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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JOSE BRIONES, individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

CUMMINS-ALLISON CORP., a corporation;
and DOES 1 through 10, inclusive,

Defendant.

Case No.: 23STCV28982

Assigned to: Hon David S. Cunningham III,
Dept. 11

Complaint Filed: November 28, 2023

FAC Filed: May 20, 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: January 13, 2027

Time: 10:00 a.m.

Dept: 11

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

2 PLEASE TAKE NOTICE that on January 13, 2027 at 10:00 a.m., in Department 11 of the
3 Los Angeles County Superior Court, located at Spring Street Courthouse, 312 North Spring Street,
4 Los Angeles, CA 90012, pursuant to Code of Civil Procedure § 382 and California Rules of Court
5 3.769, *et seq.*, Plaintiff Jose Briones (“Plaintiff” or “Class Representative”) will move the Court
6 for an Order granting preliminary approval of the proposed \$800,000.00 (the “Gross Settlement
7 Amount”) Class and Representative Action Settlement Agreement and Release (the “Settlement”
8 or “Settlement Agreement”) between Plaintiff and Defendant Cummins-Allison Corp
9 (“Defendant,” and together with Plaintiff, the “Parties”) to resolve the wage and hour class action
10 and Private Attorneys General Act (Cal. Lab. Code §§ 2699, *et seq.*) (“PAGA”) representative
11 action between Plaintiff, on behalf of the Class (defined below) (the “Action”). Plaintiff further
12 moves the Court for an Order:

- 13 1. Granting preliminary approval of the Settlement Agreement;
- 14 2. Certifying the Class, defined as “all current and former hourly-paid or non-exempt
15 employees who worked for Defendant within the State of California during the Class
16 Period” (each a “Class Member”, collectively, the “Class”). The Class Period is “the
17 time period from June 3, 2019, through July 27, 2025 (the “Class Period”);
- 18 3. Approving the proposed class notice (the “Notice”) and the plan for distribution of the
19 Notice. A true and correct copy of the Notice is attached to the Settlement Agreement
20 as **Exhibit A**;
- 21 4. Appointing Plaintiff Jose Briones as “Class Representative” for settlement purposes;
- 22 5. Appointing Plaintiff’s Counsel, Thiago M. Coelho, Jesenia A. Martinez, Lauren M.
23 Lendzion, Jesse S. Chen, Alan A. Wilcox, and Conor J.D. Gomez of Wilshire Law Firm,
24 PLC (“WLF”) as “Class Counsel” for settlement purposes;
- 25 6. Appointing Phoenix Settlement Administrators as the “Settlement Administrator”; and
- 26 7. Scheduling a final approval hearing.

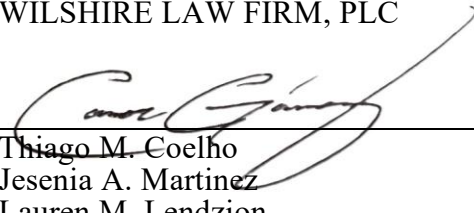
27 The motion will be based upon this notice, the attached memorandum of points and
28

1 authorities, the Declarations of Conor J.D. Gomez (the “Class Counsel Declaration”) and Jose
2 Briones 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
6 Dated: May 28, 2026

Respectfully submitted,

WILSHIRE LAW FIRM, PLC

7 By: 

8 ~~Thiago M. Coelho~~

Jesenia A. Martinez

9 Lauren M. Lenzion

Jesse S. Chen

10 Alan A. Wilcox

Conor J.D. Gomez

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

2 **I. INTRODUCTION**

3 Plaintiff seeks preliminary approval of a proposed Settlement Agreement entered into
4 between Plaintiff (on behalf of the Class) and Defendant. The Settlement Agreement will provide
5 substantial monetary payments to approximately 135 Class Members. And, as set forth more fully
6 below, the proposed Settlement satisfies all the criteria for settlement approval under California law.
7 The negotiations were at arms-length and after extensive negotiations and discussions regarding the
8 strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties executed the
9 Settlement on May 7, 2026. Accordingly, Plaintiff requests that the Court preliminarily approve the
10 proposed Settlement, certify the Class, approve the proposed Class Notice, and set a final approval
11 hearing.

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

13 **A. Plaintiff's Claims and Procedural History**

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

20 Based on these allegations, on November 28, 2023, Plaintiff filed a putative wage and hour
21 class action complaint against Defendant for: (1) failure to pay minimum and straight time wages
22 (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§
23 1194 and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to
24 authorize and permit rest periods (Labor Code § 226.7); (5) failure timely pay final wages at
25 termination (Labor Code §§ 201-203); (6) failure to provide accurate itemized wage statements
26 (Labor Code § 226); (7) failure to indemnify employees for expenditures (Labor Code § 2802);
27 and (8) unfair business practices (Business and Professions Code §§ 17200, et seq.). (Class Counsel
28 Decl., at ¶ 4.) Plaintiff sent a notice to Defendant and the California Labor & Workforce

