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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

D'MAGGIO ANGELENO DAVIS-MORALES, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

CALL GROCERY, INC., a California corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 37-2021-00046012-CU-OE-CTL
Assigned to Hon. Blaine K. Bowman, Dept. C-74

Complaint filed: October 28, 2021
FAC filed: November 27, 2024
Trial date: Not Set

CLASS & REPRESENTATIVE ACTION

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

[*Filed concurrently with*: the Declaration of Alan Wilcox.]

PRELIMINARY APPROVAL HEARING
Date: October 30, 2026
Time: 8:30 a.m.
Dept: C-74

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

PLEASE TAKE NOTICE that on October 30, 2026, at 8:30 a.m., in Department C-74 of the San Diego County Superior Court, located at Hall of Justice, 330 W Broadway, San Diego, CA 92101, pursuant to Code of Civil Procedure section 382 and California Rules of Court Rule 3.769, *et seq*., Plaintiff D'Maggio Angeleno Davis-Morales ("Plaintiff" or "Class Representative") will move the Court for an Order granting preliminary approval of the proposed $1,500,000.00 (the "Maximum Settlement Amount") Joint Stipulation of Class Action Settlement and Release (the "Settlement" or "Settlement Agreement") between Plaintiff and Defendant Call Grocery, Inc. ("Defendant," and together with Plaintiff, the "Parties") to resolve the wage and hour class action and Labor Code Private Attorneys General Act of 2004 (Lab. Code § 2699, *et seq.*) ("PAGA") representative action between Plaintiff, on behalf of the Class (defined below) and Defendant (the "Action"). Plaintiff further moves the Court for an Order:

1. Granting preliminary approval of the Settlement Agreement;
2. Certifying the Class, defined as "all persons who are employed or have been employed by Call Grocery, Inc. in California as "hourly employees" at any point during the Class Period" for settlement purposes. The Class Period is the period from May 3, 2017, through July 15, 2024 (the "Class Period");
3. Approving the proposed class notice (the "Class Notice of Settlement") and the plan for distribution of the Class Notice of Settlement. A true and correct copy of the Class Notice of Settlement is attached to the Settlement Agreement as **Exhibit A**;
4. Appointing Plaintiff D'Maggio Angeleno Davis-Morales as "Class Representative" for settlement purposes;
5. Appointing Plaintiff's Counsel Tyler Woods, James Yoo, Alan Wilcox, and Conor J.D. Gomez of Wilshire Law Firm, PLC ("WLF") as "Class Counsel" for settlement purposes;
6. Appointing CPT Group, Inc. as the "Claims Administrator"; and
7. Scheduling a final approval hearing.

The motion will be based upon this notice, the attached memorandum of points and authorities, the Declarations of Alan A. Wilcox (the "Class Counsel Declaration") and D'Maggio Angeleno Davis-Morales filed concurrently herewith, the records and files in the Action, and any other further evidence or argument that the Court may properly receive at or before the hearing (the "Motion").

Respectfully submitted,

Dated: June 4, 2026

WILSHIRE LAW FIRM, PLC

By: ______________________

Tyler J. Woods
James Yoo
Alan Wilcox
Conor J.D. Gomez

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff seeks preliminary approval of a proposed Settlement Agreement entered into between Plaintiff (on behalf of the Class) and Defendant. The Settlement Agreement will provide substantial monetary payments to approximately 2,225 Class Members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, discovery, and arm's-length negotiations between the Parties. The negotiations were at arms-length and after extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties executed the Settlement on May 18, 2026. Accordingly, Plaintiff requests that the Court preliminarily approve the proposed Settlement, certify the Class, approve the proposed Class Notice, and set a final approval hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims and Procedural History

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

Based on these allegations on October 28, 2021, Plaintiff filed a putative wage and hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194 and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Labor Code § 226.7); (5) failure to timely pay wages upon separation of employment (Labor Code §§ 201-202); (6) failure to provide accurate itemized wage statements (Labor Code § 226); (7) failure to indemnify employees for expenditures (Labor Code § 2802); and (8) unfair business practices (Business and Professions Code §§ 17200, *et seq.*). (Class Counsel Decl., at ¶ 4.) Plaintiff sent a notice to Defendant and the California Labor & Workforce

Development Agency ("LWDA") alleging similar wage and hour violations pursuant to the PAGA on June 26, 2024. (*Id.*) On November 27, 2024, Plaintiff filed a first amended complaint which added a cause of action for civil penalties under PAGA (the "Operative Complaint" and together with the other complaints, the "Action"). (*Id.*)

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

Following the filing of the Action, the Parties exchanged information, data, and documents, and reviewed the same before going to mediation. (Class Counsel Decl., at ¶ 5.) Defendant also provided documents of its wage and hour policies and practices during the Class Period and information regarding the total number of current and former employees in its informal discovery responses. (*Id.*) The Parties have engaged in sufficient informal discovery and investigation to assess the relative merits of the claims and contentions of the Parties. (*Id.*)

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

C. <u>Settlement Negotiations</u>

On May 15, 2023, the Parties participated in private mediation with experienced class action mediator Francis J. Ortman, III, Esq. (Class Counsel Decl., at ¶ 7.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached the Settlement, the material terms of which are encompassed within the Settlement Agreement. (*Id.* at ¶ 8, Ex. 1, Settlement Agreement.)

