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

NADIA VALLECILLOS, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

WATER AND POWER COMMUNITY
CREDIT UNION, a California corporation; and
DOES 1 through 10, inclusive,

Defendants

Case No.: 24STCV12492

CLASS AND REPRESENTATIVE ACTION

Assigned to the Honorable Elihu M. Berle,
Department 6

**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 Nadia Vallecillos,
the Declaration of Denise Islas, and
[Proposed] Preliminary Approval Order]*

PRELIMINARY APPROVAL HEARING:

Date:

Time:

Dept.: 6

Action Filed: May 16, 2024

Trial date: Not set

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

2 PLEASE TAKE NOTICE that on _____, 2025 at _____ a.m. in Department 6 of
3 the Spring Street Courthouse located at 312 North Spring Street, Los Angeles, California 90012,
4 pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 *et seq.*,
5 Plaintiff Nadia Vallecillos (“Plaintiff”) will move the Court for an order granting preliminary
6 approval of the proposed class action settlement between Plaintiff and Defendant Water and Power
7 Community Credit Union (“Defendant”).

8 Plaintiff will further move the Court for an order:

- 9 1. Granting preliminary approval of the Class Action and PAGA 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 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 of Kane Moon (and exhibits attached thereto), Plaintiff and
19 Denise Islas, the records and files in this action, and any other further evidence or argument that the
20 Court may properly receive at or before the hearing.

21 Respectfully submitted,

22 Dated: April 7, 2025

MOON LAW GROUP, PC

23 By: _____

24 Kane Moon
25 Lilit Ter-Astvatsatryan
26 S. Emily Grams

27 *Attorneys for Plaintiff*

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I. INTRODUCTION

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

This is a wage and hour class action and representative action for alleged Labor Code violations and claims for civil penalties pursuant to the California Private Attorneys General Act, Labor Code sections 2698, *et seq.* (“PAGA”). (Declaration of Kane Moon in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement [“Moon Decl.”], ¶ 2.) Plaintiff seeks to represent a class of all current and former employees employed by Defendant in the State of California during the period from May 16, 2020 through April 23, 2025, who do not opt out of the Settlement. (*Id.*) Defendant is a banking company based in Los Angeles County that provides financial services. (*Id.*) Plaintiff worked for Defendant from approximately May 2020 to January 2024 as a Customer Service Representative. (*Id.*) Throughout her employment Plaintiff was employed in an hourly paid, non-exempt position. (*Id.*) Plaintiff contends she and her coworkers were subjected to the same unlawful labor practices, including failure to pay wages for

1 all hours worked. (*Id.*)

2 Plaintiff's claim for unpaid wages is three-fold and stems, in part, from Defendant's alleged
3 failure to pay overtime to employees, from Defendant's policy of requiring employees to work
4 off-the-clock, uncompensated, and from Defendant's alleged failure to incorporate the regular rate
5 of pay when calculating overtime, meal break premiums, and sick pay. (*Id.* at ¶ 3.) Moreover,
6 Plaintiff brings claims against Defendant for meal and rest period violations, unreimbursed
7 business expenses, and derivative claims for waiting time penalties, wage statement violations,
8 unfair business practices, and civil penalties under PAGA. (*Id.*)

9 Because of the foregoing alleged violations of various provisions of the Labor Code,
10 Plaintiff filed a class action on May 16, 2024, which alleges Defendant systematically: (1) failed
11 to pay minimum wages, (2) failed to pay overtime compensation, (3) failed to provide meal
12 periods, (4) failed to authorize and permit rest periods, (5) failed to indemnify necessary business
13 expenses, (6) failed to pay final wages at termination, (7) failed to provide accurate itemized wage
14 statements, and (8) engaged in unfair business practices. (*Id.* at ¶ 4.)

15 On May 12, 2024, Plaintiff gave written notice to the California Labor and Workforce
16 Development Agency (the "LWDA") of the alleged Labor Code violations, with certified mail
17 service on Defendant, and paid the required filing fee. (*Id.* at ¶ 5.) A copy was submitted to the
18 LWDA in compliance with Labor Code section 2699, subd. (1)(1). (*Id.* at ¶ 5, Exh. 2.) On July 18,
19 2024, Plaintiff filed a First Amended Complaint, adding claims under PAGA (the "Operative
20 Complaint"). (*Id.*) A copy was submitted to the LWDA in compliance with Labor Code section
21 2699, subd. (1)(1). (*Id.*) To date, the LWDA has not indicated its intent to investigate the alleged
22 violations or intervene in this Action. (*Id.*)

23 Defendant ardently opposes the merits of this case and denies Plaintiff's factual allegations.
24 (*Id.* at ¶ 6.) Defendant asserts it complied with all of its compensation obligations, including
25 compensating Class Members for all off-the-clock work, and therefore, Plaintiff and other Class
26 Members were paid all wages owed. (*Id.*) Defendant also argues that Defendant did not fail to
27 incorporate any bonuses into Plaintiff's and Class Member's regular rate for purposes of overtime,
28 meal break premiums, and sick pay as such bonuses were discretionary. (*Id.*) Defendant maintains