1 Development Agency (“LWDA”) alleging similar wage and hour violations pursuant to the PAGA
2 on January 15, 2024. (*Id.*) On May 20, 2024, Plaintiff filed a first amended complaint which added
3 a cause of action for civil penalties under PAGA (the “Operative Complaint,” or the “Action”).
4 (*Id.*)

5 **B. Discovery and Investigation**

6 Following the filing of the Action, the Parties exchanged information, data, and
7 documents, and reviewed the same before going to mediation. (Class Counsel Decl., at ¶ 5.)
8 Defendant produced over 300 pages of materials, which included relevant written policies and
9 procedures. (*Id.*) Defendant also provided Plaintiff with employment data. (*Id.*) Defendant
10 produced time and pay records and service call records for approximately 151 employees (all
11 California nonexempt employees that held the same position title as Plaintiff). (*Id.*) The data
12 included daily time records showing the start and stop time for each shift based on employee
13 time punches, the start and stop time for meal periods based on employee time punches, and
14 payroll records showing the hours worked, regular earnings, overtime earnings, and bonuses (if
15 any). (*Id.*) Defendant also provided information on the total number of active employees, former
16 employees, workweeks, pay periods, and meal and rest period premiums paid. (*Id.*) The Parties
17 have engaged in sufficient informal discovery and investigation to assess the relative merits of
18 the claims and contentions of the Parties. (*Id.*)

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

27 **C. Settlement Negotiations**

28 On May 28, 2025, the Parties participated in private mediation with experienced class

1 action mediator, Hon. Patrick J. Walsh. (Class Counsel Decl., at ¶ 7.) The settlement
2 negotiations were at arm's length and, although conducted in a professional manner, were
3 adversarial. (*Id.*) After extensive negotiations and discussions regarding the strengths and
4 weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached the Settlement,
5 the material terms of which are encompassed within the Settlement Agreement. (*Id.* at ¶ 8, Ex.
6 1, Settlement Agreement.)

7 Class Counsel has conducted a thorough investigation into the facts of this Action. (Class
8 Counsel Decl., at ¶ 14.) Based on the foregoing discovery and their own independent
9 investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, just,
10 reasonable, and adequate and is in the best interests of the Class Members in light of all known
11 facts and circumstances, the risk of significant delay, the defenses that could be asserted by
12 Defendant both to certification and on the merits, trial risk, and appellate risk. (*Id.*)

13 Indeed, the Gross Settlement Amount represents approximately **85.5%** of the **realistic**
14 **maximum recovery** of \$935,450.57. (Class Counsel Decl., at ¶ 23.) Although Class Counsel
15 estimated that Defendant's maximum potential liability for all claims was approximately \$5.2
16 million, when the risk of prevailing at certification and trial are factored into the equation, Class
17 Counsel believes that Defendant's realistic exposure was \$935,450.57, meaning the Settlement
18 achieves a significant recovery. (*Id.* at ¶¶ 14-27.) Considering the risk and uncertainty of
19 prevailing at class certification and at trial, this is an excellent result for the Class. (*Id.* at ¶ 27.)
20 Indeed, because of the proposed Settlement, Class Members will receive timely, guaranteed
21 relief and will avoid the risk of an unfavorable judgment. (*Id.* at ¶ 23.)

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

23 The Settlement's key terms include:

24 1. Settlement Administrator: "refers to means an independent settlement
25 administrator, or any such administrator agreed to by the Parties and approved by the Court to
26 provide notice and administer the settlement of the Action." (Settlement, § 1.29.) The Parties
27 accepted the bid of Phoenix Settlement Administrators, (the "Settlement Administrator") which
28 was the lowest out of the multiple bids sought. (Class Counsel Decl., at ¶ 10.)

2. Class Period: means the time period from June 3, 2019 through July 27, 2025.
(Settlement, § 1.8.)

3. Class Members: “refers to all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California during the Class Period.”
(Settlement, § 1.6.)

4. Aggrieved Employee: “means all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the PAGA Period.” (Settlement, § 1.2.)

5. PAGA Period: means the time period from March 16, 2023, through July 27, 2025.
(Settlement, § 1.21.)

6. Gross Settlement Amount: “means the amount that is allocated towards the resolution of the Action, in an amount not to exceed \$800,000.00. The Gross Settlement Amount shall be inclusive of (i) Class Counsel Fees and Costs; (ii) Service Award; (iii) PAGA Payment; (iv) Settlement Administration Costs, and (iv) Net Settlement Amount. The Gross Settlement Amount does not include the employer’s share of the payroll taxes on the wages portion of Class Payments. The Gross Settlement Amount is a material term of the Agreement and shall not be increased for any reason. If the State Court requires an increase to the Gross Settlement Amount, Defendant shall have the right to void the Agreement.” (Settlement, § 1.14.)

7. No Reversion: “The entire Gross Settlement Amount will be disbursed pursuant to the terms and conditions of this Agreement, and none of it will revert to Defendant.” (Settlement, § 2.3.3.)

