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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

RUSSELL OWENS, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

MCALISTER INSTITUTE FOR TREATMENT
& EDUCATION, INC., a California corporation.;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: 37-2024-00012034-CU-OE-CTL

CLASS AND REPRESENTATIVE ACTION

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

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

PRELIMINARY APPROVAL HEARING:

Date: September 4, 2026

Time: 9:00 a.m.

Dept.: C-73

Judge: Honorable Michael D. Washington

Action Filed: March 13, 2024

FAC Filed: May 20, 2024

Trial Date: Not set

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

2 PLEASE TAKE NOTICE that on _____, 2026 at _____ in Department C-73
3 of this Court located at the Hall of Justice at 330 West Broadway, San Diego, California 92101
4 pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 *et seq.*,
5 Plaintiff Russell Owens (“Plaintiff”) will, and hereby does, move the Court for an order granting
6 preliminary approval of the proposed class action settlement between Plaintiff and Defendant
7 McAlister Institute for Treatment & Education, Inc. Specifically, Plaintiff moves the Court for an order:

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

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

21 Respectfully submitted,

22 Dated: March 13, 2026

MOON LAW GROUP, PC

23 By: _____

24 Kane Moon
25 Allen Feghali
26 Julie Sohyun Oh

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Russell Owens (“Plaintiff”) seeks preliminary approval of a proposed \$360,000.00 non-reversionary, wage-and-hour class action settlement (the “Settlement”) with Defendant McAlister Institute for Treatment & Education, Inc. (“Defendant”) (together with Plaintiff, the “Parties”). The Settlement will provide substantial monetary payments to an estimated 606 Class Members who worked an estimated aggregate of 23,395 Class Pay Periods, of which roughly 606 are Aggrieved Employees who worked an estimated aggregate of 23,395 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, informal discovery, and negotiations between the Parties. The negotiations were at arm’s-length and were facilitated through private mediation by an experienced and neutral class action mediator, Lynn Frank, Esq. Accordingly, Plaintiff requests the Court preliminarily approve the Settlement, certify the proposed Class, approve the proposed Class Notice to Class Members, and set a final approval hearing no earlier than 120 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 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 employees of Defendant McAlister Institute for Treatment & Education, Inc. (“Defendant”) (together with Plaintiff, the “Parties”) who worked for Defendant in California at any time during the Class Period, as set forth in the Joint Stipulation of Class and Representative Action Settlement Agreement (the “Settlement”). (*Id.*)

Defendant is an institution that provides a comprehensive range of substance abuse treatment, recovery, and supportive services in San Diego County. (*Id.* at ¶ 3.) Defendant

1 employed Plaintiff and other non-exempt, hourly-paid employees during the Class Period. (*Id.*)
2 Plaintiff worked for Defendant in a non-exempt, hourly-paid position, as an Overnight Monitor
3 from approximately March 2023 to February 2024. (Declaration of Plaintiff Russell Owens in
4 Support of Class Action and PAGA Settlement [“Plaintiff Decl.”], ¶ 2.) Plaintiff contends that he
5 and his coworkers were subjected to the same unlawful labor practices, including failure to pay
6 wages for all hours worked. (*Id.* at ¶ 6; Moon Decl., ¶ 3.)

7 Plaintiff’s claim for unpaid minimum and overtime wages stem from allegations that
8 Defendant failed to compensate Plaintiff and others for off-the-clock work, failed to incorporate all
9 remuneration (including bonuses) into employees’ regular rate of pay for purposes of paying overtime,
10 meal period premiums, and sick pay, and failed to pay all accrued vacation wages owed at termination.
11 (Moon Decl., ¶ 4.) Plaintiff’s meal and rest period claims are based on allegations that due to the
12 nature of their work, Class Members’ breaks were often short, late, interrupted, and sometimes
13 missed altogether, and that Defendant did not pay all premium wages for non-compliant breaks.
14 (*Id.*) Plaintiff further brings a claim for unreimbursed necessary business expenses based on
15 allegations that Class Members were required to use their personal cellular phones for work-
16 related communication and that they incur mileage for use of personal vehicles for work without
17 corresponding compensation by Defendant. (*Id.*) Finally, Plaintiff also brings derivative claims
18 for waiting time penalties, wage statement violations, unfair business practices, and civil penalties
19 under PAGA. (*Id.*)

20 Because of the foregoing alleged violations of various provisions of the Labor Code,
21 Plaintiff filed a class action on March 13, 2024, which alleges Defendant systematically: (1) failed
22 to pay minimum wages, (2) failed to pay overtime compensation, (3) failed to provide meal
23 periods, (4) failed to authorize and permit rest periods, (5) failed to indemnify necessary business
24 expenses, (6) failed to timely pay final wages at termination, (7) failed to provide accurate
25 itemized wage statements, and (8) engaged in unfair business practices. (*Id.* at ¶ 5.)