1 compliance with all its meal and rest period obligations. (*Id.*) Defendant asserts it complied with
2 all of its reimbursement obligations, and therefore, Plaintiff and other Class Members were
3 compensated for any and all necessary business expenses incurred. (*Id.*) To the extent Class
4 Members received wage statements that were allegedly inaccurate, Defendant asserts employees
5 suffered no actual damage or harm as a result. (*Id.*; *see, e.g., Angeles v. U.S. Airways, Inc.* (N.D.
6 Cal. Feb. 19, 2013, No. C 12–05860 CRB) 2013 WL 622032, at *10 [“A plaintiff must adequately
7 plead an injury arising from an employer’s failure to provide full and accurate wage statements,
8 and the omission of the required information alone is not sufficient.”].) With respect to Plaintiff’s
9 claim for waiting time penalties, Defendant alleges its good-faith belief that they paid all wages
10 precludes the imposition of waiting time penalties since Plaintiff cannot prove Defendant’s alleged
11 failure to pay all final wages at the time of separation was “willful.” (Moon Decl., ¶ 6; *see, e.g.,*
12 *Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012, No. ED CV 11–298 GHK (DTBx)) 2012 WL
13 9506073, *5.) For these reasons, among others, Defendant denies all Plaintiff’s claims and
14 allegations, and further claims it did not engage in any unfair business practices and denies liability
15 under PAGA. (Moon Decl., ¶ 6.) Defendant also maintains the claims are improper for class
16 treatment, in part, due to the individualized and testimony-intensive nature of the wage claims that
17 could bar class certification or significantly reduce Defendant’s overall liability. (*Id.*)

18 **B. Discovery and Investigation**

19 The Parties agreed to mediate the instant action, and participated in private mediation with
20 Brandon McKelvey, Esq., an experienced class and PAGA action mediator. (*Id.* at ¶ 7.) In preparation
21 for mediation, the Parties agreed to a protocol for an informal exchange of documents and
22 information before mediation. (*Id.*) Prior to mediation, Plaintiff obtained from Defendant, through
23 informal discovery, documents and data that were necessary and helpful to evaluate the claims
24 asserted in this action. (*Id.*) Defendant produced all of the time and pay records for the putative Class,
25 Plaintiff’s personnel file, and Defendant’s written policies. (*Id.*) Defendant also provided information
26 regarding the estimated number of current and formerly employed Class Members, Aggrieved
27 Employees, and PAGA Pay Periods. (*Id.*)

1 In preparation for mediation, Plaintiff's Counsel reviewed and analyzed all the information
2 Defendant provided, including the sample records and documents regarding Defendant's wage and
3 hour policies. (*Id.* at ¶ 8.) Plaintiff's Counsel retained a statistics expert to analyze the sample records
4 and prepare a damage analysis prior to the mediation. (*Id.*) The sample time and pay records analyzed
5 contained 64,065 actual shifts worked (representing roughly 97% of total shifts worked in the Class
6 Period), which allowed Plaintiff's expert to prepare an analysis ***with a high degree of certainty***. (*Id.*)
7 In conjunction with their extensive factual investigation, Plaintiff's Counsel also investigated the
8 applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly,
9 Plaintiff's Counsel was able to evaluate the probability of class certification, success on the merits,
10 and Defendant's maximum and realistic monetary exposure for all claims. (*Id.*) Thus, Plaintiff's and
11 her Counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed
12 them to act intelligently in negotiating the Settlement. (*Id.*)

13 C. **Settlement Negotiations**

14 On January 23, 2025, the Parties participated in a full day of private mediation before
15 Brandon McKelvey, Esq. (*Id.* at ¶ 9.) The negotiations were at arm's length and, although
16 conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation
17 willing to explore the potential for a settlement of the dispute, but each side was also prepared to
18 litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After
19 extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's
20 claims and Defendant's defenses, a settlement was reached by the Parties. (*Id.*) The material terms
21 of the settlement are set out in the Class Action and PAGA Settlement Agreement and Class Notice
22 (*Id.*, Exh. 1 [the "Settlement"].) Plaintiff's Counsel represent they are not aware of any related
23 case that would be extinguished or adversely affected by approval of this Settlement. (*Id.* at ¶ 10.)

24 Plaintiff's Counsel have conducted a thorough investigation into the facts of this case. (*Id.*
25 at ¶ 17.) Based on the foregoing document and information exchange and on their own independent
26 investigation and evaluation, Plaintiff's Counsel are of the opinion that the proposed Settlement
27 is fair, reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and
28 circumstances, the risk of significant delay, trial risk, appellate risk, and the defenses that

Defendant may assert both to certification and on the merits, the Settlement is in the best interest of the Class. (*Id.*; *see also Id.* at ¶¶ 17–33.) **Indeed, the \$500,000.00 gross settlement figure represents roughly 80% of the realistic recovery estimated to be \$626,423.98.** (*Id.* at ¶ 26.)

