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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GENARO RODRIGUEZ NORIEGA, individually, and on behalf of all others similarly situated,

Plaintiff,

vs.

EL TOREO, INC.; EL TOREO; CAFÉ EL TOREO, LLC; EL TOREO CAFÉ, LLC; EL TOREO CAFÉ PASADENA, LLC; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 24STCV02094

CLASS AND REPRESENTATIVE ACTION

[Hon. David S. Cunningham III, Dept. 11
]

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

[*Filed with the Declaration of Kane Moon, the Declaration of Plaintiff Noriega, the Declaration of Jodey Lawrence, and [Proposed] Preliminary Approval Order*]

PRELIMINARY APPROVAL HEARING:
Date: June 20, 2025
Time: 10:00 a.m.
Dept.: 11

Complaint filed: January 26, 2024
FAC Filed: April 5, 2024
Trial date: Not set

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

PLEASE TAKE NOTICE that on June 20, 2025 at 10:00 a.m. in Department 11 located at the Spring Street Courthouse at 312 North Spring Street, Los Angeles, California 90012, pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 *et seq*., Plaintiff Genaro Rodriguez Noriega ("Plaintiff") will move the Court for an order granting preliminary approval of the proposed class action settlement between Plaintiff and Defendant El Toreo, Inc. ("Defendant").

Plaintiff will further move the Court for an order:

1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement;
2. Certifying a Class, for settlement purposes only;
3. Approving the Class Notice and plan for its distribution;
4. Appointing Plaintiff as the Class Representative, for settlement purposes only;
5. Appointing Moon Law Group, PC as Class Counsel, for settlement purposes only;
6. Appointing Phoenix Class Action Settlement Administration Solutions. as the Administrator; and
7. Scheduling a Final Approval Hearing no earlier than 130 days from the date of preliminary approval.

The motion will be based upon this notice, the attached memorandum of points and authorities, the supporting declarations and exhibits thereto, 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: May 8, 2025 **MOON LAW GROUP, PC**

By:______________________________

Kane Moon
Lilit Ter-Astvatsatryan

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Genaro Rodriguez Noriega ("Plaintiff") seeks preliminary approval of a proposed $135,000.00 non-reversionary, wage and hour class action settlement (the "Settlement") with Defendant El Toreo, Inc. ("Defendant") (together with Plaintiff, the "Parties"). The Settlement will provide substantial monetary payments to an estimated 121 Class Members who worked an estimated aggregate of 4,611 Workweeks, of which roughly 61 are Aggrieved Employees who worked an estimated aggregate of 820 PAGA Pay Periods. 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, formal and informal discovery, and negotiations between the Parties. The negotiations were at arm's-length and were facilitated through a mediation session by an experienced and neutral class action mediator, Hon. Carl West (Ret.) Accordingly, Plaintiff requests the Court preliminarily approve the Settlement, certify the proposed Settlement Class, approve the proposed Notice to Class Members, and set a final approval hearing no earlier than 130 days from the date of preliminary approval.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims and Procedural History

This is a wage and hour class action and representative action for alleged Labor Code violations and claims for civil penalties pursuant to the California Private Attorneys General Act, Labor Code sections 2698, *et seq.* ("PAGA"). (Declaration of Kane Moon in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ["Moon Decl."], ¶ 2.) Plaintiff seeks to represent a class of all current and former non-exempt, hourly paid employees who worked for Defendant in California during the period from January 26, 2020 through March 16, 2025[1] (*Id.*) Defendant is a Mexican restaurant located in Lancaster, California. (*Id.*) Plaintiff

[1] The "Class Period" is defined as the "period from January 26, 2020 through the date of preliminary approval of this settlement, or sixty (60) days from the January 15, 2025 mediation, whichever occurs first." (Settlement, ¶ 1.12.) March 16, 2025 is 60 days from January 15, 2025 and is prior to the date of preliminary approval of this settlement. (Moon Decl., ¶ 2, n.2.)

worked for Defendant dish washer/food preparer for Defendant from approximately January 2023 to March 2023. (*Id.*) Throughout his employment Plaintiff was employed in an hourly paid, non-exempt position. (*Id.*) Plaintiff contends he and his coworkers were subjected to the same unlawful labor practices, including failure to pay wages for all hours worked. (*Id.*)

Plaintiff's claim for unpaid wages stems in part, from Defendant's alleged practice of rounding employees' time to their detriment and requiring employees to work off-the-clock, uncompensated. (*Id.* at ¶ 3.) Moreover, Plaintiff brings claims against Defendant for meal and rest period violations, unreimbursed business expenses, and derivative claims for waiting time penalties, wage statement violations, unfair business practices, and civil penalties under PAGA. (*Id.*)