26 Pursuant to PAGA, on March 10, 2024, Plaintiff gave written notice to the California Labor
27 and Workforce Development Agency (the “LWDA”) of the alleged Labor Code violations, with
28 certified mail service on Defendant, and paid the required filing fee. (*Id.* at ¶ 6, Ex. 2.) On May

20, 2024, Plaintiff timely filed a First Amended Class and Representative Action Complaint to add a ninth cause of action for civil penalties under PAGA (the “Operative Complaint”). (*Id.* at ¶ 6.) In compliance with Labor Code section 2699(s)(1), Plaintiff subsequently submitted to the LWDA a file-stamped copy of the Operative Complaint containing the Court-assigned case number. (*Id.*) To date, the LWDA has not indicated its intent to investigate the alleged violations or intervene in this Action. (*Id.*)

On October 1, 2024, the Court granted Plaintiff’s request for dismissal of class claims due to existence of an arbitration agreement, leaving only the PAGA claim. (*Id.* at ¶ 7.) As part of the Settlement, the Parties agreed that Plaintiff would file a Second Amended Complaint to reassert the class claims. (*Id.*) On December 16, 2025, Plaintiff sought leave of court to file a Second Amended Complaint. (*Id.*) Thereafter, the Court granted Plaintiff leave, and Plaintiff filed the Second Amended Complaint on February 24, 2026. (*Id.*)

Defendant ardently opposes the merits of this case and denies Plaintiff’s factual allegations. (*Id.* at ¶ 8.) Defendant asserts it complied with all its compensation obligations, including compensating Class Members for any and all off-the-clock work and overtime work, and therefore, Plaintiff and other Class Members were paid all wages owed, including accrued vacation wages. (*Id.*) Defendant argues it did not fail to incorporate any non-discretionary bonuses into the regular rate of pay for purposes of paying overtime, meal period premiums, and sick pay, and that all bonuses were discretionary. (*Id.*) Defendant maintains compliance with all its meal and rest period obligations. (*Id.*) Defendant asserts it complied with all its reimbursement obligations, and that Plaintiff and other employees were compensated for any and all business expenses necessarily incurred. (*Id.*) To the extent employees 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

1 Plaintiff cannot prove Defendant's alleged failure to pay all final wages at the time of separation
2 was "willful." (Moon Decl., ¶ 8; *see, e.g., Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012, No.
3 ED CV 11-298 GHK (DTBx)) 2012 WL 9506073, *5.) For these reasons, among others,
4 Defendant denies all of Plaintiff's claims and allegations, and further claims it did not engage in
5 any unfair business practices and denies liability under PAGA. (Moon Decl., ¶ 8.) Defendant also
6 maintains the claims are improper for class treatment, in part, due to the individualized and
7 testimony-intensive nature of the wage claims that could bar class certification or significantly
8 reduce Defendant's overall liability. (*Id.*)

9 **B. Discovery and Investigation**

10 The Parties agreed to mediate this action with Lynn Frank, Esq., an experienced class and
11 PAGA action mediator. (*Id.* at ¶ 9.) In preparation for mediation, the Parties agreed to a protocol for
12 an informal production of documents and information before mediation. (*Id.*) Prior to mediation,
13 Plaintiff obtained from Defendant, a sample of the time and corresponding payroll records of the
14 Class, the Employee Handbook and policies in effect during the Class Period, and demographic data,
15 including the estimated number of current and formerly employed Class Members, Aggrieved
16 Employees, and PAGA Pay Periods. (*Id.*)

