and penalties (the “Non-Wage Portion”). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.” (Settlement, § 3.2.4.1.)

13. Class Representative Service Award: “Class Representative Service Payment to the Class Representative of not more than \$5,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff’s request for a Class Representative Service Payment that does not exceed this amount.” (Settlement, § 3.2.1.)

14. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment: “A Class Counsel Fees Payment of not more than 35%, which is currently estimated to be \$77,000.00 and a Class Counsel Litigation Expenses Payment of not more than \$20,000.00. Defendant will not oppose requests for these payments provided that do not exceed these amounts.” (Settlement, § 3.2.2.)

15. Administrator: “means Apex Class Action Administration, the neutral entity the Parties have agreed to appoint to administer the Settlement.” (Settlement, § 1.2.)

16. Administration Expenses Payment: “means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.” (Settlement, § 1.3.) In its bid, the Administrator agreed to cap its costs at \$6,590.00 for 160 Class Members. (Class Counsel Decl., ¶ 10, Ex. 2 [Administrator Bid].)

1           17.    Notice of Proposed Class Action Settlement: The Class Notice sets forth in plain  
2 terms, a statement of the Action, the terms of the Settlement Agreement, the approximate amount  
3 of the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class  
4 Representative Service Payment being sought, and an explanation of how the Settlement  
5 allocations are calculated. (Settlement, Ex. A, Class Notice.) Class Members will be notified by  
6 first-class mail of the Settlement. (Settlement, § 4.4.1.) The Administrator will undertake its best  
7 efforts to ensure that the Class Notice is provided to the current addresses of Class Members,  
8 including conducting a national change of address search and re-mailing the Class Notice to  
9 updated addresses. (*Id.*; Class Counsel Decl., ¶ 10, Ex. 2 [Administrator Bid].)

### 10   **III.    DISCUSSION**

11           To prevent fraud, collusion, or unfairness to the class, the settlement of a class action  
12 requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This  
13 Court has wide discretion to determine whether the proposed Settlement is fair. (*Mallick v. Super.*  
14 *Ct.* (1979) 89 Cal.App.3d 434, 438.)

#### 15           **A.    A Presumption of Fairness Exists Over The Settlement**

16           Fairness is presumed when: (1) the settlement is reached through arm's-length bargaining;  
17 (2) investigation is sufficient to allow counsel and the court to act intelligently; (3) counsel is  
18 experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk* at p. 1800.)

#### 19                   **1.    The Settlement Is the Product of Arm's-Length Negotiations**

20           Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless  
21 evidence to the contrary is offered. No evidence to the contrary has been offered here; thus, there  
22 is a presumption that the negotiations were conducted in good faith. (Conte & Newberg, *Newberg*  
23 *on Class Actions* (3rd Ed.) § 11.51.)

24           On May 24, 2024, the Parties participated in private mediation with experienced class  
25 action mediator Phillip K. Cha, Esq. (Class Counsel Decl., at ¶ 7.) The Parties' settlement  
26 discussions were conducted at arms' length and although the Parties were professional, the  
27 settlement negotiations were adversarial with each of the Parties prepared to litigate their position  
28 through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and

1 discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses,  
2 the Parties reached the Settlement. (*Id.*)

### 3 **2. The Parties Conducted Sufficient Investigation**

4 Prior to reaching this Settlement, Class Counsel conducted informal discovery concerning  
5 the claims set forth in the Action, such as a sample of Class Member timekeeping and payroll  
6 records, Defendant's policies and procedures concerning the payment of wages, the provision of  
7 meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well  
8 as information regarding the number of putative Class Members and the mix of current versus  
9 former employees, the wage rates in effect, and the amount of meal and rest period premium wages  
10 paid to Class Members. (Class Counsel Decl., at ¶¶ 5-6.) In conjunction with their extensive factual  
11 investigation, Class Counsel investigated the applicable law regarding the claims and defenses  
12 asserted in the Action. (*Id.*) Thus, Plaintiff and Class Counsel were able to act intelligently and  
13 effectively in negotiating the proposed Settlement. (*Id.*)