Because of the foregoing alleged violations of various provisions of the Labor Code, Plaintiff filed a class action on January 26, 2024, which, as amended, alleges Defendant systematically: (1) failed to pay minimum wages, (2) failed to pay overtime compensation, (3) failed to provide meal periods, (4) failed to authorize and permit rest periods, (5) failed to indemnify necessary business expenses, (6) failed to pay final wages at termination, (7) failed to provide accurate itemized wage statements, (8) engaged in unfair business practices, and (9) violated civil penalty provisions recoverable as PAGA penalties pursuant to Labor Code sections 2698, *et seq*. (*Id.* at ¶ 4.)

On January 21, 2024, Plaintiff gave written notice to the California Labor and Workforce Development Agency (the "LWDA") of the alleged Labor Code violations, with certified mail service on Defendant, and paid the required filing fee. (*Id.* at ¶ 5, Exh. 2.) On April 5, 2024, Plaintiff filed the First Amended Complaint (the "Operative Complaint") to allege PAGA claims, and subsequently submitted a copy to the LWDA in compliance with Labor Code section 2699, subd. (*l*)(1). To date, the LWDA has not indicated its intent to investigate the alleged violations or intervene in this Action. (*Id.* at ¶ 5.)

Defendant ardently opposes the merits of this case and denies Plaintiff's factual allegations. (*Id.* at ¶ 6.) Defendant asserts it complied with all of its compensation obligations, including compensating Class Members for all off-the-clock work, and therefore, Plaintiff and other Class

Members were paid all wages owed. (*Id.*) Defendant also argues that its rounding practice was neutral on its face and in compliance with California law. (*Id.*) Defendant maintains compliance with all its meal and rest period obligations. (*Id.*) Defendant asserts it complied with all of its reimbursement obligations, and therefore, Plaintiff and other Class Members were compensated for any and all necessary business expenses incurred. (*Id.*) To the extent Class Members received wage statements that were allegedly inaccurate, Defendant asserts employees suffered no actual damage or harm as a result. (*Id.*; *see, e.g.*, *Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013, No. C 12–05860 CRB) 2013 WL 622032, at *10 [“A plaintiff must adequately plead an injury arising from an employer’s failure to provide full and accurate wage statements, and the omission of the required information alone is not sufficient.”].) With respect to Plaintiff’s claim for waiting time penalties, Defendant alleges its good-faith belief that it paid all wages precludes the imposition of waiting time penalties since Plaintiff cannot prove Defendant’s alleged failure to pay all final wages at the time of separation was “willful.” (Moon Decl., ¶ 6; *see, e.g.*, *Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012, No. ED CV 11–298 GHK (DTBx)) 2012 WL 9506073, *5.) For these reasons, among others, Defendant denies all of Plaintiff’s claims and allegations, and further claims it did not engage in any unfair business practices and denies liability under PAGA. (Moon Decl., ¶ 6.) Defendant also maintains the claims are improper for class treatment, in part, due to the individualized and testimony-intensive nature of the wage claims that could bar class certification or significantly reduce Defendant’s overall liability. (*Id.*)

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

The Parties agreed to mediate the instant action and participated in private mediation with Hon. Carl West (Ret.), an experienced class and PAGA action mediator. (*Id.* at ¶ 7.) In preparation for mediation, the Parties agreed to a protocol for an informal exchange of documents and information before mediation. (*Id.*) Prior to mediation, Plaintiff obtained from Defendant, through informal discovery, electronic time and pay records, policy documents, and data that were necessary and helpful to evaluate the claims asserted in this action. (*Id.*) Defendant produced an approximate 99% sample of the time and pay records for the putative Class, Plaintiff’s personnel file, and Defendant’s written policies. (*Id.*) Defendant also provided information regarding the estimated number of current and formerly employed Class Members, Aggrieved Employees, and PAGA Pay Periods. (*Id.*)

In preparation for mediation, Plaintiff's Counsel reviewed and analyzed all the information Defendant provided, including the sample records and documents regarding Defendant's wage and hour policies. (*Id.* at ¶ 8.) Plaintiff's Counsel retained a statistics expert to analyze the sample records and prepare a damage analysis prior to the mediation. (*Id.*) The sample time and pay records analyzed contained 19,155 actual shifts in the Class Period (representing roughly 99.2% of total shifts in the Class Period), which allowed Plaintiff's expert to prepare an analysis ***with a high degree of certainty***. (*Id.*) In conjunction with their extensive factual investigation, Plaintiff's Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly, Plaintiff's Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum and realistic monetary exposure for all claims. (*Id.*) Thus, Plaintiff's and his Counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement. (*Id.*)