17 In preparation for mediation, Plaintiff's Counsel reviewed and analyzed all the information
18 Defendant provided, including the sample records and documents regarding Defendant's wage-and-
19 hour policies. (*Id.* at ¶ 10.) Plaintiff's Counsel was aided by a damage model from the sample records
20 prior to the mediation. (*Id.*) The sample time and pay records analyzed contained a total of 46,575
21 shifts for the Class Period (approximately 21% in the Class), which allowed Plaintiff's to prepare an
22 analysis with a reasonable degree of certainty. (*Id.*) In conjunction with their extensive factual
23 investigation, Plaintiff's Counsel also investigated the applicable law regarding the claims and
24 defenses asserted in the litigation. (*Id.*) Accordingly, Plaintiff's Counsel was able to evaluate the
25 probability of class certification, success on the merits, and Defendant's maximum and realistic
26 monetary exposure for all claims. (*Id.*) Thus, Plaintiff's and his Counsel's familiarity with the facts
27 of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating
28 the Settlement. (*Id.*)

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

2 On November 20, 2024, the Parties participated in a full day of private mediation with
3 Lynn Frank, Esq. (*Id.* at ¶ 11.) The negotiations were at arm’s length and, although conducted in
4 a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to
5 explore the potential for a settlement of the dispute, but each side was also prepared to litigate
6 their position through trial and appeal if a settlement had not been reached. (*Id.*) After a full
7 discussion regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses
8 and with the assistance of the mediator, the Parties reached a resolution. (*Id.*) The material terms
9 of the settlement are set out in the Settlement. (*Id.* at ¶¶ 2, 11, Ex. 1.)

10 In compliance with Labor Code section 2699(s)(2), notice of settlement and a copy of the
11 proposed Settlement has been submitted to the LWDA along with a copy of Plaintiff’s preliminary
12 approval motion and the hearing date. (*Id.* at ¶ 12; Ex. 3.) To date, the LWDA has not indicated
13 any objection to the Settlement. (*Id.*)

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

15 Under the Settlement, Defendant will pay a non-reversionary, all-inclusive amount of *no*
16 *less than \$360,000.00* (“GSA”) to resolve this action. (Settlement, ¶ 3.0.) Other key terms of the
17 Settlement are outlined in the counsel declaration submitted concurrently herewith. (Moon Decl.,
18 ¶¶ 13–31.) The proposed Settlement Administrator—Phoenix Class Action Administration
19 Solutions—was jointly selected by the Parties based on its bid of \$10,000.00. (*Id.* at ¶ 17, Ex. 5;
20 Settlement, ¶ 1.1.)

21 The Class is defined as all current and former non-exempt employees of Defendant who
22 worked for Defendant in California at any time from March 10, 2023, through January 19, 2026,
23 subject to the escalator clause. (*Id.* at ¶¶ 1.3, 1.12.) “Aggrieved Employees” is defined as all
24 current and former non-exempt employees of Defendant who worked for Defendant in California
25 at any time from March 10, 2023, through January 19, 2026. (*Id.* at ¶¶ 1.2, 1.32.) The Settlement
26 allocates \$20,000.00 from the GSA for settlement of the Released PAGA Claims, which will be
27 distributed: 75% (\$15,000.00) to the LWDA and 25% (\$5,000.00) to Aggrieved Employees
28

1 pursuant to PAGA law governing Plaintiff's claims.¹ (*Id.* at ¶ 1.35.) Each Aggrieved Employee
2 will be entitled to a pro rata share of the 25% share of the PAGA Penalties directly proportional
3 to their number of PAGA Pay Periods. (*Id.* at ¶ 3.0.7.) This results in an average Individual PAGA
4 Payment of roughly **\$8.25** for each of the estimated 606 Aggrieved Employees (\$5,000.00 / 606),
5 and a PAGA Pay Period value of roughly **\$0.21** for each of the 23,395 estimated Pay Periods in
6 the PAGA Period (\$5,000.000 / 23,395). (Moon Decl., ¶ 19.)

7 The Net Settlement Amount means the Gross Settlement Amount less the following court-
8 approved payments: Individual PAGA Payments, LWDA PAGA Payment, Class Counsel Fees Payment,
9 Class Counsel Expenses Payment, Class Representative Enhancement Award, and Settlement
10 Administration Costs. (*Id.* at ¶ 1.27.) The remainder is to be paid to Participating Class Members
11 as Individual Class Payments. (*Id.*) Accordingly, the Net Settlement Amount will be *no less than*
12 **\$179,500.00** for an estimated Class of **606 individuals**.² (Moon Decl., ¶ 20.) Each Class Member
13 who does not opt-out will be entitled to a pro rata share of the Net Settlement Amount that is
14 directly proportional to the number of Workweeks worked during the Class Period. (*Id.* at ¶ 3.0.4.)
15 The estimated **\$179,500.00** Net Settlement Amount results in an average Individual Class Payment of
16 roughly **\$296.20** for each of the estimated 606 Class Members (\$179,500.00 / 606),³ and a Class Pay
17 Period value of roughly **\$7.67** for each of the 23,395 estimated Class Pay Periods in the Class Period
18 (\$179,500.00 / 23,395). (Moon Decl., ¶ 22.)