### 14 **3. Class Counsel Has Extensive Experience in Class Action Litigation**

15 The settlement negotiations were conducted by highly capable and experienced counsel.  
16 Class Counsel have a strong record of vigorous and effective advocacy for their clients and are  
17 experienced in handling complex wage and hour class action litigation. (*Id.* at ¶¶ 36-45.) Although  
18 Plaintiff and Class Counsel were prepared to litigate the claims alleged in the Action, they believe  
19 the proposed Settlement is in the best interests of the Class.

### 20 **4. The Percentage of Objectors Is Small**

21 This factor cannot yet be determined unless and until the Court preliminarily approves the  
22 Motion and the Class Notice. This factor will be properly addressed in Class Counsel's Motion  
23 for Final Approval of Class Action Settlement, should this Court grant the instant Motion.

### 24 **B. The Settlement Is Fair, Just, Reasonable, and Adequate**

25 In considering whether a settlement is fair, just, reasonable, and adequate the trial court  
26 should consider relevant factors, which may include the strength of plaintiff's case, the risk,  
27 expense, complexity and likely duration of further litigation, the risk of maintaining class action  
28 status through trial, the amount offered in settlement, the extent of discovery completed and the

1 stage of the proceedings, the experience and views of counsel, ... and the reaction of the class  
2 members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th  
3 116, 128.) Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh*  
4 *v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236.)

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

#### 8 **1. Plaintiff's Strengths and Risks of Continued Litigation**

9 Based on Plaintiff's discovery and investigation, Class Counsel reached the conclusion that  
10 Defendant had a policy and practice of: requiring its employees to work "off-the-clock" prior to  
11 clocking in for the workday, during meal periods, and after clocking out for the workday, time  
12 which it did not pay for; and not providing its employees with California compliant meal and rest  
13 periods, which it did not pay appropriate premiums for. (Class Counsel Decl., ¶ 16.) Defendant  
14 denies these claims.

15 While Plaintiff is confident in the merits of their claims, a legitimate controversy exists as  
16 to each cause of action. (Class Counsel Decl., ¶ 23.) Plaintiff recognizes that proving the amount  
17 of wages due to each class member would be an expensive, time-consuming, and uncertain  
18 proposition. (*Id.*) Although the Parties had engaged in significant amount of investigation, informal  
19 discovery and Class-wide data analysis, the Parties had not yet completed formal written discovery.  
20 (*Id.* at ¶ 24.) Plaintiff intended to depose corporate officers and managers of Defendant. (*Id.*)  
21 Moreover, preparation for a class certification and a trial remained for the Parties as well as the  
22 prospect of appeals in the wake of a disputed class certification ruling for Plaintiffs and/or adverse  
23 summary judgment ruling. (*Id.*) Had the Court certified any claims, Defendant could move to  
24 decertify the claims. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees  
25 and costs through trial. (*Id.*) This Settlement avoids the risks and the accompanying expense of  
26 further litigation. (*Id.*)

1 Balancing the strengths of Plaintiff’s claims against the risks of continued litigation of the  
2 Action, Plaintiff and Class Counsel determined that the proposed Settlement was in the best  
3 interests of the Class.

## 4 2. The Gross Settlement Amount Is Reasonable

5 In order to approve a class action settlement, the Court must satisfy itself that the class  
6 settlement is within the “ballpark” of reasonableness. (*Kullar*, at 133.) The fact that a plaintiff  
7 might have received more if the case had been fully litigated is no reason not to approve the  
8 settlement. (*Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447.) The record need not contain an  
9 explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of*  
10 *Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not require “an explicit  
11 statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims”,  
12 but instead, only an “understanding of the amount that is in controversy and the realistic range of  
13 outcomes of the litigation.”].)