D. Key Terms of the Proposed Settlement

Under the Settlement, Defendant will pay a non-reversionary, all-inclusive amount of *no less than* \$500,000.00 to resolve this action. (Settlement, ¶¶ 1.22, 3.1.) The key terms include:

1. Class Members or Settlement Class, and Class Period: The proposed Class for purposes of the Settlement contains approximately 138 members who collectively worked 17,252 Workweeks and is defined as all current and former employees employed by Defendant in the State of California during the Class Period who do not opt out of the Settlement. (*Id.* at ¶¶ 1.5, 4.1.) The “Class Period” is May 6, 2020 through April 23, 2025. (Settlement, ¶ 1.12.) The Class will exclude any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion (“Non-Participating Class Member”). (*Id.* at ¶ 1.29.)

2. Aggrieved Employees and PAGA Period: The Class contains an estimated 97 Aggrieved Employees who collectively worked 3,352 PAGA Pay Periods and is defined as all current and former non-exempt employees employed by Defendant in the State of California at any time during the PAGA Period. (*Id.* at ¶ 1.4, Moon Decl., ¶ 31.) The “PAGA Period” is May 16, 2023 through April 23, 2025. (*Id.* at ¶ 1.34.)

3. Non-reversionary Gross Settlement Amount: This amount is \$500,000.00, subject to a potential increase under the escalator clause and excludes Defendant’s employer’s share of payroll taxes. (Settlement, ¶¶ 3.1, 8.) No portion will revert to Defendant. (*Id.* at ¶ 3.1.)

4. Escalator Clause: As of February 7, 2025, Defendant calculated that from May 16, 2020, to that date, there were approximately 138 Class Members who worked approximately 17,252 workweeks during the Class Period. (*Id.* at ¶ 8.) As such, the Parties agree that, should the total number of workweeks exceed 18,977 during the Class Period (which is 10% more than Defendant’s representation), then the Gross Settlement Amount shall increase by \$28.98 (GSA divided by 17,252) for each additional workweek above 18,977 unless Defendant elects to modify the end date of the Class Period such that the number of workweeks does not exceed 18,977. (*Id.*)

1 5. Net Settlement Amount: The total amount of money available for payout and distribution
2 to Participating Class Members in Individual Class Payments, which is the Gross Settlement Amount
3 less the following payments, in amounts as finally approved by the Court: (i) the Class Representative
4 Service Payment of up to \$7,500.00 to Plaintiff; (ii) Administration Expenses Payment of up to
5 \$6,500.00; (iii) PAGA Penalties in the amount of \$50,000.00, which will be distributed as 75%
6 (\$37,500.00) to the LWDA and 25% (\$12,500.00) to Aggrieved Employees; (iv) the Class Counsel
7 Fees Payment of not more 33.33% of the Gross Settlement Amount (currently estimated to be
8 \$166,666.66); and (v) and the Class Counsel Litigation Expenses Payment of up to \$25,000.00. (*Id.* at
9 ¶¶ 1.27, 3.2.1-3.2.5.) In the event the amounts finally approved are less, the remainder will revert to
10 Participating Class Members. (*Id.* at ¶¶ 3.2.1-3.2.3.)

11 6. Administrator and Costs: The Parties jointly appointed Simpluris, Inc. as the neutral
12 entity to administer this Settlement. (*Id.* at ¶ 1.2, 7.1.) At this time, the Administrator estimates costs
13 will not exceed \$6,500.00. (Moon Decl., ¶ 15, Exh 5.)

14 7. Individual Class Payment: Participating Class Members will receive a pro rata share of
15 the Net Settlement Amount calculated according to the number of Class Period Workweeks.
16 (Settlement, ¶ 1.23.) “Class Period Workweek” means any week during which a Class Member
17 worked for Defendant for at least one day, during the Class Period. (*Id.* at ¶ 1.13.)

18 8. Individual PAGA Payment: Aggrieved Employees will receive a pro rata share of 25%
19 of the PAGA Penalties calculated according to the number of PAGA Period Pay Periods. (*Id.* at ¶
20 1.24.) “PAGA Period Pay Period” any pay period during which an Aggrieved Employee worked for
21 Defendant for at least one day during the PAGA Period. (*Id.* at ¶ 1.35.)

22 9. Tax Treatment: 10% of each Participating Class Member’s Individual Class Payment
23 will be allocated to settlement of wage claims (the “Wage Portion”). (*Id.* at ¶ 3.2.4.1) The Wage
24 Portions are subject to tax withholding and will be reported on an IRS W-2 Form. (*Id.*) 90% of each
25 Participating Class Member’s Individual Class Payment will be allocated to settlement of claims for
26 interest and penalties (the “Non-Wage Portion”). (*Id.*) The Non-Wage Portions are not subject to wage
27 withholdings and will be reported on IRS 1099 Forms. (*Id.*) T The Administrator will report the
28 Individual PAGA Payments on IRS 1099 Forms. (*Id.* at ¶ 3.2.5.1)

1 10. Released Parties: Defendant and each of their insurers, brands, concepts, affiliates,
2 subsidiaries, parent companies, predecessors, successors, assigns, employees, officers, directors,
3 agents, attorneys, administrators, representatives, heirs, estates, powers-of-attorney, and any
4 individual or entity that could be jointly liable with Defendant. (*Id.* at ¶ 1.42.)