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

24 ² The Net Settlement Amount was calculated by deducting the following from the \$360,000.00
25 GSA: \$7,500.00 for the Class Representative Enhancement Award, up to \$10,000.00 for the
26 Administration Expenses Payment, \$20,000.00 for the PAGA Penalties to the LWDA and Aggrieved
Employees, \$120,000.00 for the Class Counsel Fees Payment, and up to \$23,000.00 for the Class
Counsel Expenses Payment. (Settlement, ¶¶ 3.0.1–3.0.6.)

27 ³ At this time, the actual amounts to Class Members and/or Aggrieved Employees are unknown
28 and will be calculated by the Administrator following preliminary approval and receipt and processing
of the Class Data. (Settlement, ¶ 6.7.) The high and low range of payments will be provided to the
Court in a motion for final approval. (Moon Decl., ¶ 22, n.3.)

1 The Parties, Plaintiff’s Counsel, and Defense Counsel represent that they are not aware of
2 any other pending matter or action asserting claims that will be extinguished or affected by the
3 Settlement. (Moon Decl., ¶ 31.)

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

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

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

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

3 ///

4 ///

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

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

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

15 Plaintiff’s Counsel have conducted a thorough investigation into the facts of this case. (Moon
16 Decl., ¶ 32.) As previously noted, the Settlement at issue was reached through arms’-length
17 negotiations, private mediation, and the assistance of a statistics expert. (*Id.*) Based on Defendant’s
18 informal class-wide discovery production, on Plaintiff’s Counsel’s independent investigation and
19 evaluation, and on their extensive experience in wage-and-hour litigation, Plaintiff’s Counsel are of the
20 opinion that the proposed Settlement is fair, reasonable, and adequate. (*Id.*)

21 Based on Plaintiff’s Counsel’s review of the time, payroll, and additional data provided by
22 Defendant, on Plaintiff’s analysis of the sample records provided by Defendant, and on information
23 from Plaintiff, Plaintiff’s Counsel evaluated the estimated maximum and risk-adjusted exposure that
24 Defendant faced. (*Id.* at ¶ 33.) Specifically, based on the information provided for mediation, the
25 total estimated **realistic recovery** (adjusted for risks at certification and proof on the merits) for the
26 alleged claims, including penalties, is estimated to be **\$541,223.23**. (*Id.*) This amount was calculated
27 as follows: **\$69,354.41** (90% discount) for the off-the-clock work claim; **negligible, if any value**, for
28 the regular rate claim and unpaid accrued vacation wages claim; **\$60,545.52** (50% discount) for the

meal period claim; **\$146,578.30** (90% discount) for the rest period claim; **\$23,395.00** (90% discount) for the unreimbursed business expenses claim; **\$69,775.00** (95% discount) for the waiting time penalties claim; **\$54,600.00** (95% discount) for the wage statement claim; and **\$116,975.00** (95% discount) for the PAGA penalties claim. (*Id.* at ¶¶ 34–40.) The foregoing discounts were based on the evidence presented for mediation and arguments made during arm’s-length settlement negotiations. (*Id.*)

The \$360,000.00 gross settlement figure represents roughly 66.5% of the total realistic recovery. (*Id.* at ¶ 40.) 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.*)

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

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, considering all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, and the defenses Defendant may assert both to certification and on the merits, the Settlement is in the best interest of the Class and LWDA. (Moon Decl., ¶ 32.) While Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 43.) Plaintiff also recognizes that proving the amount 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 ¶ 44.) Plaintiff’s Counsel took into account the risk of not prevailing