C. Settlement Negotiations

On January 15, 2025, the Parties participated in a full day of private mediation before Hon. Carl West (Ret.). (*Id.* at ¶ 9.) The 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, a settlement was reached by the Parties. (*Id.*) The material terms of the settlement are set out in the Class Action and PAGA Settlement Agreement and Class Notice. (*Id.*, Exh. 1 [the "Settlement"].) Plaintiff's Counsel represent they are not aware of any related case that would be extinguished or adversely affected by approval of this Settlement. (*Id.* at ¶ 10.)

Plaintiff's Counsel have conducted a thorough investigation into the facts of this case. (*Id.* at ¶ 17.) Based on the foregoing document and information exchange and on their own independent investigation and evaluation, Plaintiff's Counsel are of the opinion that the proposed Settlement is fair, reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, and the defenses that Defendant may assert both to certification and on the merits, the Settlement is in the best interest of the Class. (*Id.*; *see also id.* at ¶¶ 17–31.) **Indeed, the $135,000.00 gross settlement figure represents roughly 86% of the realistic recovery estimated to be $157,118.11.** (*Id.* at ¶ 25.)

D. Key Terms of the Proposed Settlement

Under the Settlement, Defendant will pay a non-reversionary, all-inclusive amount of *no less than* $135,000.00 to resolve this action. (Settlement, ¶¶ 1.21, 3.1.) The key terms include:

1. Class Members or Settlement Class, and Class Period: The proposed Class for purposes of the Settlement contains approximately 121 members and is defined as all current and former non-exempt, hourly paid employees who worked for Defendant in California during the Class Period. (*Id.* at ¶¶ 1.5, 4.1.) The "Class Release Period" is January 26, 2020 through March 16, 2025. (Settlement, ¶ 1.12.) The Class will exclude any Class Member who opts out of the Class portion of the Settlement by sending the Administrator a valid and timely Request for Exclusion ("Non-Participating Class Member"). (*Id.* at ¶ 1.27.)

2. Aggrieved Employees and PAGA Period: The Class contains an estimated 61 Aggrieved Employees who worked approximately 820 PAGA Pay Periods, defined as all individuals who performed work in any non-exempt position for Defendant in California at any time during the PAGA Period. (*Id.* at ¶¶ 1.4, 4.1.) The "PAGA Period" is January 26, 2023 to March 16, 2025. (*Id.* at ¶ 1.30.)

3. Non-reversionary Gross Settlement Amount: This amount is $135,000.00, subject to a potential increase under the escalator clause (as more particularly set forth in the Settlement) and excludes Defendant's employer's share of payroll taxes. (Settlement, ¶¶ 3.1, 8.) No portion will revert to Defendant. (*Id.* at ¶ 3.1.)

4. Escalator Clause: Based on its records, Defendant estimates that, there are a total of 4,611 Workweeks during the Class Period. (*Id.* at ¶ 8.) Should the total number of Workweeks worked by Participating Class Members during the Class Period increases by more than 10% (i.e., by more than 462 Workweeks), Defendant shall increase the Gross Settlement Amount on a pro-rata basis equal to

the percentage increase in the number of Workweeks worked by Participating Class Members above 10%. (*Id.*)

5. Net Settlement Amount: The total amount of money available for payout and distribution to Participating Class Members in Individual Class Payments, which is the Gross Settlement Amount less the following payments, in amounts as finally approved by the Court: (i) the Class Representative Service Payment of up to $7,500.00 to Plaintiff; (ii) Administration Expenses Payment of up to $5,000.00; (iii) PAGA Penalties in the amount of $10,000.00, which will be distributed as 75% ($7,500.00) to the LWDA and 25% ($2,500.00) to Aggrieved Employees; (iv) the Class Counsel Fees Payment of not more 1/3 of the Gross Settlement Amount (currently estimated to be $45,000.00); and (v) and the Class Counsel Litigation Expenses Payment of up to $22,000.00. (*Id.* at ¶¶ 1.27, 3.2.1-3.2.5.) In the event the amounts finally approved are less, the remainder will revert to Participating Class Members. (*Id.* at ¶¶ 3.2.1-3.2.5.2.)

6. Administrator and Costs: The Parties jointly appointed Phoenix Class Action Administration Solutions. as the neutral entity to administer this Settlement. (*Id.* at ¶ 1.2, 7.1.) At this time, the Administrator estimates costs will not exceed $5,000.00 (Moon Decl., ¶ 15, Exh 4.)