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

21 The proposed Gross Settlement Amount represents a substantial recovery when compared  
22 to Plaintiff’s reasonably forecasted recovery. (Class Counsel Decl. at ¶¶ 14-26.) Because of the  
23 proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk  
24 of an unfavorable judgment. (*Id.*) When considering the risks of litigation, the uncertainties  
25 involved in achieving class certification, the burdens of proof necessary to establish liability, the  
26 probability of appeal of a favorable judgment, it is clear that the Settlement is within the “ballpark”  
27 of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) ***Indeed, each Class***  
28 ***Member is eligible to receive an average net benefit of approximately \$722.60.*** (*Id.* at ¶ 26.)

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

2           Under the Settlement, subject to the Court’s approval, Defendant agrees to pay Class  
3 Counsel the Attorney Fees and Costs. These amounts are disclosed to all Class Members in the  
4 proposed Class Notice and are reasonable. (Class Counsel Decl., at Ex. 1, Ex. A.)

5                   **1.     Class Counsel Request an Award of the Attorneys’ Fees and Costs Based**  
6                   **on the “Common Fund” Method**

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

13           Class Counsel seeks approval of the Class Counsel Fees based on the “percentage of  
14 recovery/common fund” theory. The purpose of this approach is to “spread litigation costs  
15 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire  
16 burden alone.” (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v.*  
17 *State of California* (1995) 15 Cal.3d 162, the California Supreme Court stated: “[O]ne who expends  
18 attorneys’ fees in winning a suit which creates a fund from which others derive benefits may require  
19 those passive beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly,  
20 in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court  
21 recognized that the common fund doctrine has been applied “consistently in California when an  
22 action brought by one party creates a fund in which other persons are entitled to share.” (*Id.* at p.  
23 110.)

24           The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th  
25 480 that, “when class action litigation establishes a monetary fund for the benefit of the class  
26 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the  
27 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the  
28 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage

1 method—including relative ease of calculation, alignment of incentives between counsel and the  
2 class, a better approximation of market conditions in a contingency case, and the encouragement  
3 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—  
4 convince us the percentage method is a valuable tool that should not be denied our trial courts.”  
5 (*Id.* [internal citations omitted].)

## 6                   **2.       The Requested Attorneys’ Fees and Costs Are in Line with Typical** 7                   **Cases**

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

18           Here, the Class Counsel Fees Payment is equal to 35% of the Gross Settlement Amount,  
19 which is in line with the prevailing guidelines established in California case law and academic  
20 literature and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162  
21 Cal.App.4th 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage method  
22 or the lodestar method is used, fee awards in class actions average around one-third of the  
23 recovery.”].) Accordingly, Plaintiff respectfully requests that the Court approve the Class Counsel  
24 Fees Payment as negotiated by the Parties and requested herein.

## 25                   **3.       This Matter Involves A “Fee-Shifting” Provision of the Labor Code**

26           Labor Code § 1194 (a) provides for the recovery of “minimum wage or overtime  
27 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Under this  
28 section, Plaintiff would be permitted to recover their actual attorneys’ fees, even if those fees were

larger than the total Class recovery at the conclusion of this Action should it proceed. The 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 Action. In fact, prosecution of this Action involved significant financial risk for Class Counsel. (Class Counsel Decl., ¶¶ 34-35.) Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once Class Counsel undertook this Action 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. (*Id.*)

#### **4. The Experience, Reputation and Ability of Class Counsel Support the Requested Attorneys' Fees and Costs**

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possess considerable expertise in litigating class actions. (Class Counsel Decl., ¶¶ 36-45.) 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 Class Counsel Fees Payment is reasonable and fair.

#### **D. The PAGA Allocation is Reasonable**

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

1 PAGA penalties in the range of zero to two percent of the total maximum amount of the Settlement.  
2 (*Id.* [approving a PAGA payment of 0.3%, or \$1,500]; *see also Jack v. Hartford Fire Ins. Co.* (S.D.  
3 Cal. Oct. 13, 2011) 2011 WL 4899942 at \*6 [approving a PAGA payment of 0.25%]; *McKenzie v.*  
4 *Fed. Express Corp.* (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at \*5 [acknowledging that courts  
5 approve PAGA claim settlements in the range of zero to two percent of the total settlement].)