1 at trial due to low or no participation by Class Members. (*Id.*) Indeed, the individualized and testimony-
2 intensive nature of the claims could bar manageability of the representative claims or otherwise
3 significantly reduce any recovery whatsoever. (*Id.*) For example, the rest period and unreimbursed
4 expense claims are testimony-driven claims and assume a 50% and 100% violation rate, respectively,
5 which would not likely be demonstrated at trial, as it assumes either the participation of a majority
6 or all employees (which would be difficult given the reality that many, if not all, employees would
7 be unwilling to participate due to fear of retaliation), or alternatively, the use of surveys or statistical
8 data as a surrogate (which would still require the participation of a majority of employees to establish
9 a sound representation of all non-exempts). (*Id.*) Even assuming employees would be willing to
10 participate, obtaining declarations would potentially reveal that each individual employee had a different
11 experience. (*Id.*)

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

22 The proposed \$360,000.00 Settlement therefore represents a substantial recovery when
23 compared to the reasonably forecasted recovery for the Class. (*Id.* at ¶ 46.) When considering the
24 risks of litigation, the uncertainties involved in continued litigation, the burdens of proof necessary
25 to establish liability, and the probability of appeal, it is clear the Settlement amount is within the
26 "ballpark" of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*; (*Kullar*,
27 *supra*, 168 Cal.App.4th at p. 133; *see Munoz, supra*, 186 Cal.App.4th at pp. 408–09.)

1 **3. The PAGA Settlement is Fair Considering the Parties’ Respective Positions**
2 **and Significant Risks**

3 With regard to the PAGA claims, the Settlement is a fair and reasonable resolution that
4 satisfies PAGA’s dual statutory purposes of deterrence and punishment, on the one hand, and
5 providing Aggrieved Employees with genuine and meaningful relief, on the other. (Moon Decl., ¶ 41;
6 Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendant has had to hire legal counsel, engage
7 in informal class-wide discovery, and participate in mediation. (Moon Decl., ¶ 41.) Defendant will also
8 have to pay civil penalties to the LWDA under the Settlement, assuming final settlement approval is
9 granted. (*Id.*) Not including its own attorneys’ fees and costs as well as the employer’s share of payroll
10 taxes, Defendant will pay no less than \$360,000.00 to resolve this matter—of which \$20,000.00 is
11 allocated toward the PAGA claims and will be distributed, in compliance with Labor Code section 2699
12 as 75% (\$15,000.00) to the LWDA and 25% (\$5,000.00) to Aggrieved Employees—and the release
13 obtained under the Settlement does not preclude Aggrieved Employees from pursuing any individual
14 claims they may have against Defendant or the other Released Parties. (*Id.*)

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

1 In sum, the \$20,000.00 PAGA Penalties allocation under the Settlement constitutes “genuine
2 and meaningful” that is “consistent with the underlying purpose of the statute to benefit the public.”
3 (*See O’Connor v. Uber Tech., Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133–35 [denying settlement
4 approval where allocation for PAGA claims was 0.1% of the estimated full worth].)

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

7 The Settlement negotiations were conducted by highly capable counsel with considerable
8 experience and demonstrated competence with litigating wage-and-hour class actions. (Moon Decl.,
9 ¶¶ 51–67.) Plaintiff’s Counsel have a strong record of vigorous and effective advocacy for their
10 clients and are experienced in handling complex wage-and-hour class action litigation. (*Id.*) Their
11 experience was helpful in assessing the reasonableness of the Settlement at issue here, and from this
12 experience they concluded that this litigation could not have been settled on better terms than
13 provided under the Settlement. (*Id.* at ¶ 68.) Although Plaintiff and his counsel were prepared to try
14 the claims alleged in the litigation, they support the proposed Settlement as being in the best interest
15 of the Class based on objective evidence that has been considered and weighed against the risks,
16 expenses, and time consumption to both sides of continued litigation. (*Id.* at ¶¶ 11, 32.)

17 **B. The Proposed Attorneys’ Fees and Costs Are Reasonable**

18 Subject to the Court’s approval, the Settlement provides a fee application of one-third of the
19 GSA for Class Counsel’s attorneys’ fees, plus reimbursement for out-of-pocket litigation costs not to
20 exceed \$23,000.00.⁴ (Settlement, ¶ 3.0.2.) These amounts are disclosed to Class Members in the
21 proposed Class Notice and are reasonable. (*Id.* at Ex. A.)

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

23 California courts have long awarded attorneys’ fees as a percentage of the benefit created by
24 counsel in pursuing claims on behalf of a class. (*See, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25.)
25 The California Supreme Court has held, “when a number of persons are entitled in common to a
26

27
28 ⁴ Plaintiff’s Counsel’s current litigation costs are \$14,773.34, and they anticipate incurring
additional costs up to final approval. (Moon Decl., ¶ 75, Ex. 4.)