5 11. Release by Participating Class Members: All Participating Class Members, on behalf of
6 themselves and their respective former and present representatives, agents, attorneys, heirs,
7 administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged,
8 or reasonably could have been alleged, based on the Class Period factual allegations and primary
9 rights stated in the Operative Complaint and any amendments thereto, including, 1) failure to pay all
10 wages (including minimum wages, other wages, and paid sick leave at the correct rates of pay); 2)
11 failure to pay all overtime wages (including failure to pay at the regular rate of pay); 3) meal period
12 violations and claims for meal period premium pay; 4) rest period violations and claims for rest period
13 premium pay; 5) failure to pay all wages during employment and upon termination; 6) wage statement
14 violations and failure to keep required records (Lab. Code § 1174); 7) failure to reimburse expenses,
15 and 8) Unfair Competition Law violations. Except as set forth in Section 5.3 of this Agreement,
16 Participating Class Members do not release any other claims, including claims for vested benefits,
17 wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance,
18 disability, social security, workers' compensation, or claims based on facts occurring outside the Class
19 Period. (*Id.* at ¶ 5.2.)

20 12. Release by Are Aggrieved Employees: All Aggrieved Employees are deemed to release,
21 on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs,
22 administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that
23 were alleged, or reasonably could have been alleged, based on the PAGA Period factual allegations and
24 primary rights stated in the Operative Complaint and any amendments thereto, the PAGA Notices
25 including, 1) failure to pay all wages (including minimum wages, other wages, and paid sick leave at
26 the correct rates of pay); 2) failure to pay all overtime wages (including failure to pay at the regular rate
27 of pay); 3) meal period violations and claims for meal period premium pay; 4) rest period violations and
28 claims for rest period premium pay; 5) failure to pay all wages during employment and upon termination;

6) wage statement violations and failure to keep required records (Lab. Code § 1174); and 7) failure to reimburse expenses. This Release shall apply to Plaintiff, the Aggrieved Employees, the Labor & Workforce Development Agency, and the State of California during the PAGA Period. (*Id.* at ¶ 5.3.)

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

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

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

16. Funding: Defendant will fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than fourteen (14) days after the Effective Date. (*Id.* at ¶ 4.3.)

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

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

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

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

27 ///

28 ///

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

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

5 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
6 evidence to the contrary is offered. (Newberg, Newberg on Class Actions (3rd ed. 1992) § 11.51.)
7 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super. Ct.*
8 (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The fact that
9 the plaintiff might have received more if the case had been fully litigated is no reason not to approve
10 the settlement.”].) Thus, there is a presumption here that negotiations were conducted in good faith.

11 The proposed Settlement at issue was reached following extensive negotiations and
12 discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses
13 with an experienced and neutral class action mediator. (Moon Decl., ¶ 9.) Plaintiff’s Counsel
14 performed an extensive investigation into the facts, claims, and defenses at issue, including by
15 reviewing the governing law, analyzing’ Defendant’s written policies and sampling time/pay data,
16 and retaining a statistics expert to prepare a damage analysis regarding Defendant’s potential liability.
17 (*Id.* at ¶¶ 7–8.) Once an agreement to mediate was made, Plaintiff obtained, through informal
18 discovery, documents and data necessary and helpful to evaluate the claims and defenses at issue,
19 including a statistically significant sample of time and pay records for the putative Class as well as
20 demographic data. (*Id.*) Based on a review of its records, Defendant estimates there are approximately
21 138 Class Members who collectively worked a total of approximately 17,252 Workweeks During the
22 Class Period, and approximately 97 Aggrieved Employees who worked 3,352 pay periods during the
23 PAGA Period. (*Id.* at ¶ 18.) Based on Plaintiff’s Counsel’s review of the time, payroll, and additional
24 data provided by Defendant, on Plaintiff’s expert’s analysis of the sampling records provided by
25 Defendant, and on information from Plaintiff, Plaintiff’s Counsel evaluated the estimated maximum
26 and risk-adjusted exposure that Defendant faced. (*Id.*)

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

A settlement is not judged against what a plaintiff might recover had he prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba v. Apple Comp., Inc.* (2001) 91 Cal.App.4th 224, 246, 250 [“Compromise is inherent and necessary in the settlement process . . . even if ‘the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,’ this is no bar to a class settlement because ‘the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.’”] [quoting *Air Line Stewards v. Am. Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109].)