7. Individual Class Payment: Participating Class Members will receive a pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period. (Settlement, ¶ 1.22.) "Workweek" means any week during which a Class Member worked for Defendant for at least one day, during the Class Period. (*Id*. at ¶ 1.44.)

8. Individual PAGA Payment: Aggrieved Employees will receive a pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period. (*Id.* at ¶ 1.23.) "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period. (*Id.* at ¶ 1.29.)

9. Tax Treatment: 10% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). (*Id.* at ¶ 3.2.4.1.) The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. (*Id.*) The remaining 90% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). (*Id.*) The Non-Wage Portions are not

subject to wage withholdings and will be reported on IRS 1099 Forms. (*Id.*) Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (*Id.* at ¶ 3.2.4.1)

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

11. Release by Participating Class Members: Upon remittance of the Gross Settlement Amount by Defendant to the Settlement Administrator and entry of Judgment by the Court, the Settlement Class Members, other than those who timely submit valid requests for exclusion, will fully and finally release and discharge Defendant and all Released Parties from any and all claims, causes of action, demands, damages, or liabilities arising at any time during the Class Period that were pled or which could have been pled based on the factual allegations contained in Plaintiff's First Amended Complaint, including but not limited to, claims for: (i) failure to pay minimum wages in violation of Labor Code §§ 204, 1194, 1194.2 and 1197; (ii) failure to pay overtime compensation in violation of Labor Code §§ 1194 and 1198; (iii) failure to provide meal periods in violation of Labor Code §§ 226.7 and 512 or failure to provide adequate compensation in lieu of meal periods; (iv) failure to authorize and permit rest breaks in violation of Labor Code §§ 226.7; (v) failure to pay the correct rate of pay for paid sick leave; (vi) failure to indemnify necessary business expenses in violation of Labor Code §§ 2802; (vii) failure to timely pay final wages at termination in violation of Labor Code §§ 201-203; (viii) failure to provide accurate itemized wage statements in violation of Labor Code § 226; (ix) unfair business practices in violation of Cal. Business & Professions Code §§ 17200 (collectively, the "Released Claims"). The Released Claims extend to all theories of relief, whether under California law, federal law,

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

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

13. Uncashed Settlement Checks: For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date (not less than 180 days after the date of mailing), the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384(b). (*Id*. at ¶¶ 4.4.1, 4.4.3.)

14. Class Notice: The proposed Class Notice sets forth, in plain terms, a statement of case, the terms of the Settlement, the approximate amounts of attorneys' fees, costs, PAGA Penalties, and service award being sought, an explanation of how the individual payments are calculated, and the Final Approval Hearing information. (Settlement, ¶ 7.4, Exh. A.) The proposed method for providing notice of the proposed Settlement and distribution thereof is the one most likely to give actual notice to the greatest number, if not all, of the Class Members. (*Id.* at ¶ 7.4.2.) The Administrator will undertake its best efforts to ensure the Class Notice is provided to the current address of Class

Members, including conducting a national change of address search and re-mailing the notice to updated addresses. (*Id.*)

15. Procedure for Disputing Pay Periods, Opting Out, or Objecting: The Class Notice explains the procedure under which a Class Member can dispute the number of individual Workweeks and/or Pay Periods credited to them. (*Id.* at ¶ 7.6, Exh. A.) Additionally, the Class Notice explains how Class Members may, should they choose to do so, opt-out or otherwise object to the Settlement. Class Members need not file or serve, or state in any written objection, a notice of intention to appear at the Final Approval Hearing. (*Id.* at ¶¶ 7.5, 7.7, Exh. A.)

16. Funding: Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator in three (3) equal installments: first installment shall be within sixty (60) days after the Effective Date, second installment shall be within six (6) months after the Effective Date, and third installment shall be within twelve (12) months after the Effective Date.[2] (*Id.* at ¶ 4.3.) The Settlement Administrator will distribute payments under the Settlement within 14 days after Defendant fully funds the entire Gross Settlement Amount. (*Id.* at ¶ 4.4.)