1 specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the
2 creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out
3 of the fund.” (*Id.* at p. 34.)

4 Plaintiff’s Counsel seek an award of attorneys’ fees on the “percentage of recovery/common
5 fund” theory. (Moon Decl., ¶ 70.) The purpose of this approach is to “spread litigation costs
6 proportionately among all the beneficiaries so that the active beneficiary does not bear the entire
7 burden alone.” (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State*
8 *of California* (1975) 15 Cal.3d 162, the California Supreme Court stated, “one who expends
9 attorneys’ fees in winning a suit which creates a fund from which others derive benefits, may require
10 those passive beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in
11 *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court
12 recognized that the common fund doctrine has been applied “consistently in California when an
13 action brought by one party creates a fund in which other persons[] are entitled to share.” (*Id.* at pp.
14 110–11 [pincite omitted].)

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

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

27 According to a leading treatise on class actions: “No general rule can be articulated on what
28 is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a

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

8 Here, Plaintiff’s Counsel’s fees request for one-third of the GSA is in line with the prevailing
9 guidelines established in California case law and academic literature and is consistent with awards in
10 California. (*Compare* Settlement, ¶ 3.0.2, with *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66,
11 n.11 [“Empirical studies show that, regardless whether the percentage method or the lodestar method
12 is used, fee awards in class actions average around one-third of the recovery.”].) Accordingly,
13 Plaintiff requests the Court preliminarily approve the attorneys’ fees as negotiated by the Parties.

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

15 Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable
16 fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(k)(1),
17 2802(d).) Under these sections, Plaintiff would be permitted to recover his actual attorneys’ fees,
18 even if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) This
19 Settlement is beneficial in that it limits the risk of continued expenses and consumption of time,
20 energy, and resources facing Defendant while at the same time rewarding Plaintiff’s Counsel for their
21 decision to assume risk by taking on this matter on a contingent basis with no guarantee of recovery.
22 (Moon Decl., ¶ 71.) In fact, prosecution of this action involved significant financial risk for Plaintiff’s
23 Counsel. (*Id.*) Once Plaintiff’s Counsel undertook this litigation, they committed to pursue it to its
24 conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶ 73.)

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

26 As demonstrated by their past experience in pursuing class actions on behalf of consumers
27 and employees, Plaintiff’s Counsel possess considerable expertise in litigating class actions. (*Id.* at
28 ¶¶ 51–67.) Plaintiff’s Counsel have been involved as lead counsel or co-counsel in numerous class

1 actions that resulted in millions in recovery. (*Id.*) As noted above, their experience in wage-and-hour
2 litigation was integral in evaluating the strengths and weaknesses of the case against Defendant and
3 the reasonableness of the Settlement. (*Id.* at ¶ 68.) Practice in the narrow field of wage-and-hour
4 litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and
5 federal) as well as the procedural law of class action litigation. (*Id.* at ¶ 66.) Based on these and other
6 factors, Plaintiff’s Counsel have frequently received fee awards of this percentage from the gross
7 recovery for the class. (*See id.* at ¶¶ 55, 60, 65.) Because it is reasonable to compensate counsel
8 commensurate with their skill, reputation, and experience, the requested fee award is supported here.

9 **C. The Enhancement Award to Plaintiff Is Reasonable**

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

26 Under the Settlement here, subject to the Court’s approval, a Class Representative
27 Enhancement Award of up to \$7,500.00 will go to Plaintiff, in addition to his amount as a Class
28 Member. (Settlement, ¶ 3.0.1.) This award is for his services in support of the Action and his general

1 release. (*Id.* at ¶ 1.14.) Plaintiff has devoted a great deal of time and work assisting counsel in the
2 case and communicated with counsel frequently for litigation and to prepare for mediation. (Moon
3 Decl., ¶¶ 47–50; Plaintiff Decl., ¶¶ 19–22.) The requested award is fair and reasonable, particularly
4 considering the substantial benefits Plaintiff generated for all Class Members. (Moon Decl., ¶ 49.)