Here, based on the information provided at mediation, Defendant’s **realistic exposure** (adjusted for risks at certification and proof on the merits) for the alleged claims, including penalties, is estimated to be **\$626,423.98**. (Moon Decl., ¶¶ 18, 26.) This amount was calculated as follows: **\$49,464.75** (25% discount) for the unpaid overtime claim; **\$26,661.59** (85% discount) for the off-the-clock work claim; **\$54,874.00** (50% discount) for the regular rate claim; **\$85,552.58** (85% discount) for the meal period claim; **\$311,620.12** (85% discount) for the rest period claim; **\$49,838.55** (85% discount) for the unreimbursed business expense claim; **\$16,187.40** (95% discount) for the waiting time penalties claim; **\$15,465.00** (95% discount) for the wage statement claim; and **\$16,760.00** (95% discount) for the PAGA penalties claim. (*Id.* at ¶¶ 18–25.) The foregoing discounts were based on the evidence presented and arguments made during arm’s-length settlement negotiations. (*Id.* at ¶¶ 9, 18–25.) **The \$500,000.00 gross settlement figure represents roughly 80% of the total realistic recovery.** (*Id.* at ¶ 26.) This is an excellent result for the Class, particularly because, under the Settlement, Class Members will receive timely and guaranteed relief, avoiding the risk of not being able to recover anything. (*Id.*)

With regards to the PAGA claims, Plaintiff and her Counsel believe the Settlement is a fair and reasonable resolution that satisfies PAGA’s dual statutory purposes of deterrence and punishment, on the one hand, and providing PAGA Members with genuine and meaningful relief, on the other. (Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendant has had to hire legal counsel, engage in informal discovery, and participate in mediation. (Moon Decl., ¶ 27.) Defendant is

1 also now having to pay civil penalties to the LWDA under the Settlement, assuming final settlement
2 approval is granted. (Settlement, ¶ 3.2.5.) Not including its own attorneys' fees and costs as well as
3 the employer's share of payroll taxes, Defendant will pay no less than \$500,000.00 to resolve this
4 matter—of which \$50,000.00 is allocated toward the PAGA claims and will be distributed, in
5 compliance with Labor Code section 2699 as 75% (\$37,500.00) to the LWDA and 25% (\$12,500.00)
6 to Aggrieved Employees—and the release obtained under the Settlement does not preclude Aggrieved
7 Employees from seeking remedies based on any underlying individual claims they may have against
8 Defendant or the other Released Parties. (Lab. Code § 2699(i).) Moreover, Plaintiff's Counsel are of
9 the opinion that because the issues here are fairly contested, there is a possibility of the Court not
10 awarding the PAGA penalties even if Plaintiff prevailed on the merits due to the largely discretionary
11 nature of awarding PAGA penalties. (*Id.*) Indeed, under Labor Code section 2699, subdivision (e)(2),
12 a Court can reduce PAGA penalties "if, based on the facts and circumstances of the particular case,
13 to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."
14 (Lab. Code § 2699(e)(2).) In other words, were this matter to go to trial, any award granted would be
15 at the discretion of the Court and subject to a substantial reduction. (Moon Decl., ¶ 27.)

16 While Plaintiff is confident in the merits of her claims, a legitimate controversy exists as to
17 each cause of action. (*Id.* at ¶ 28.) Plaintiff also recognizes that proving the amounts of wages owed
18 to each Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id.*) The
19 Settlement obviates the significant risk that this Court may deny certification of all or some of
20 Plaintiff's claims. (*Id.* at ¶ 29.) Furthermore, even if Plaintiff was able to pursue her claims on a class-
21 wide basis and obtain certification of all or some of the claims, continued litigation would be
22 expensive, involving a trial and possible appeals, and would substantially delay and reduce any
23 recovery by the Class. (*Id.*) This Settlement avoids the risks, burdens, and the accompanying expense
24 of further litigation. (*Id.* at ¶ 30.) Although the Parties have engaged in a significant amount of
25 investigation, informal discovery, and class-wide data analysis, they have not conducted extensive
26 formal discovery, including depositions. (*Id.*) Moreover, preparation for class certification and a trial
27 would remain for the Parties as well as the prospect of appeals in the wake of a disputed class
28

1 certification ruling for Plaintiff and/or any summary judgment ruling. (*Id.*) As a result, the Parties
2 would incur considerably more attorneys' fees and costs through trial. (*Id.*)

3 30. The Net Settlement Amount available for settlement payments is estimated to be *no*
4 *less than \$244,333.34* for an estimated Class of **138 individuals**.¹ (*Id.* at ¶ 31.) As a result, it is
5 estimated each Participating Class Member will receive an average gross benefit of approximately
6 **\$1,770.53** prior to tax withholdings on the wage portion of payments. (*Id.*) Considering Class
7 Members' average hourly rate is \$27.32, the average benefit is roughly **64.8 hours of work**. (*Id.*)
8 This amounts to **an estimated Workweek value of roughly \$14.16** for the currently estimated
9 **17,252 Workweeks**. (*Id.*) Additionally, it is currently estimated there are **97 Aggrieved Employees**
10 who will receive an estimated average of approximately **\$128.87** from their \$12,500.00 total share of
11 the PAGA Penalties, which results in an estimated **Pay Period value of \$3.73** per pay period based
12 on the currently estimated **3,352 PAGA Pay Periods**. (*Id.*) The actual amounts to Participating Class
13 Members and PAGA Members will vary based on each individual's duration of work during the Class
14 Period or PAGA Period, respectively; thus, those who worked longer will receive a gross benefit
15 greater than the average estimated amount. At this time, the high and low range of payments to Class
16 Members is unknown. (*Id.*) These ranges will be calculated by the Administrator following
17 preliminary approval and receipt and processing of the Class List and will be provided to the Court
18 in a motion for final approval. (*Id.*)