8. Class Counsel Fees and Costs: “Class Counsel will apply to the State Court for an award of Class Counsel Fees not to exceed one-third (1/3) of the Gross Settlement Amount, or \$266,666.67 (the “Class Counsel Fees”), and reasonable documented costs directly incurred for purposes of the Action (the “Class Counsel Costs”).” (Settlement, § 4.2; Class Counsel Decl., ¶ 26, Ex. 4 [Class Counsel Costs].)

9. Service Award: “means the amounts to be paid to Plaintiff in recognition of his effort and work in prosecuting the Action as a putative class representative on behalf of putative

Class Members and Aggrieved Employees, and for his general release of claims. Subject to the State Court’s approval, the Service Award shall not exceed \$10,000.00” (the “Service Award”) (Settlement, § 1.28.)

10. PAGA Payment: “shall be \$80,000, as civil penalties, to be paid from the Gross Settlement Amount. The PAGA Payment shall be allocated as follows: 75% of the PAGA Payment will be paid to the LWDA, and 25% of the PAGA Payment will be paid to the Aggrieved Employees pursuant to a formula based on the number of Pay Periods worked during the PAGA Period” (the “PAGA Payment”). (Settlement, § 1.20.) Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for Preliminary Approval. (Class Counsel Decl., ¶ 9.)

11. Settlement Administration Costs: “refers to the costs payable from the Gross Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Agreement, tax reporting, distributing the Gross Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs are currently estimated to be \$7,250.00.” (Settlement, § 1.30; Class Counsel Decl., ¶ 10, Ex. 3 [Settlement Administrator Bid].)

12. Net Settlement Amount: “means the portion of the Gross Settlement Amount remaining after deducting (i) the Class Counsel Fees and Costs, (ii) the Service Award, (iii) the PAGA Payment, and (iv) the Settlement Administration Costs, as approved by the State Court. The entire Net Settlement Amount shall be distributed to the Participating Class Members.” (Settlement, § 1.16.)

13. Distribution of Net Settlement Amount: “The Class Payments to Participating Class Members will be determined by dividing the value of Net Settlement Amount by the total number of Workweeks of all Participating Class Members during the Class Period, and then multiplying the resulting figure by the number of Workweeks of each Participating Class Member during the Class Period.” (Settlement, § 6.2.)

14. Distribution Of PAGA Payments. “PAGA Payments to Aggrieved Employees will be determined by dividing \$20,000.00 (25% of the PAGA Payment, which is allocated to

Aggrieved Employees) by the total number of Pay Periods of all Aggrieved Employees during the PAGA Period, and then multiplying the resulting figure by the number of Pay Periods of each Aggrieved Employee during the PAGA Period.” (Settlement, § 6.4.)

15. Tax Allocation of Class Payments: “Class Payments made under this Settlement will be attributed 85% as penalties and interest, to be reported on IRS Form 1099 (if applicable), and 15% as unpaid wages, to be reported on IRS Form W-2 and subject to payroll deductions. In accordance with applicable tax laws, the Net Settlement Amount is subject to reduction for the employee’s share of required tax withholdings and payroll deductions on the wage portion of the Class Payments. The employer’s share of payroll taxes on the wages portion of the Net Settlement Amount shall be paid by Defendant separately and in addition to the Gross Settlement Amount. The Settlement Administrator shall issue any necessary IRS Form 1099 and Form W-2 statements to Participating Class Members for their respective share of the Net Settlement Amount. Participating Class Members shall be solely and legally responsible for paying all other applicable taxes on their respective share of the Net Settlement Amount and shall indemnify and hold harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the payments.” (Settlement, § 10.2.5.)

16. Release by Participating Class Members: “Upon the Effective Date, the Participating Class Members, Plaintiff, and their heirs, executors, administrators, attorneys, agents and assigns, fully and finally release and forever discharge the Released Parties from any and all Released Class Claims arising during the Class Period. As a result of this release, the Participating Class Members will be unable to bring a claim or seek recovery for any alleged violations of the Released Class Claims that took place during the Class Period.” (Settlement, § 5.1.)

17. Release by The State Of California: “Upon the Effective Date, Plaintiff, the Aggrieved Employees, and the State of California (including but not limited to the LWDA) fully and finally release and forever discharge the Released Parties from any and all Released PAGA Claims arising during the PAGA Period. As a result of this release, Plaintiff, the Aggrieved Employees, and the State of California (including but not limited to the LWDA) will not be able

1 to bring a claim or seek civil penalties based on the Released PAGA Claims that took place during
2 the PAGA Period.” (Settlement, § 5.2.)