III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL

The law favors the settlement of lawsuits, particularly in class actions and other complex cases. (*See, e.g.*, *Neary v. Regents of Univ. of Cal.* (1992) 3 Cal.4th 272, 277–81.) To prevent fraud, collusion, or unfairness to the class, the settlement of a class action requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800–01 [citing authority omitted].) To approve a settlement, the Court must find "the settlement is fair, adequate, and reasonable." (*Id.*) This Court has wide discretion in making this determination. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434,

[2] The funding schedule of the Gross Settlement Amount was critical in setting the Action to ensure Defendant is able to fund the Gross Settlement Amount within its financial constraints. (Moon Decl., ¶ 16, n.2.) Prior to mediation, Defendant produced comprehensive financials, including its corporate tax returns for the years 2022 and 2023, as well as an income statement for January 2024 through July 2024. (*Id.*) Plaintiff's Counsel retained a forensic CPA, Kenneth L. Creal of Creal & Creal to review Defendant's financials, and based on Mr. Creal's review, Plaintiff's Counsel determined that the funding schedule is fair because it ensures Defendant can fund the Gross Settlement Amount while remaining in business. (*Id.*)

438.) Fairness, adequacy, and reasonableness are presumed, as here, when: "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Dunk,* 48 Cal.App.4th at p. 1802 [citing Newberg, Newberg on Class Actions (3rd ed. 1992) § 11.41].)

In evaluating a settlement, the trial court considers the following factors: (1) the strength of plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the settlement amount offered; (5) the extent of discovery completed and the stage of the proceedings; (6) counsel's experience and views; (7) the presence of a governmental participant; and (8) the class members' reaction to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 128.) 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 L.A.* (2010) 186 Cal.App.4th 399, 408–09 [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, Plaintiff's Counsel have provided materials and information exceeding the threshold required for this Court to conclude the Settlement is fair, reasonable, and adequate.

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

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. (Newberg, Newberg on Class Actions (3rd ed. 1992) § 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 the plaintiff might have received more if the case had been fully litigated is no reason not to approve the settlement."].) Thus, there is a presumption here that negotiations were conducted in good faith.

The proposed Settlement at issue was reached following extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses with an experienced and neutral class action mediator. (Moon Decl., ¶ 9.) Plaintiff's Counsel performed an extensive investigation into the facts, claims, and defenses at issue, including by reviewing the governing law, analyzing' Defendant's written policies and sampling time/pay data, and retaining a statistics expert to prepare a damage analysis regarding Defendant's potential liability. (*Id.* at ¶¶ 7–8.) Once an agreement to mediate was made, Plaintiff obtained, through formal and informal discovery, documents and data necessary and helpful to evaluate the claims and defenses at issue, including an approximate 99% sample of time and pay records for the putative Class as well as demographic data. (*Id.*) Based on a review of its records to date, Defendant estimates there are 121 Class Members who collectively worked a total of 4,611 Workweeks during the Class Period, and 61 Aggrieved Employees who worked a total of 820 PAGA Pay Periods during the PAGA Period. (Settlement, ¶ 4.1.) Additionally, Plaintiff's expert estimated that Class Members' average hourly rate was $17.35; there were 74 former employees falling within the three-year statute of limitations ("SOL") period for waiting time penalties, and 61 employees falling within the one-year SOL period for inaccurate wage statement penalties and PAGA penalties. (Moon Decl., ¶ 18.) Based on Plaintiff's Counsel's review of the time, payroll, and additional data provided by Defendant, on Plaintiff's expert's analysis of the sampling records provided by Defendant, and on information from Plaintiff, Plaintiff's Counsel evaluated the estimated maximum and risk-adjusted exposure that Defendant faced. (*Id.*)

2. The Settlement Is Fair Considering the Parties' Respective Positions

A settlement is not judged against what a plaintiff might recover had he prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba v. Apple Comp., 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.'"] [quoting *Air Line Stewards v. Am. Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109].)

Here, based on the information provided at mediation, Defendant's ***realistic* exposure** (adjusted for risks at certification and proof on the merits) for the alleged claims, including penalties, is estimated to be **$157,118.11**. (Moon Decl., ¶¶ 18, 25.) This amount was calculated as follows: **$18,047.25** (25% discount) for the rounding claim; **$3,081.26** (90% discount) for the off-the-clock work claim; **$60,304.26** (75% discount) for the meal period claim; **$35,227.44** (90% discount) for the rest period claim; **$1,241.00** (90% discount) for the unreimbursed business expense claim; **$23,131.80** (90% discount) for the waiting time penalties claim; **$7,895.00** (90% discount) for the wage statement claim; and **$8,200.00** (90% discount) for the PAGA penalties claim. (*Id.* at ¶¶ 18-24.) The foregoing discounts were based on the evidence presented and arguments made during arm's-length settlement negotiations. (*Id.* at ¶¶ 9, 18-25.) **The $135,000.00 gross settlement figure represents roughly 86% of the total realistic recovery**. (*Id.* at ¶ 25.) This is an excellent result for the Class, particularly because, under the Settlement, Class Members will receive timely and guaranteed relief, avoiding the risk of not being able to recover anything. (*Id.*)