6 Here, the PAGA Amount is larger than many other PAGA settlement amounts approved by  
7 the courts where seemingly nominal amounts were allocated for such claims. (*See, e.g., Zubia v.*  
8 *Shamrock Foods Co.* (C.D. Cal. Dec. 21, 2017) No. CV1603128ABAGRX, 2017 WL 10541431,  
9 at \*14 [approving a PAGA settlement of 0.1%]; *Hopson, supra*, 2008 WL 3385452, at \*1  
10 [approving a PAGA settlement of 0.3% or \$1,500]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal.  
11 Oct. 31, 2012) No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at \*3 [approving a PAGA  
12 settlement of 0.27%].) The Parties negotiated the PAGA Amount, 75% percent of which  
13 (\$3,750.00) as the LWDA Payment and 25% (\$1,250.00) to be distributed to the individual PAGA  
14 Members. (Settlement, § 1.34.) The PAGA Amount equates to approximately 2.3% of the Gross  
15 Settlement Amount, which far exceeds amounts that are routinely approved. The Parties negotiated  
16 to allocate 2.3% of the Settlement to PAGA Amount in good faith and this amount is reasonable.  
17 (Class Counsel Decl., ¶ 21.)

18 **E. The Enhancement Payment Is Reasonable**

19 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to  
20 compensate them for the expense or risk they have incurred in conferring a benefit on other  
21 members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval  
22 of class action settlement agreements containing enhancements for the class representatives, which  
23 are necessary to provide incentive to represent the class, and are appropriate given the benefit the  
24 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir.  
25 2009) 563 F.3d 948, 958-59.)

26 Service awards are particularly important to plaintiffs in wage and hour cases because they  
27 promote the important public policies underlying the wage and hour laws. This strong policy is  
28 codified in California Labor Code § 90.5, which provides, “it is the policy of this state to vigorously

1 enforce minimum labor standards in order to ensure employees are not required or permitted to  
2 work under substandard unlawful conditions . . . .” Nonetheless, the California Supreme Court has  
3 noted that “retaliation against employees for asserting statutory rights under the Labor Code is  
4 widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.*  
5 (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should be rewarded for  
6 assuming the risk of retaliation for the sake of class members. (See *Frank v. Eastman Kodak Co.*  
7 (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

8 Under the Settlement Agreement, subject to the Court’s approval, Defendant agreed to pay  
9 the Class Representative Service Payment in the amount of \$5,000.00 to Plaintiff. Courts routinely  
10 approve service awards of \$10,000.00 for plaintiffs represented by counsel. (See, e.g., *Moreno v.*  
11 *Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) 2021 WL 3673845, \*3 [“The Court concludes  
12 a \$10,000 incentive award is appropriate.”]; *Suarez v. Bank of America, National Association* (N.D.  
13 Cal., Jan. 11, 2024, No. 18-CV-01202-LB) 2024 WL 150721, at \*4 [“The court approves awards  
14 of \$10,000 for each class representative.”].)

15 A **2006** study examining the average incentive award given to class action plaintiffs from  
16 **1993 to 2002** found that the “average award per class representative was \$15,992 and the median  
17 award per class representative was \$4,357.” (Eisenberg & Miller, *Incentive Awards to Class Action*  
18 *Plaintiffs: An Empirical Study* (2006) 53 UCLA L.Rev. 1303, 1308.) That same study found that  
19 named plaintiffs in employment discrimination class actions received an average award of \$69,850  
20 and a median award of \$31,081, while named plaintiffs in other employment class actions received  
21 an average award of \$12,121 and a median award of \$13,059. (*Id.* at p. 1334.) The authors of the  
22 study found that higher awards in employment cases reflected the “courts’ wish to make  
23 representative plaintiffs whole by compensating them for the high costs of their service to the class,  
24 including risks of stigmatization or retaliation on the job.” (*Id.* at p. 1308.)