3 18. Notice of Proposed Class Action Settlement: “The Notice will explain the terms of
4 the Agreement, including (i) information regarding the nature of the Action; (ii) a summary of the
5 principal terms of the Settlement Agreement; (iii) the Class Member definition; (iv) the total
6 number of Workweeks each respective Class Member worked for Defendant during the Class
7 Period; (v) the estimated Class Payment (if applicable) from the Net Settlement Amount to each
8 Class Member; (vi) the formula for calculating the settlement payments; (vii) instructions on how
9 to submit Requests for Exclusion, Notices of Objection, and Workweeks disputes; (viii) the
10 Response Deadline; and (ix) the claims to be released under the Released Class Claims. The Notice
11 will be printed in English only, because Class Members can speak, write, and understand English.”
12 (Settlement § 1.17, Ex. A, Notice.) Class Members will be notified by first-class mail of the
13 Settlement. (Settlement, § 7.2.) The Settlement Administrator will undertake its best efforts to
14 ensure that the Notice is provided to the current addresses of Class Members, including conducting
15 a national change of address search and re-mailing the Notice to updated addresses. (Settlement,
16 §§ 7.2 – 7.3; Class Counsel Decl., ¶ 10, Ex. 3 [Settlement Administrator Bid].)

17 19. Notice Administration: “Defendant shall provide the Settlement Administrator with
18 the Class List and PAGA List within 45 calendar days after the State Court grants preliminary
19 approval of the Settlement. The Class List and PAGA List are being provided confidentially to the
20 Settlement Administrator only, and the Settlement Administrator shall treat the information as
21 private and confidential and take all necessary precautions to maintain the confidentiality of the
22 Class List and PAGA List. This information is to be used only to carry out the Settlement
23 Administrator’s duties as specified in this Settlement.” (Settlement, § 7.1.) “The Settlement
24 Administrator shall mail the Notice to Class Members within 20 calendar days of the receipt of the
25 Class List and PAGA List via First Class U.S. Mail, using the most current, known mailing address
26 for each Class Member based on information provided by Defendant.” (Settlement, § 7.2.)

27 20. Non-Delivered Notices or Checks: “Any mailing returned to the Settlement
28 Administrator as undeliverable shall be re-mailed within five calendar days via First Class U.S.

1 Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement
2 Administrator shall attempt to determine the correct address using a computer-based skip-trace
3 search, and it shall then perform a single re-mailing via First Class U.S. Mail within five calendar
4 days. If the computer-based skip-trace search does not provide a correct address, the Settlement
5 Administrator shall attempt to determine the correct address using the Class Member's Social
6 Security number and any available information provided by Defendant. If the Settlement
7 Administrator is unable to determine the correct address using the Class Member's Social Security
8 number and/or any information provided by Defendant, the Settlement Administrator shall perform
9 a search based on the National Change of Address Database maintained by the United States Postal
10 Service to update and correct any known or identifiable address changes.” (Settlement, § 7.3.)

11 21. Opt-Out Procedures: “Class Members may opt out of the Class Settlement by
12 mailing to the Settlement Administrator a Request for Exclusion. Any such Request for Exclusion
13 must be postmarked by the Response Deadline. A Request for Exclusion is a letter from a Class
14 Member or his/her representative that reasonably communicates the Class Member's election to
15 be excluded from the Settlement and includes the Class Member's name, address and email address
16 or telephone number.” (Settlement, § 8.2.1.)

17 22. Disputed Workweeks on Notice: “Participating Class Members will have an
18 opportunity to dispute the number of Workweeks indicated on their Notice. To do so, Participating
19 Class Members must produce evidence to the Settlement Administrator showing that such
20 information is inaccurate on or before the Response Deadline. Defendant's records will be
21 presumed correct, but the Settlement Administrator will evaluate the evidence submitted by the
22 Participating Class Member and will make the final decision as to the merits of the dispute. All
23 disputes will be decided within 10 business days after the Response Deadline. The Settlement
24 Administrator shall have the right to contact Defense Counsel and/or Class Counsel if it determines
25 more information is needed to resolve any issue of disputed Workweeks.” (Settlement, § 8.4.)

26 23. Objection Procedures: “Participating Class Members may send written objections
27 to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may
28 appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final

1 Approval Hearing. A Participating Class Member who elects to send a written objection to the
2 Settlement Administrator must do so not later than 45 days after the Settlement Administrator’s
3 mailing of the Class Notice (plus an additional 21 days for Class Members whose Class Notice
4 was re-mailed).” (Settlement, § 8.3.1.)