Class Counsel has conducted a thorough investigation into the facts of this Action. (Class

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

Indeed, the Gross Settlement Amount represents approximately **48%** of the **realistic maximum recovery** of $3,099,496.04. (Class Counsel Decl., at ¶ 23.) Although Class Counsel estimated that Defendant's maximum potential liability for all claims was approximately $25,973,846.76, when the risk of prevailing at certification and trial are factored into the equation, Class Counsel believes that Defendant's realistic exposure was significantly less; meaning the Settlement achieves a significant recovery. (*See id.* at ¶¶ 14-27.) Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class. (*Id.* at ¶ 27.) Indeed, because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id.* at ¶ 23.)

D. Key Terms of the Proposed Settlement

The Settlement's key terms include:

1. Claims Administrator: "shall mean CPT Group, Inc. ("CPT") or any other third-party administrator which Class Counsel and Defendant's counsel jointly select, and the Court approves, to administer the Settlement claims and act as the Claims Administrator." (Settlement, § 24.)

2. Class Period: "shall mean the period covered by the Settlement, namely, from May 3, 2017 through July 15, 2024." (Settlement, § 4.)

3. Class: "shall consist of all persons who are employed or have been employed by Call Grocery, Inc. in California as "hourly employees" at any point during the Class Period. The Settlement Class will not include any person who previously settled or released any of the claims covered by this Settlement, or any person who previously was paid or received awards through civil or administrative actions for the claims covered by this Settlement, or any person who submits

a timely and valid request for exclusion as provided in this Settlement (as more fully described below)." (Settlement, § 3.)

4. Aggrieved Employee: "means all persons who are employed or have been employed by Defendant Call Grocery, Inc. in California as "hourly employees" at any point during the PAGA Period." (Settlement, § 2.)

5. PAGA Period: "means from June 26, 2023, through preliminary approval of this Settlement." (Settlement, § 18.)

6. Maximum Settlement Amount: "shall mean a maximum amount of One Million Five Hundred Thousand ($1,500,000.00), which shall include all payments to Class Members, Class Counsel Attorney's Fees and Costs, a Service Payment (defined below) of Ten Thousand Dollars ($10,000.00) to Plaintiff, a payment of Fifty-Six Thousand Two Hundred Fifty Dollars ($56,250.00) to the LWDA for PAGA penalties (75% of $75,000), payments totaling Eighteen Thousand Seven Hundred Fifty Dollars ($18,750.00) to the Aggrieved Employees for PAGA Penalties (25% of $75,000), all Settlement administration costs, and the employer's share of payroll taxes. Under no condition will Defendant's aggregate liability exceed the Maximum Settlement Amount." (Settlement, § 13.)

7. No Reversion: "The Parties agree the entire Maximum Settlement Amount will be paid out without reversion to Defendant." (Settlement, § 13.)

8. Net Settlement Amount: "shall mean the amount of the Maximum Settlement Amount allocated to the payment of Settlement Awards as defined below according to a specified formula to the Class Members. The Net Settlement Amount shall be calculated by deducting from the Maximum Settlement Amount all Class Counsel Attorneys' Fees and Costs, a Service Payment (defined below) of Ten Thousand Dollars ($10,000.00) to Plaintiff, a payment of Fifty-Six Thousand Two Hundred Fifty Dollars ($56,250.00) to the LWDA for PAGA Penalties (75% of $75,000.00), a payment of Eighteen Thousand Seven Hundred Fifty Dollars ($18,750.00) to the Aggrieved Employees for PAGA Penalties (25% of $75,000.00), and all Settlement administration costs (not to exceed $30,000), and the employer's share of payroll taxes. The Parties agree that the entire Net Settlement Amount will be paid out to all Class Members who do not opt out and that

the entire PAGA Penalties will be paid out to the LWDA and the Aggrieved Employees (whether or not they opt out of the class), and without the need to submit claims for payment." (Settlement, § 14.)

9. PAGA Penalties: "means the total amount of PAGA civil penalties to be paid from the Maximum Settlement Amount in settlement of PAGA claims, allocated 25% to the Aggrieved Employees and 75% to the LWDA." (Settlement, § 17.) Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for Preliminary Approval. (Class Counsel Decl., ¶ 9.)

10. Service Payment: "shall be the amount paid to Plaintiff and Class Representative as payment for his time and efforts in pursuing this Action and in exchange for a general release by him of all claims of whatever nature he might have against the Released Parties, subject to approval by the Court." (Settlement, § 23.)