25 Class Counsel represents that Plaintiff devoted a great deal of time and work assisting Class  
26 Counsel litigate the Action, and Plaintiff communicated with Class Counsel during the mediation  
27 and the preparation leading up to mediation. (See generally Plaintiff’s declaration; Class Counsel  
28 Decl., ¶¶ 27-31.) The Class Representative Service Award is reasonable particularly in light of the

substantial benefits Plaintiff generated for all Class Members and as compared to similarly situated plaintiffs in other employment class and representative actions. (*Id.*)

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

##### A. **Legal Standard**

The proposed Class is well suited for class certification. All of 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 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 three requirements to section 382: Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is *superior* to other methods. (*In re Tobacco II Cases*, (2009) 46 Cal.App.4th 298, 313.)

The California Supreme Court has looked to Federal Rule of Civil Procedure 23 to further 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.” (*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**

1                   **Settlement Purposes.**

2                   **1.       The Class is Ascertainable and Numerous**

3                   A class is ascertainable if a plaintiff supplies a reasonable means of identifying potential  
4                   class members and the class is defined in terms of objective characteristics and common facts  
5                   sufficient to allow a class member to identify himself or herself as having a right to recover based  
6                   on that description. (*ABM Industries Overtime Cases*, (2017) 19 Cal.App.5th 277, 303.) Courts  
7                   also consider the size or numerosity of the class when determining whether or not it is  
8                   ascertainable. (*Id.* at 302).

9                               **a)       Class Definition**

10                  When defining a class, the terminology used must convey “sufficient meaning to enables  
11                  persons hearing to determine whether they are members of the class” and if the proposed class  
12                  definition offers an objective way to identify those who will be bound by the results of the  
13                  litigation. (*Id.* at 302-303.) Courts have routinely certified classes defined using language to that  
14                  here. (*Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 227; *see also Brinker*  
15                  at 1017-1018, 1019, defining several subclasses such as employees “who worked one or more work  
16                  periods in excess of three and a half hours without receiving a paid 10 minute break” and those  
17                  “who worked ‘off-the-clock’ or without pay.”)

18                  Here, the Class definition (as stated above) is objective as it is limited in scope to a specific  
19                  time frame (during the Class Period) and is limited to the potential class members’ employment  
20                  classification (non-exempt employees). Further, there are common facts that exist here (such as  
21                  those employees who worked without pay, were not given proper meal or rest periods, etc.) that  
22                  are encapsulated by the causes of action alleged in the Action. This definition therefore provides  
23                  sufficiently clear information to allow current and former employees to readily and reasonably  
24                  determine whether or not they are a putative Class Member in this Action based upon this  
25                  definition. (*ABM* at 304, stating “As long as the potential class members may be identified without  
26                  unreasonable expense or time and given notice of the litigation, and the proposed class definition  
27                  offers an objective means of identifying the persons who will be bound by the results of the  
28                  litigation, the ascertainability requirement is met.”) Thus, the proposed Class that Plaintiff seeks

1 to represent is easily ascertainable and includes approximately former and current 146 employees  
2 of Defendant.

3 **b) Numerosity**

4 “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a  
5 class action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981)  
6 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action  
7 may be maintained as a class action even where the parties are numerous and it is in fact practicable  
8 to join them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a  
9 class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries  
10 of a trust in an action for removal of the trustees.” (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d  
11 574; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.]) If even as  
12 little as 10 persons can constitute a class, then certainly the 146 Class Members here satisfy the  
13 numerosity requirement.

14 **2. There is a Well-Defined Community of Interest in the Questions of**  
15 **Law and Fact**

16 The community-of-interest requirement itself embodies three factors: “(1) predominant  
17 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and  
18 (3) class representatives who can adequately represent the class.” (*Richmond* at 470.)