5 24. Payment Processing: “The Settlement Administrator shall establish a Qualified
6 Settlement Fund pursuant to Section 468B(g) of the Internal Revenue Code for purposes of
7 administering the Settlement. The Settlement Administrator shall furnish the Qualified Settlement
8 Fund with its own Employer ID Number and calculate all settlement checks and payroll deductions
9 and withholdings required under law based on information that will be confidentially furnished by
10 Defendant. Within 60 calendar days after the Effective Date, Defendant shall deposit the
11 Class/Representative Settlement Amount into an interest-bearing escrow account with the
12 Settlement Administrator.” (Settlement, § 10.1.) “Subject to the terms of the Agreement, the
13 Settlement Administrator shall distribute payment of any approved Class Counsel Fees and Costs
14 within 20 calendar days after the funding of the Gross Settlement Amount.” (Settlement, § 10.2.1.)
15 “Subject to the terms of the Agreement, the Settlement Administrator shall pay to Plaintiff any
16 approved Service Award within 20 calendar days after the funding of the Gross Settlement
17 Amount.” (Settlement, § 10.2.2.) “The Settlement Administrator shall pay itself any approved
18 Settlement Administration Costs within 20 calendar days after the funding of the Gross Settlement
19 Amount.” (Settlement, § 10.2.3.) “The Settlement Administrator shall distribute the PAGA
20 Payment within 20 days after the funding of the Gross Settlement Amount.” (Settlement, § 10.2.4.)
21 “The Settlement Administrator shall distribute the Net Settlement Amount to Participating Class
22 Members within 20 calendar days after the funding of the Gross Settlement Amount.” (Settlement,
23 § 10.2.5.)

24 25. Void Date: “All Class Payment checks will remain valid and negotiable for 180
25 days from the date of their mailing by the Settlement Administrator. After 180 calendar days from
26 the date of mailing, the checks shall become null and void, and any monies remaining in the
27 distribution account shall be distributed by the Settlement Administrator to the California State
28 Controller’s Office pursuant to California’s Unclaimed Property Law to be held in the name of the

1 applicable Participating Class Member. No part of the Net Settlement Amount shall be returned to
2 Defendant.” (Settlement, § 10.3.2.)

3 26. Undeliverable or Uncashed Checks: “After 180 calendar days from the date of
4 mailing, the checks shall become null and void, and any monies remaining in the distribution
5 account shall be distributed by the Settlement Administrator to the California State Controller’s
6 Office pursuant to California’s Unclaimed Property Law to be held in the name of the applicable
7 Participating Class Member. No part of the Net Settlement Amount shall be returned to
8 Defendant.” (Settlement § 10.3.2.) “For any Participating Class Members for whom the settlement
9 checks were deemed undeliverable, the funds associated with the settlement payment will be
10 distributed to the California State Controller’s Office pursuant to California’s Unclaimed Property
11 Law to be held in the name of the applicable Participating Class Member.” (Settlement, § 10.3.3.)

12 **III. DISCUSSION**

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

17 **A. A Presumption of Fairness Exists Over The Settlement**

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

21 **1. The Settlement Is the Product of Arm’s-Length Negotiations**

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

26 On May 28, 2025, the Parties participated in private mediation with experienced class
27 action mediator, Hon. Patrick J. Walsh. (Class Counsel Decl., at ¶ 7.) The Parties’ settlement
28 discussions were conducted at arms’ length and although the Parties were professional, the

1 settlement negotiations were adversarial with each of the Parties prepared to litigate their position
2 through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and
3 discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses,
4 the Parties reached the Settlement. (*Id.*)

5 **2. The Parties Conducted Sufficient Investigation**

6 Prior to reaching this Settlement, Class Counsel conducted informal discovery concerning
7 the claims set forth in the Action. (Class Counsel Decl., at ¶ 5.) Defendant produced over 300
8 pages of materials, which included relevant written policies and procedures. (*Id.*) Defendant also
9 provided Plaintiff with employment data. (*Id.*) Defendant produced time and pay records and
10 service call records for approximately 151 employees (all California nonexempt employees that
11 held the same position title as Plaintiff). (*Id.*) The data included daily time records showing the
12 start and stop time for each shift based on employee time punches, the start and stop time for meal
13 periods based on employee time punches, and payroll records showing the hours worked, regular
14 earnings, overtime earnings, and bonuses (if any). (*Id.*) Defendant also provided information on
15 the total number of active employees, former employees, workweeks, pay periods, and meal and
16 rest period premiums paid. (*Id.*) In conjunction with their extensive factual investigation, Class
17 Counsel investigated the applicable law regarding the claims and defenses asserted in the Action.
18 (*Id.*) Thus, Plaintiff and Class Counsel were able to act intelligently and effectively in negotiating
19 the proposed Settlement. (Class Counsel Decl., at ¶¶ 5-6.)

20 **3. Class Counsel Has Extensive Experience in Class Action Litigation**

21 The settlement negotiations were conducted by highly capable and experienced counsel.
22 Class Counsel have a strong record of vigorous and effective advocacy for their clients and are
23 experienced in handling complex wage and hour class action litigation. (*Id.* at ¶¶ 37-49.) Although
24 Plaintiff and Class Counsel were prepared to litigate the claims alleged in the Action, they believe
25 the proposed Settlement is in the best interests of the Class.

26 ///

27 ///

28 ///

1 **4. The Percentage of Objectors Is Small**

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

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

6 In considering whether a settlement is fair, just, reasonable, and adequate the trial court
7 should consider relevant factors, which may include the strength of plaintiff’s case, the risk,
8 expense, complexity and likely duration of further litigation, the risk of maintaining class action
9 status through trial, the amount offered in settlement, the extent of discovery completed and the
10 stage of the proceedings, the experience and views of counsel, ... and the reaction of the class
11 members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
12 116, 128.) Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh*
13 *v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236.)