19 The proposed Settlement of \$500,000.00 therefore represents a substantial recovery when
20 compared to Plaintiff's reasonably forecasted recovery. (*Id.* at ¶ 32.) When considering the risks of
21 litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to
22 establish liability, and the probability of appeal, it is clear the Settlement amount of \$500,000.00 is
23 within the "ballpark" of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*)
24

25
26 ¹ The Net Settlement Amount is at least \$500,000.00 less the following: \$7,500.00 for the
27 Class Representative Service Payment, \$6,500.00 for Administration Expenses Payment, \$50,000.00
28 for the PAGA Penalties to the LWDA and Aggrieved Employees, \$166,666.66 for the Class Counsel
Fees Payment, and up to \$25,000.00 for the Class Counsel Litigation Expenses Payment.
(Settlement, ¶¶ 3.2.1-3.2.5.)

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

3 The Settlement negotiations were conducted by highly capable counsel with considerable
4 experience and demonstrated competence with litigating wage and hour class actions. (*Id.* at ¶¶ 37–
5 54.) Plaintiff's Counsel have a strong record of vigorous and effective advocacy for their clients and
6 are experienced in handling complex wage and hour class action litigation. (*Id.* at ¶¶ 37–54.) The
7 experience of Plaintiff's Counsel was helpful in assessing the reasonableness of the Settlement at
8 issue here, and from this experience they concluded that this litigation could not have been settled on
9 better terms than provided under the Settlement. (*Id.* at ¶ 55.) Although Plaintiff and her counsel were
10 prepared to try the claims alleged in the litigation, they support the proposed Settlement as being in
11 the best interest of the Class based on objective evidence that has been considered and weighed
12 against the risks, expenses, and time consumption to both sides of continued litigation. (*Id.* at ¶¶ 9,
13 17, 28–30.)

14 **B. The Proposed Class Notice of Settlement Should Be Approved**

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

20 **C. The Proposed Attorneys' Fees and Costs Are Reasonable**

21 Subject to the Court's approval, the Settlement provides a fee application of up to 33.33% for
22 Class Counsel's attorneys' fees, plus reimbursement for out-of-pocket litigation costs not to exceed
23 \$25,000.00. (Settlement, ¶ 3.2.2.) These amounts are disclosed to Class Members in the proposed
24 Class Notice and are reasonable. (*Id.* at Exh. A.)

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

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

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 will seek an award of attorneys’ fees on the “percentage of
5 recovery/common fund” theory. (Moon Decl., ¶ 57.) The purpose of this approach is to “spread
6 litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear
7 the entire burden alone.” (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn*
8 *v. State 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 recently affirmed in *Laffitte v. Robert Half International Inc.*
16 (2016) 1 Cal.5th 480 that, “when class action litigation establishes a monetary fund for the benefit of
17 the class members, and the trial court in its equitable powers awards class counsel a fee out of that
18 fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage
19 of the fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the
20 percentage method—including relative ease of calculation, alignment of incentives between counsel
21 and the class, a better approximation of market conditions in a contingency case, and the
22 encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging
23 the litigation[]—convince us the percentage method is a valuable tool that should not be denied our
24 trial courts.” (*Id.* [internal citations omitted].) This line of legal authority supports a request for
25 attorneys’ fees based 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 will request fees equal to 33.33% of the Gross Settlement Amount,
9 which is in line with the prevailing guidelines established in California case law and academic
10 literature and is consistent with awards in California. (*Compare* Settlement, ¶ 3.2.2, *with Chavez v.*
11 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 [“Empirical studies show that, regardless whether
12 the percentage method or the lodestar method is used, fee awards in class actions average around
13 one-third of the recovery.”].) Accordingly, Plaintiff requests the Court preliminarily approve her
14 counsel’s ability to request attorneys’ fees as negotiated by the Parties.

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

16 Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable
17 fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(g)(1),
18 2802(d).) Under these sections, Plaintiff would be permitted to recover her actual attorneys’ fees,
19 even if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) This
20 Settlement is beneficial in that it limits the risk of continued expenses and consumption of time,
21 energy, and resources facing Defendant while at the same time rewarding Plaintiff’s Counsel for their
22 decision to assume risk by taking on this matter. (*See* Moon Decl., ¶ 30.) In fact, prosecution of this
23 action involved significant financial risk for Plaintiff’s Counsel. (*Id.* at ¶¶ 58–62.) Her Counsel
24 undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.* at ¶¶ 58–62.)
25 Once Plaintiff’s Counsel undertook this litigation on behalf of the Class, they committed to pursue it
26 to its conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶ 60.)
27
28

1 **4. Counsel’s Experience, Reputation, and Ability Support the Requested Fees**