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

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

17 **A. Legal Standard**

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

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

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

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

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

13 When determining whether a class is ascertainable, California courts focus on the following
14 three factors: “(1) the class definition, (2) the size of the class and (3) the means of identifying class
15 members.” (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, Plaintiff maintains there is an
16 easily ascertainable Class, defined by objective and precise criteria. (Settlement, ¶¶ 1.3, 1.12.) The
17 proposed Class that Plaintiff seeks to represent is ascertainable because (1) the Class definition is
18 sufficiently precise, (2) the Class consists of about 606 individuals, and (3) Class Members can be
19 readily identified by Defendant’s records. (*Id.* at ¶¶ 1.3, 1.7, 1.1.) Because Class Members are
20 identified using specific criteria in the regular business records of Defendant—their employment by
21 Defendant in California, non-exempt classification, hourly wage, and actual work during the Class
22 Period—the Class is ascertainable. (*See Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952,
23 959–60 [class membership defined by ownership of product that is the subject of the lawsuit is
24 sufficient to make the class ascertainable].) “The requirement of Code of Civil Procedure section 382
25 that there be ‘many’ parties to a class action suit is indefinite and has been construed liberally.” (*Rose*
26 *v. City of Hayward* (1981) 126 Cal.App.3d 926, 934.) “Where a question is of common interest to
27 ‘many’ persons, an action may be maintained as a class action even where the parties are numerous
28 and it is in fact practicable to join them all.” (*Id.*) “No set number is required as a matter of law for

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

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

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

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

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

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

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

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

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

14 Here, all requirements are met. Plaintiff retained counsel with extensive experience in
15 prosecuting complex class actions, including similar class actions that previously settled. (Moon
16 Decl., ¶¶ 51–67.) Based on their experience, Plaintiff’s Counsel unquestionably are “qualified,
17 experienced and generally able to conduct the proposed litigation.” (*Miller, supra*, 148 Cal.App.3d
18 at p. 874.) Plaintiff has, with counsel, litigated this case and diligently reviewed the settlement terms,
19 showing dedication, and with full knowledge and acceptance of duties, he has committed to his role
20 as Class Representative. (Plaintiff Decl., ¶¶ 11–22.) In addition, Plaintiff and his Counsel have no
21 conflicts with one another, other Class Members, or the proposed Administrator. (*Id.* at ¶¶ 8–10;
22 Moon Decl., ¶ 69.)

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

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

litigants and the judicial system. (*Id.*) Absent class treatment, similarly situated employees with small, but nevertheless meritorious, claims for damages would, as a practical matter, have no means of redress because of the time, effort, and expense required to prosecute individual actions. (*Id.* at p. 515; *Gentry, supra*, 42 Cal.4th at pp. 457–62.) Moreover, in the context of settlement, the superiority concerns are essentially non-existent. (*See generally, e.g., Stamburgh, supra*, 62 Cal.App.3d.)

V. THE PROPOSED CLASS NOTICE IS CONSTITUTIONALLY SOUND AND SATISFIES RULES OF COURT

Class Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court, rule 3.766(e)–(f), rule 3.769(f).) Here, the proposed Class Notice, in the form attached to the Settlement as **Exhibit A**, which will be mailed to Class Members in English and Spanish, meets all the requirements of California Rules of Court. The Class Notice summarizes the proceedings to date and the terms and conditions of the proposed Settlement in an informative and coherent manner. (Settlement, ¶ 6.3.-6.12, Ex. A.) It also states that the final approval decision has yet to be made, and provides the date, time, and location of the Final Approval Hearing. (*Id.*) It explains the right and procedures to opt-out or submit any written objections and/or arrange to appear at the Final Approval Hearing and verbally state any objections. (*Id.*) It makes clear the Settlement does not constitute an admission of liability by Defendant, who denies all liability, and it recognizes that this Court has not ruled on the merits of the action. (*Id.*) Thus, the proposed Class Notice meets all the requirements of California Rule of Court 3.769(f). (Cal. Rules of Court, rule 3.769(f).)

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

California law vests the Court with broad discretion in fashioning an appropriate notice program. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 970, 973–74.) There is no statutory or due process requirement that all class members receive actual notice, but in this matter, Class Members will receive direct mailed notice, which is the best possible form of notice under the circumstances. (Settlement, ¶ 6.3.) As the Court of Appeals has explained, “[t]he notice given should have a

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

3 **VI. CONCLUSION**

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

7 Respectfully submitted,

8 Dated: March 13, 2026

MOON LAW GROUP, PC

9
10 By: _____

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