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

17 **1. Plaintiff’s Strengths and Risks of Continued Litigation**

18 Based on Plaintiff’s discovery and investigation, Class Counsel reached the conclusion that
19 Defendant had a policy and practice of: requiring its employees to work “off-the-clock” prior to
20 clocking in for the workday, during meal periods, and after clocking out for the workday, time
21 which it did not pay for; not providing its employees with California compliant meal and rest
22 periods, which it did not pay appropriate premiums for; and failing to reimburse its employees for
23 business-related expenses. (Class Counsel Decl., ¶ 16.) Defendant denies these claims.

24 While Plaintiff is confident in the merits of their claims, a legitimate controversy exists as
25 to each cause of action. (Class Counsel Decl., ¶ 24.) Plaintiff recognizes that proving the amount
26 of wages due to each class member would be an expensive, time-consuming, and uncertain
27 proposition. (*Id.*) Although the Parties had engaged in significant amount of investigation, informal
28 discovery, the Parties had not yet completed formal written discovery. (*Id.* at ¶ 25.) Plaintiff

1 intended to depose corporate officers and managers of Defendant. (*Id.*) Moreover, preparation for
2 a class certification and a trial remained for the Parties as well as the prospect of appeals in the
3 wake of a disputed class certification ruling for Plaintiff and/or adverse summary judgment ruling.
4 (*Id.*) Had the Court certified any claims, Defendant could move to decertify the claims. (*Id.*) As a
5 result, the Parties would incur considerably more attorneys’ fees and costs through trial. (*Id.*) This
6 Settlement avoids the risks and the accompanying expense of further litigation. (*Id.*)

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

10 **2. The Gross Settlement Amount Is Reasonable**

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

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

27 The proposed Gross Settlement Amount represents a substantial recovery when compared
28 to Plaintiff’s reasonably forecasted recovery. (Class Counsel Decl. at ¶¶ 14-27.) Because of the

1 proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk
2 of an unfavorable judgment. (*Id.*) When considering the risks of litigation, the uncertainties
3 involved in achieving class certification, the burdens of proof necessary to establish liability, the
4 probability of appeal of a favorable judgment, it is clear that the Settlement is within the “ballpark”
5 of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) ***Indeed, each Class***
6 ***Member is eligible to receive an average net benefit of approximately \$3,058.35. (Id. at ¶ 27.)***

7 **C. The Proposed Class Counsel’s Fees and Costs Are Reasonable**

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

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

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

19 Class Counsel seeks approval of the Class Counsel Fees based on the “percentage of
20 recovery/common fund” theory. The purpose of this approach is to “spread litigation costs
21 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
22 burden alone.” (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v.*
23 *State of California* (1995) 15 Cal.3d 162, the California Supreme Court stated: “[O]ne who expends
24 attorneys’ fees in winning a suit which creates a fund from which others derive benefits may require
25 those passive beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly,
26 in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court
27 recognized that the common fund doctrine has been applied “consistently in California when an
28

1 action brought by one party creates a fund in which other persons are entitled to share.” (*Id.* at p.
2 110.)

3 The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th
4 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
5 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
6 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
7 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
8 method—including relative ease of calculation, alignment of incentives between counsel and the
9 class, a better approximation of market conditions in a contingency case, and the encouragement
10 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—
11 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
12 (*Id.* [internal citations omitted].)

13 2. The Requested Attorneys’ Fees and Costs Are in Line with Typical 14 Cases

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

25 Here, the Class Counsel Fees payment is equal to one-third (1/3) of the Gross Settlement
26 Amount, which is in line with the prevailing guidelines established in California case law and
27 academic literature and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008)
28 162 Cal.App.4th 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage

1 method or the lodestar method is used, fee awards in class actions average around one-third of the
2 recovery.”].) Accordingly, Plaintiff respectfully requests that the Court approve the Class Counsel
3 Fees as negotiated by the Parties and requested herein.

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

5 Labor Code § 1194 (a) provides for the recovery of “minimum wage or overtime
6 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Under this
7 section, Plaintiff would be permitted to recover their actual attorneys’ fees, even if those fees were
8 larger than the total Class recovery at the conclusion of this Action should it proceed. The
9 Settlement is beneficial in that it limits the risk of continued expenses and consumption of time,
10 energy, and resources facing Defendant while at the same time rewarding Class Counsel for their
11 decision to assume risk by taking on this Action. In fact, prosecution of this Action involved
12 significant financial risk for Class Counsel. (Class Counsel Decl., ¶¶ 35-36.) Class Counsel
13 undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once Class
14 Counsel undertook this Action on behalf of the Class, Class Counsel committed to pursue it to its
15 conclusion, placing its fiduciary duty to the Class ahead of all other concerns. (*Id.*)

16 **4. The Experience, Reputation and Ability of Class Counsel Support the** 17 **Requested Attorneys’ Fees and Costs**

18 As demonstrated by their past experience in pursuing class actions on behalf of consumers
19 and employees, Class Counsel possess considerable expertise in litigating class actions. (Class
20 Counsel Decl., ¶¶ 37-49.) Class Counsel has been involved as lead counsel or co-counsel in several
21 class actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate
22 class counsel commensurate with their skill, reputation and experience, Class Counsel’s requested
23 fee award is supported here.