2 As demonstrated by their past experience in pursuing class actions on behalf of consumers
3 and employees, Plaintiff’s Counsel possess considerable expertise in litigating class actions. (*Id.* at
4 ¶¶ 37-54.) Plaintiff’s Counsel have been involved as lead counsel or co-counsel in numerous class
5 actions that resulted in millions in recovery. (*Id.* at ¶¶ 37-54.) Plaintiff’s Counsel’s experience in
6 wage and hour litigation was integral in evaluating the strengths and weaknesses of the case against
7 Defendant and the reasonableness of the settlement. (*Id.* at ¶ 55.) Practice in the narrow field of wage
8 and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law
9 (state and federal) as well as the procedural law of class action litigation. (*Id.* at ¶ 53.) Based on these
10 and other factors, Plaintiff’s Counsel have frequently received fee awards of this percentage from the
11 gross recovery for the class. (*See id.* at ¶¶ 41, 47.) Because it is reasonable to compensate counsel
12 commensurate with their skill, reputation, and experience, the requested fee award is supported here.

13 **D. The Service Award to Plaintiff Is Reasonable**

14 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
15 compensate them for the expense or risk they have incurred in conferring a benefit on other members
16 of the class.” (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Courts routinely grant approval of class
17 action settlement agreements containing enhancements for the class representatives, which are
18 necessary to provide incentive to represent the class and are appropriate given the benefit the class
19 representatives help to bring about for the class. (*See Rodriguez v. W. Publ’g Corp.* (9th Cir. 2009)
20 563 F.3d 948, 958–59.) Service awards are particularly important to plaintiffs in wage and hour cases
21 because they promote the important public policies underlying the wage and hour laws. This strong
22 policy is codified in California Labor Code section 90.5, which provides, “[i]t is the policy of this
23 state to vigorously enforce minimum labor standards in order to ensure employees are not required
24 or permitted to work under substandard unlawful conditions . . .” (Lab. Code § 90.5.) Nonetheless,
25 the California Supreme Court has noted that “retaliation against employees for asserting statutory
26 rights under the Labor Code is widespread,” despite anti-retaliation statutes designed to protect
27 employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61.) In this context, class
28

1 representatives should be rewarded for assuming the risk of retaliation for the sake of class members.
2 (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

3 Under the Settlement here, subject to the Court’s approval, Defendant agrees to pay a Class
4 Representative Service Payment of \$7,500.00 to Plaintiff, which will be in addition to her amount
5 as a Class Member. (Settlement, ¶ 3.2.1.) This award is in recognition of Plaintiff’s time and effort,
6 as well as her exposure to substantial risk, in bringing and presenting the action, and for her general
7 release of claims, both known and unknown, and waiver of section 1542 rights. (*Id.* at ¶¶ 3.2.1,
8 5.1.2.) Plaintiff has devoted a great deal of time and work assisting counsel in the case and
9 communicated with counsel frequently for litigation and to prepare for the mediation session.
10 (Moon Decl., ¶¶ 33–36; Declaration of Plaintiff Nadia Vallecillos in Support of Motion for
11 Preliminary Approval of Class Action and PAGA Settlement [“Plaintiff Decl.”], ¶¶ 16–25.) The
12 requested award is fair and reasonable, particularly considering the substantial benefits Plaintiff
13 generated for all Class Members. (Moon Decl., ¶¶ 26–36.)

14 When compared with the amounts awarded in typical class action cases, the amount requested
15 here is particularly reasonable. A 2006 study examining the average incentive award given to class
16 action plaintiffs from 1993 to 2002 found that the “average award per class representative was
17 \$15,992 and the median award per class representative was \$4357.” (Eisenberg & Miller, *Incentive*
18 *Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L. Rev. 1303, 1307–08.)
19 The same study found that named plaintiffs in employment discrimination class actions received an
20 average award of \$69,850 and a median award of \$31,081, while named plaintiffs in other
21 employment class actions received an average award of \$12,121 and a median award of \$13,059. (*Id.*
22 at p. 1333.) The authors of the study found that higher awards in employment cases reflected the
23 “courts’ wish to make representative plaintiffs whole by compensating them for the high costs of
24 their service to the class, including risks of stigmatization or retaliation on the job.” (*Id.* at p. 1308.)

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

26 **A. Legal Standard**

27 The proposed Settlement Class is well suited for class certification. The claims all derive from
28 a core set of alleged violations of California’s wage and hour laws and regulations. (Moon Decl., ¶¶

3–4.) For the reasons set forth more fully below, the Class, for purposes of Settlement, satisfies the prerequisites for certification under Code of Civil Procedure section 382. (Code Civ. Proc. § 382.) Section 382 provides that “when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.” (*Id.*) There are two requirements to section 382: “(1) there must be an ascertainable class[]; and (2) there must be a well defined community of interest in the questions of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow Cab Co.* (1967) 67 Cal. 2d 695, 704 [internal citations omitted].) To clarify these requirements, the California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the community-of-interest requirement itself embodies three factors: “(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal. 3d 462, 470.)