With regards to the PAGA claims, Plaintiff and his Counsel believe the Settlement is a fair and reasonable resolution that satisfies PAGA's dual statutory purposes of deterrence and punishment, on the one hand, and providing PAGA Members with genuine and meaningful relief, on the other. (*Id.* at ¶ 26; Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendant has had to hire legal counsel, engage in informal discovery, and participate in mediation. (Moon Decl., ¶ 26.) Defendant is also now having to pay civil penalties to the LWDA under the Settlement, assuming final settlement approval is granted. (Settlement, ¶ 3.2.5.) Not including its own attorneys' fees and costs as well as the employer's share of payroll taxes, Defendant will pay no less than $135,000.00 to resolve this matter— of which $10,000.00 is allocated toward the PAGA claims and will be distributed, in compliance with Labor Code section 2699 as 75% ($7,500.00) to the LWDA and 25% ($2,500.00) to Aggrieved Employees—and the release obtained under the Settlement does not preclude Aggrieved Employees from seeking remedies based on any underlying individual claims they may have against

Defendant or the other Released Parties. (Moon Decl., ¶ 26; Lab. Code § 2699(i).) Moreover, Plaintiff's Counsel are of the opinion that because the issues here are fairly contested, there is a possibility of the Court not awarding the PAGA penalties even if Plaintiff prevailed on the merits due to the largely discretionary nature of awarding PAGA penalties. (Moon Decl., ¶ 26.) Indeed, under Labor Code section 2699, subdivision (e)(2), a Court can reduce PAGA penalties "if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (Lab. Code § 2699(e)(2).) In other words, were this matter to go to trial, any award granted would be at the discretion of the Court and subject to a substantial reduction. (Moon Decl., ¶ 26.)

While Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 27.) Plaintiff also recognizes that proving the amounts of wages owed to each Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id.*) The Settlement obviates the significant risk that this Court may deny certification of all or some of Plaintiff's claims. (*Id.* at ¶ 28.) Furthermore, even if Plaintiff was able to pursue his claims on a class-wide basis and obtain certification of all or some of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the Class. (*Id.*) This Settlement avoids the risks, burdens, and the accompanying expense of further litigation. (*Id.* at ¶ 29.) Although the Parties have engaged in a significant amount of investigation, informal discovery, and class-wide data analysis, they have not conducted extensive formal discovery, including depositions. (*Id.*) Moreover, preparation for class certification and a trial would remain for the Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or any summary judgment ruling. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through trial. (*Id.*)

The Net Settlement Amount available for settlement payments is estimated to be *no less than* **$45,500.00**[3] for an estimated Class of **121 individuals**. (*Id.* at ¶ 30.) As a result, it is estimated each Participating Class Member will receive an average gross benefit of approximately **$376.03** prior to tax withholdings on the wage portion of payments. (*Id.*) Considering Class Members' average hourly rate is $17.35, the average benefit is roughly **21.7 hours of work**. (*Id.*) This amounts to **an estimated Workweek value of roughly $9.87** for the currently estimated **4,611Workweeks**. (*Id.*) Additionally, it is currently estimated there are **61 Aggrieved Employees** who will receive an estimated average of approximately **$40.98** from their $2,500.00 total share of the PAGA Penalties, which results in an estimated **Pay Period value of $3.05** per pay period based on the currently estimated **820 PAGA Pay Periods**. (*Id.*) The actual amounts to Participating Class Members and Aggrieved Employees will vary based on each individual's duration of work during the Class Period or PAGA Period, respectively; thus, those who worked longer will receive a gross benefit greater than the average estimated amount. (*Id.*) At this time, the high and low range of payments to Class Members is unknown. (*Id.*) These ranges will be calculated by the Administrator following preliminary approval and receipt and processing of the Class Data and will be provided to the Court in a motion for final approval. (*Id.*)

The proposed Settlement of $135,000.00 therefore represents a substantial recovery when compared to Plaintiff's reasonably forecasted recovery. (*Id.* at ¶ 32.) When considering the risks of litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to establish liability, and the probability of appeal, it is clear the Settlement amount of $135,000.00 is within the "ballpark" of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*)

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[3] The Net Settlement Amount is at least $135,000.00 less the following: $7,500.00 for the Class Representative Service Payment, up to $5,000.00 for Administration Expenses Payment, $10,000.00 for the PAGA Penalties to the LWDA and Aggrieved Employees, $45,000.00 for the Class Counsel Fees Payment, and up to $22,000.00 for the Class Counsel Litigation Expenses Payment. (Settlement, ¶¶ 3.2.1-3.2.5.)