24 Class Counsel’s experience in wage and hour class actions was integral in evaluating the
25 strengths and weaknesses of the case against Defendant and the reasonableness of the Settlement.
26 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning
27 the rapidly evolving substantive law (state and federal), as well as the procedural law of class
28 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 are reasonable and fair.

D. The PAGA Allocation is Reasonable

Where settlements negotiate a good faith amount for PAGA payments 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. Courts have approved amounts for PAGA penalties in the range of zero to two percent of the total maximum amount of the Settlement. (*See Jack v. Hartford Fire Ins. Co.* (S.D. Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a PAGA payment of 0.25%]; *McKenzie v. Fed. Express Corp.* (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5 [acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement].)

Here, the PAGA Payment is larger than many other PAGA settlement amounts approved by the courts where seemingly nominal amounts were allocated for such claims. (*See, e.g., Zubia v. Shamrock Foods Co.* (C.D. Cal. Dec. 21, 2017) No. CV1603128ABAGRX, 2017 WL 10541431, at *14 [approving a PAGA settlement of 0.1%]; *Hopson, supra*, 2008 WL 3385452, at *1 [approving a PAGA settlement of 0.3% or \$1,500]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012) No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 [approving a PAGA settlement of 0.27%].) The Parties negotiated the PAGA Payment, 25% of which is to be paid to the Aggrieved Employees (\$20,000.00) and 75% of which is to be paid to the LWDA (\$60,000.00) in settlement of PAGA claims. (Settlement, § 1.20.) The PAGA Payment equates to approximately 10% of the Gross Settlement Amount, which far exceeds amounts that are routinely approved. The Parties negotiated to allocate 10% of the Gross Settlement Amount to PAGA Penalties in good faith and this amount is reasonable.

E. The Class Representative Service Award 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*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which

1 are necessary to provide incentive to represent the class, and are appropriate given the benefit the
2 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir.
3 2009) 563 F.3d 948, 958-59.)

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

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

21 A **2006** study examining the average incentive award given to class action plaintiffs from
22 **1993 to 2002** found that the “average award per class representative was \$15,992 and the median
23 award per class representative was \$4,357.” (Eisenberg & Miller, *Incentive Awards to Class Action*
24 *Plaintiffs: An Empirical Study* (2006) 53 UCLA L.Rev. 1303, 1308.) That same study found that
25 named plaintiffs in employment discrimination class actions received an average award of \$69,850
26 and a median award of \$31,081, while named plaintiffs in other employment class actions received
27 an average award of \$12,121 and a median award of \$13,059. (*Id.* at p. 1334.) The authors of the
28 study found that higher awards in employment cases reflected the “courts’ wish to make

1 representative plaintiffs whole by compensating them for the high costs of their service to the class,
2 including risks of stigmatization or retaliation on the job.” (*Id.* at p. 1308.)

3 Class Counsel represents that Plaintiff devoted a great deal of time and work assisting Class
4 Counsel litigate the Action, and Plaintiff communicated with Class Counsel during the mediation
5 and the preparation leading up to mediation. (*See generally* Plaintiff’s declaration; Class Counsel
6 Decl., ¶¶ 28-32.) The Service Award is reasonable particularly in light of the substantial benefits
7 Plaintiff generated for all Class Members and as compared to similarly situated plaintiffs in other
8 employment class and representative actions. (*Id.*)

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

10 **A. Legal Standard**

11 The proposed Class Members are well suited for class certification. All of the claims derive
12 from a core set of alleged violations of California’s wage and hour laws and regulations. For the
13 reasons set forth more fully below, for purposes of settlement only, the Class satisfies the
14 prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides: “when
15 the question is one of a common or general interest, of many persons, or when the parties are
16 numerous, and it is impracticable to bring them all before the court, one or more may sue or defend
17 for the benefit of all.” (Code Civ. Proc., § 382). There are three requirements to section 382: Class
18 certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined
19 community of interest, and (3) that certification will provide substantial benefits to litigants and
20 the courts, i.e., that proceeding as a class is *superior* to other methods. (*In re Tobacco II Cases*,
21 (2009) 46 Cal.App.4th 298, 313.)

22 The California Supreme Court has looked to Federal Rule of Civil Procedure 23 to further
23 explain that the community-of-interest requirement itself embodies three factors: “(1) predominant
24 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
25 (3) class representatives who can adequately represent the class.” (*Richmond v. Dart Indus., Inc.*
26 (1981) 29 Cal. 3d 462, 470.)

27 California law and policy favor the fullest and most flexible use of the class action device.
28 (*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 Settlement Purposes.