19 **a) There are Many Common Issues of Law and Fact Which**  
20 **Predominate**

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

26 Here, the employment practices at issue are: whether Defendant had legally compliant  
27 policies and practices for all hours worked, including overtime wages; whether Defendant had  
28 legally compliant policies and practices to provide employees with meal periods; whether

1 Defendant had legally compliant policies and practices authorizing and permitting its employees  
2 to take rest periods; whether Defendant reimbursed employees for business expenses; whether  
3 payment of wages during employed was timely; whether final payment of wages was untimely and  
4 excluded unpaid wages, including meal and rest period premium wages; whether wage statements  
5 were consequently non-compliant; and whether Defendant failed to keep requisite payroll records.  
6 Plaintiff contends that the factual and legal issues are the same for all the identified Class Members,  
7 including Plaintiff. Further, all Class Members suffered from, and seek redress for, the same  
8 alleged injuries.

9 **b) *Plaintiff's Claims Are Typical of the Claims of the Class***

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

22 **c) *Plaintiff and Class Counsel Meet the Adequacy Requirement***

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

27 All of these requirements are met here for settlement purposes. Plaintiff retained Class  
28 Counsel, whom have extensive experience in prosecuting complex class actions, including similar

1 class actions that previously settled. (Class Counsel Decl., ¶¶ 36-45.) Class Counsel  
2 unquestionably is “qualified, experienced and generally able to conduct the proposed litigation.”  
3 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 875.) In addition, Plaintiff has no conflicts, and  
4 Plaintiff has, with Class Counsel, litigated this Action and diligently reviewed the Settlement  
5 terms, showing their dedication. Plaintiff’s willingness to serve as Class Representative and to  
6 sacrifice the value of their own individual claims by executing a general release broader than that  
7 of the other Class Members so that the Class may benefit from this Settlement demonstrates  
8 Plaintiff’s serious commitment to bringing about the best results possible for the Class, thereby  
9 also demonstrating that Plaintiff’s interests are aligned with those of the Class and no conflict  
10 exists. (*McGhee, supra*, 60 Cal.App.3d at p. 451.)

### 11 3. A Class Action is Superior to a Multiplicity of Litigation

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

## 22 V. THE PROPOSED CLASS NOTICE IS CONSTITUTIONALLY SOUND

### 23 A. The Proposed Class Notice Plan Satisfies Due Process

24 Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,  
25 Rule 3.766 (e), (f).) California law vests the Court with broad discretion in fashioning an  
26 appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no  
27 statutory or due process requirement that all class members receive actual notice, but in this Action,  
28 the Class Notice will be disseminated through direct U.S. first class mail to the last known address

1 for each Class Member. As the Court of Appeals has explained, “[t]he notice given should have a  
2 reasonable chance of reaching a substantial percentage of the class members . . . .” (*Id.* at p. 974.)  
3 In this Action the Class Notice will be provided by direct mailing, which is the best possible form  
4 of notice as it provides the most reasonable chance of reaching a substantial percentage of the  
5 Class.

6 **B. The Class Notice is Accurate and Informative**

7 The proposed Class Notice is informative. It informs the Class Members of the terms of the  
8 Settlement and their right to be excluded from the Settlement. If there are Class Members who  
9 wish to object to this proposed Settlement, they will have the opportunity to file their objections  
10 and be heard at the Final Approval Hearing.

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

19 **C. The Proposed Class Notice of Settlement Should Be Approved**

20 The proposed Class Notice, in the form attached as **Exhibit A** to the Settlement Agreement,  
21 should be approved for dissemination to the Class. The Class Notice informs the Class of the terms  
22 of the Settlement and of their rights to be excluded from the Settlement. And if there are Class  
23 Members who wish to object to the Settlement, they will have the opportunity to file their  
24 objections and be heard at the final approval hearing. Accordingly, the proposed Class Notice  
25 meets all the requirements of Rule 3.769(f) of the California Rules of Court and should be  
26 approved.

1 **VI. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary  
3 approval of the proposed Settlement and set a final approval hearing on October 23, 2026.  
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5  
6 Dated: April 23, 2026

Respectfully submitted,

WILSHIRE LAW FIRM, PLC

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