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

The Settlement negotiations were conducted by highly capable counsel with considerable experience and demonstrated competence with litigating wage and hour class actions. (*Id.* at ¶¶ 36–54.) Plaintiff's Counsel have a strong record of vigorous and effective advocacy for their clients and are experienced in handling complex wage and hour class action litigation. (*Id.* at ¶¶ 36–54.) The experience of Plaintiff's Counsel was helpful in assessing the reasonableness of the Settlement at issue here, and from this experience they concluded that this litigation could not have been settled on better terms than provided under the Settlement. (*Id.* at ¶ 55.) Although Plaintiff and his counsel were prepared to try the claims alleged in the litigation, they support the proposed Settlement as being in the best interest of the Class based on objective evidence that has been considered and weighed against the risks, expenses, and time consumption to both sides of continued litigation. (*Id.* at ¶¶ 9, 17, 27–29.)

B. <u>The Proposed Class Notice of Settlement Should Be Approved</u>

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

C. <u>The Proposed Attorneys' Fees and Costs Are Reasonable</u>

Subject to the Court's approval, the Settlement provides a fee application of up to 1/3 of the Gross Settlement Amount for Class Counsel's attorneys' fees, plus reimbursement for out-of-pocket litigation costs not to exceed $22,000.00. (Settlement, ¶ 3.2.2.) These amounts are disclosed to Class Members in the proposed Class Notice and are reasonable. (*Id.* at Exh. A.)

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

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

Plaintiff's Counsel will seek an award of attorneys' fees on the "percentage of recovery/common fund" theory. (Moon Decl., ¶ 57.) The purpose of this approach is to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1975) 15 Cal.3d 162, the California Supreme Court stated, "one 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 pp. 110–11 [pincite omitted].)

The California Supreme Court recently affirmed in *Laffitte v. Robert Half International 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].) This line of legal authority supports a request for attorneys' fees based on the percentage of recovery/common fund method.

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

According to a leading treatise on class actions: "No 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." (Newberg, Newberg on Class Actions (3rd ed. 1992) § 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 Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 297 [stating that most cases where 30–50% was awarded involved "smaller" settlement funds of under $10 million].)

Here, Plaintiff's Counsel will request fees equal to 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. (*Compare* Settlement, ¶ 3.2.2, *with 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 requests the Court preliminarily approve his counsel's ability to request attorneys' fees as negotiated by the Parties.

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

Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(g)(1), 2802(d).) Under these sections, Plaintiff would be permitted to recover his actual attorneys' fees, even if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) 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 Plaintiff's Counsel for their decision to assume risk by taking on this matter. (*See* Moon Decl., ¶ 30.) In fact, prosecution of this action involved significant financial risk for Plaintiff's Counsel. (*Id.* at ¶¶ 58–62.) His Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.* at ¶¶ 58–62.) Once Plaintiff's Counsel undertook this litigation on behalf of the Class, they committed to pursue it to its conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶ 60.)

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

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Plaintiff's Counsel possess considerable expertise in litigating class actions. (*Id.* at ¶¶ 36-54.) Plaintiff's Counsel have been involved as lead counsel or co-counsel in numerous class actions that resulted in millions in recovery. (*Id.* at ¶¶ 36-54.) Plaintiff's Counsel's experience in wage and hour litigation was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. (*Id.* at ¶ 55.) 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. (*Id.* at ¶ 53.) Based on these and other factors, Plaintiff's Counsel have frequently received fee awards of this percentage from the gross recovery for the class. (*See id.* at ¶¶ 40, 46, 52.) Because it is reasonable to compensate counsel commensurate with their skill, reputation, and experience, the requested fee award is supported here.

D. The Service Award to Plaintiff Is Reasonable

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 section 90.5, which provides, "[i]t 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 . . ." (Lab. Code § 90.5.) 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 here, subject to the Court's approval, Defendant agrees to pay a Class Representative Service Payment of $7,500.00 to Plaintiff, which will be in addition to his amount as a Class Member. (Settlement, ¶ 3.2.1.) This award is in recognition of Plaintiff initiating the Action and providing services in support of the Action. (*Id.* at ¶ 1.14.) Plaintiff has devoted a great deal of time and work assisting counsel in the case and communicated with counsel frequently. (Moon Decl., ¶¶ 34–38; Declaration of Plaintiff Genaro Rodriguez Noriega in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement ["Plaintiff Decl."], ¶¶ 18-23.) The requested award is fair and reasonable, particularly considering the substantial benefits Plaintiff generated for all Class Members. (Moon Decl., ¶¶ 25–35.)