1. The Class is Ascertainable and Numerous

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

a) Class Members Definition

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

Here, the Class Members definition (as stated above) is objective as it is limited in scope to a specific time frame (during the Class Period) and is limited to the potential class members’ employment classification (hourly-paid or non-exempt employees). Further, there are common facts that exist here (such as those employees who worked without pay, were not given proper meal or rest periods, etc.) that are encapsulated by the causes of action alleged in the Action. This definition therefore provides sufficiently clear information to allow current and former employees to readily and reasonably determine whether or not they are a putative Class Members in this

1 Action based upon this definition. (*ABM* at 304, stating “As long as the potential class members
2 may be identified without unreasonable expense or time and given notice of the litigation, and the
3 proposed class definition offers an objective means of identifying the persons who will be bound
4 by the results of the litigation, the ascertainability requirement is met.”) Thus, the proposed Class
5 Members that Plaintiff seeks to represent is easily ascertainable and includes approximately former
6 and current 135 employees of Defendant.

7 **b) Numerosity**

8 “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a
9 class action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981)
10 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action
11 may be maintained as a class action even where the parties are numerous and it is in fact practicable
12 to join them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a
13 class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries
14 of a trust in an action for removal of the trustees.” (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d
15 574; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.]) If even as
16 little as 10 persons can constitute a class, then certainly the 135 Class Members here satisfy the
17 numerosity requirement.

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

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

23 **a) There are Many Common Issues of Law and Fact Which**
24 **Predominate**

25 The Court should grant conditional Class certification for settlement purposes here on the
26 grounds that questions of law and fact common to all Class and subclass predominate over any
27 individual questions. This inquiry tests whether proposed classes are sufficiently cohesive to
28

warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605.)

Here, the employment practices at issue are: whether Defendant had legally compliant policies and practices for all hours worked, including overtime wages; whether Defendant had legally compliant policies and practices to provide employees with meal periods; whether Defendant had legally compliant policies and practices authorizing and permitting its employees to take rest periods; whether Defendant reimbursed employees for business expenses; whether final payment of wages was untimely and excluded unpaid wages, including meal and rest period premium wages; and whether wage statements were consequently non-compliant. Plaintiff contends that the factual and legal issues are the same for all the identified Class Members, including Plaintiff. Further, all Class Members suffered from, and seek redress for, the same alleged injuries.

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

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

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

The adequacy of representation requirements is met by fulfilling two conditions: first, a named plaintiff must be represented by counsel qualified to conduct the pending litigation; second,

1 a named plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of*
2 *America* (1976) 60 Cal.App.3d 442, 451.)

3 All of these requirements are met here for settlement purposes. Plaintiff retained Class
4 Counsel, whom have extensive experience in prosecuting complex class actions, including similar
5 class actions that previously settled. (Class Counsel Decl., ¶¶ 37-49.) Class Counsel
6 unquestionably is "qualified, experienced and generally able to conduct the proposed litigation."
7 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 875.) In addition, Plaintiff has no conflicts, and
8 Plaintiff has, with Class Counsel, litigated this Action and diligently reviewed the Settlement
9 terms, showing their dedication. Plaintiff's willingness to serve as Class Representative and to
10 sacrifice the value of their own individual claims by executing a general release broader than that
11 of the other Class Members so that the Class may benefit from this Settlement demonstrates
12 Plaintiff's serious commitment to bringing about the best results possible for the Class, thereby
13 also demonstrating that Plaintiff's interests are aligned with those of the Class and no conflict
14 exists. (*McGhee, supra*, 60 Cal.App.3d at p. 451.)

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

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

26 V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND

27 A. The Proposed Notice Plan Satisfies Due Process

28 Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,

1 Rule 3.766 (e), (f).) California law vests the Court with broad discretion in fashioning an
2 appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no
3 statutory or due process requirement that all class members receive actual notice, but in this Action,
4 the Notice will be disseminated through direct U.S. first class mail to the last known address for
5 each Class Member. As the Court of Appeals has explained, “[t]he notice given should have a
6 reasonable chance of reaching a substantial percentage of the class members . . .” (*Id.* at p. 974.)
7 In this Action the Notice will be provided by direct mailing, which is the best possible form of
8 notice as it provides the most reasonable chance of reaching a substantial percentage of the Class.

9 **B. The Notice is Accurate and Informative**

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

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

22 **C. The Proposed Notice of Settlement Should Be Approved**

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

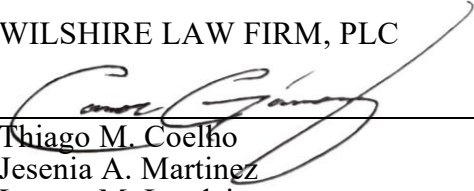
1 **VI. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully request that the Court grant preliminary
3 approval of the proposed Settlement and set a final approval hearing on or after July 16, 2027.

4 Respectfully submitted,

5 Dated: May 28, 2026

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