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

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

1. The Class Is Ascertainable and Numerous

When determining whether a class is ascertainable, California courts focus on the following three factors: “(1) the class definition, (2) the size of the class and (3) the means of identifying class members.” (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, Plaintiff maintains there is an easily ascertainable Class, defined by objective and precise criteria. (Settlement, ¶¶ 1.5, 1.12.) The proposed Class that Plaintiff seeks to represent is ascertainable because (1) the Class definition is sufficiently precise, (2) the Class consists of about 138 individuals, and (3) Class Members can be readily identified by looking at Defendant’s records. (*Id.* at ¶¶ 1.5, 1.12, 1.8, 4.1.) Because Class

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

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

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

21 Here, Plaintiff’s claims satisfy all three requirements. The employment practices at issue
22 include whether Defendant: had legally compliant policies and practices to pay employees all
23 minimum, overtime, double time, meal break premiums, and sick pay wages owed; reimbursed
24 employees for necessary business expenses; had legally compliant policies and practices to provide
25 employees with and authorize meal and rest periods; paid all final wages to employees at the time of
26 termination; intentionally failed to pay all final wages; provided inaccurate itemized wage statements;
27 engaged in unfair business practices; and violated civil penalty provisions recoverable under PAGA.
28 (Moon Decl., ¶ 3–4.) Plaintiff contends the factual and legal issues are the same for all Class

Members, and further that all Class Members suffered from and seek redress for the same alleged injuries. (Plaintiff Decl., ¶¶ 4–5.) Considering Class Members would need to prove the same issues of law and fact to prevail, and their legal remedies are identical, it would be preferable to resolve all claims through a settlement than to force each Class Member to litigate their own individual claims. Thus, the Court should grant conditional class certification for settlement purposes because common questions of law and fact predominate over any individual questions within the Class.

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

The typicality requirement does not focus on the individual characteristics or circumstances of the representative plaintiff compared to those of the remainder of the class, but rather, upon the typicality of the proposed representative’s claims as they relate to the defendant’s conduct and activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 [“The only requirements a re [sic] that common questions of law and fact *predominate* and that the class representative be *similarly* situated” vis-à-vis the class.] [emphasis in original].) A representative plaintiff’s claims are typical of the class if they arise from the same event, practice, or course of conduct, and if the claims rest on the same legal theories. (*Id.*) That is precisely the case here. Plaintiff is a former employee of Defendant; as such, she alleges she was subject to the same policies and practices as other similarly situated employees. (Plaintiff Decl., ¶ 6.)

4. Plaintiff and Her Counsel Meet the Adequacy Requirement

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

Here, all requirements are met. Plaintiff retained counsel with extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Moon Decl., ¶¶ 37–52.) With their experience, Plaintiff’s Counsel unquestionably are “qualified, experienced and generally able to conduct the proposed litigation.” (*Miller, supra*, 148 Cal.App.3d at p. 874.) In addition, Plaintiff and her Counsel have no conflicts with one another, other Class Members, the proposed Settlement Administrator. (Plaintiff Decl., ¶¶ 7–8; Moon Decl., ¶ 56.)

1 Further, Plaintiff has, with counsel, litigated this case and diligently reviewed the settlement terms,
2 showing dedication, and with full knowledge and acceptance of duties, she has committed to her role
3 as Class Representative. (Plaintiff Decl., ¶¶ 16–25.)

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

5 Finally, in making its class certification decision, the Court must determine that a class action
6 would be superior to alternative means for the fair and efficient adjudication of the litigation. (*See*
7 *Leyva v. Medline Indus. Inc.* (9th Cir. 2013) 716 F.3d 510, 514–15.) By consolidating many potential
8 individual actions into a single proceeding, this Court’s use of the class action device enables it to
9 manage this litigation in a manner that serves the economics of time, effort, and expense for the
10 litigants and the judicial system. (*Id.*) Absent class treatment, similarly situated employees with
11 small, but nevertheless meritorious, claims for damages would, as a practical matter, have no means
12 of redress because of the time, effort, and expense required to prosecute individual actions. (*Id.* at p.
13 515; *Gentry, supra*, 42 Cal.4th at pp. 457–62.) Moreover, in the context of settlement, the superiority
14 concerns are essentially non-existent. (*See generally, e.g., Stamburgh, supra*, 62 Cal.App.3d.)

15 **V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND**

16 **A. The Proposed Notice Plan Satisfies Due Process**

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

26 **B. The Notice Is Accurate and Informative**

27 The proposed Class Notice should be approved. It will be disseminated through direct U.S.
28 first-class mail to the current address for each Class Member. (*Id.* at ¶ 7.4.2.) It informs the Class of

1 the terms of the Settlement and the right to be excluded. (*Id.* at ¶ 7.5, Exh. A.) And if there are Class
2 Members who wish to object to the proposed Settlement, they are informed of their right to submit
3 written objections and/or be heard at the Final Approval Hearing. (*Id.* at ¶ 7.7.2, Exh. A.)

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

13 **VI. CONCLUSION**

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

17 Respectfully submitted,

18 Dated: April 7, 2025

MOON LAW GROUP, PC

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20 By: _____

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