When compared with the amounts awarded in typical class action cases, the amount requested here is particularly reasonable. 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 $4357." (Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L. Rev. 1303, 1307–08.) The 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. 1333.) 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. The claims all derive from a core set of alleged violations of California's wage and hour laws and regulations. (Moon Decl., ¶¶ 3–4.) For the reasons set forth more fully below, the Class, for purposes of Settlement, satisfies the prerequisites for certification under Code of Civil Procedure section 382. (Code Civ. Proc. § 382.)

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

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

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

1. The Class Is Ascertainable and Numerous

When determining whether a class is ascertainable, California courts focus on the following three factors: "(1) the class definition, (2) the size of the class and (3) the means of identifying class members." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, Plaintiff maintains there is an easily ascertainable Class, defined by objective and precise criteria. (Settlement, ¶¶ 1.5, 1.12.) The proposed Class that Plaintiff seeks to represent is ascertainable because (1) the Class definition is sufficiently precise, (2) the Class consists of about 121 individuals, and (3) Class Members can be readily identified by looking at Defendant's records. (*Id.* at ¶¶ 1.5, 1.12, 1.8, 4.1.) Because Class Members are identified using specific criteria in the regular business records of Defendant—their employment by Defendant in California, non-exempt classification, and actual work during the Class

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

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

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

Here, Plaintiff's claims satisfy all three requirements. The employment practices at issue include whether Defendant: had legally compliant policies and practices to pay employees all minimum and overtime wages owed; reimbursed employees for necessary business expenses; had legally compliant policies and practices to provide employees with and authorize meal and rest periods; paid all final wages to employees at the time of termination; intentionally failed to pay all final wages; provided inaccurate itemized wage statements; engaged in unfair business practices; and violated civil penalty provisions recoverable under PAGA. (Moon Decl., ¶ 3–4.) Plaintiff contends the factual and legal issues are the same for all Class Members, and further that all Class Members suffered from and seek redress for the same alleged injuries. (Plaintiff Decl., ¶¶ 5-7.) Considering Class Members would need to prove the same issues of law and fact to prevail, and their legal remedies are identical, it would be preferable to resolve all claims through a settlement than to force each Class Member to litigate their own individual claims. Thus, the Court should grant conditional class certification for settlement purposes because common questions of law and fact predominate over any individual questions within the Class.

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 ["The only requirements a re [sic] that common questions of law and fact *predominate* and that the class representative be *similarly* situated" vis-à-vis the class.] [emphasis in original].) 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 was an employee of Defendant; as such, he alleges he was subject to the same policies and practices as other similarly situated employees. (Plaintiff Decl., ¶ 6.)

4. Plaintiff and His Counsel Meet the Adequacy Requirement

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

Here, all requirements are met. Plaintiff retained counsel with extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Moon Decl., ¶¶ 36–54.) With their experience, Plaintiff's Counsel unquestionably are "qualified, experienced and generally able to conduct the proposed litigation." (*Miller*, *supra*, 148 Cal.App.3d at p. 874.) In addition, Plaintiff and his Counsel have no conflicts with one another, other Class Members, the proposed Administrator. (Plaintiff Decl., ¶ 8; Moon Decl., ¶ 56.) Further, Plaintiff has, with counsel, litigated this case and diligently reviewed the settlement terms, showing dedication, and with full knowledge and acceptance of duties, he has committed to his role as Class Representative. (Plaintiff Decl., ¶¶ 9-12.)

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

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

V. <u>THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND</u>

A. <u>The Proposed Notice Plan Satisfies Due Process</u>

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

B. <u>The Notice Is Accurate and Informative</u>

The proposed Class Notice should be approved. It will be disseminated through direct U.S. first-class mail to the current address for each Class Member. (*Id.* at ¶ 7.4.2.) It informs the Class of the terms of the Settlement and the right to be excluded. (*Id.* at ¶ 7.5, Exh. A.) And if there are Class

Members who wish to object to the proposed Settlement, they are informed of their right to submit written objections and/or be heard at the Final Approval Hearing. (*Id.* at ¶ 7.7.2, Exh. A.)

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

VI. CONCLUSION

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

Respectfully submitted,

Dated: May 8, 2025 **MOON LAW GROUP, PC**

By: ______________________________

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