11. Class Counsel Attorneys' Fees and Costs: "In consideration for settling this matter and in exchange for the release of claims by the Settlement Class, and subject to final approval or modification by the Court, Class Counsel shall be awarded attorneys' fees not to exceed Five Hundred Thousand Dollars ($500,000.00), which is one-third (1/3) of the Maximum Settlement Amount, and attorneys' costs up to the maximum amount of Thirty Thousand Dollars ($30,000.00), from the Maximum Settlement Amount. Defendant will not object to Class Counsel's application for attorneys' fees and costs up to these amounts. The amounts set forth above will cover all work performed and all fees to Class Counsel and costs incurred by Class Counsel to the date of payment, all work to be performed, and all fees to Class Counsel and costs to be incurred by Class Counsel in connection with the approval by the Court of this Stipulation of Settlement, and obtaining final approval and judgment. Should Class Counsel request a lesser amount or the Court approve a lesser amount of attorneys' fees and costs, the difference between the lesser amount and the maximum amount set forth above shall be added to the Net Settlement Amount. The attorneys' fees and costs approved by the Court shall be paid from the settlement fund to Class Counsel within forty-five (45) calendar days following the Effective Date by the Claims Administrator in

accordance with the distribution of Settlement Funds." (Settlement, § E(l).; Class Counsel Decl., ¶ 26.)

12. Claims Administration Fees and Costs: "Defendant will not object to Plaintiff seeking approval from the Court for payment to the Claims Administrator of administration fees and costs totaling up to $30,000 as approved by the Court shall be paid within forty-five (45) calendar days following the Effective Date." In its bid, the Administrator agreed to cap its costs at $23,000.00 for 2,500 Class Members. (Settlement, § E(m).; Class Counsel Decl., ¶ 10, Ex. 3 [Settlement Administrator Bid].)

13. Released by the Class: "Upon final approval by the Court of this Settlement Agreement, and except as to such rights or claims as may be created by this Settlement Agreement, all Settlement Class Members, except those Settlement Class Members who submit valid and timely written requests for exclusion, fully release and discharge the Released Parties from any and all Released Class Claims as defined in this Agreement." (Settlement, § E(v).)

14. Released by the Aggrieved Employees: "Upon final approval by the Court of this Settlement Agreement and Defendant's payment in full of the Maximum Settlement Amount and the employer's share of taxes on wages, and except as to such rights or claims as may be created by this Settlement Agreement, all Aggrieved Employees, whether or not they submit requests for exclusion, fully release and discharge the Released Parties from any and all Released PAGA Claims as defined in this Agreement." (Settlement, § E(w).)

15. Class Notice of Settlement: The Class Notice of Settlement sets forth in plain terms, a statement of the Action, the terms of the Settlement Agreement, the approximate amount of the Class Counsel Fees, Class Counsel Costs, and Service Payment being sought, and an explanation of how the Settlement allocations are calculated. (Settlement § 8., Ex. A, Class Notice of Settlement.) Class Members will be notified by first-class mail of the Settlement. (Settlement, § E(h).) The Settlement Administrator will undertake its best efforts to ensure that the Class Notice of Settlement is provided to the current addresses of Class Members, including conducting a national change of address search and re-mailing the Class Notice to updated addresses. (Settlement, § E(q).), Class Counsel Decl., ¶ 10, Ex. 3 [Settlement Administrator Bid].)

16. Mailing of Notice: "Within twenty (20) calendar days of preliminary approval of this Settlement by the Court, Defendant shall provide to the Claims Administrator all Class Data available to it. The Parties agree that the Class Members' contact information and Social Security Numbers will be used only by the Claims Administrator for the sole purpose of effectuating the Settlement and will not be provided by the Claims Administrator to Class Counsel at any time or in any form. The Claims Administrator shall take reasonable steps to protect the confidential and private information of the Class Members. To the extent Class Counsel possesses or comes to possess the Class Members' contact information, Social Security Numbers, and/or Federal Employment Identification Numbers (other than Plaintiff's), Class Counsel shall return all such information (including copies and data or information derived therefrom) within seven (7) calendar days from the Effective Date of the Settlement, shall not retain copies of such information, and shall not maintain or use such information for any purpose. The spreadsheet provided for above shall be based on Defendant's payroll and other business records and in a format acceptable to the Claims Administrator. Defendant agrees to consult with the Claims Administrator prior to the production date to ensure the format will be acceptable to the Claims Administrator. The Claims Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List." (Settlement, § E(q).)

17. Returned Notices: "Class Notices of Settlement returned to the Claims Administrator as non-delivered during the 60-calendar-day period for submission of requests for exclusion from the Settlement shall be resent to the forwarding address, if any, on the returned envelope. If there is no forwarding address, the Claims Administrator will do a National Change of Address check, skip-trace return mail, and re-mail within three (3) business days of receipt using the Class Member's Social Security Number and/or Federal Employment Identification Number. All Class Members whose Class Notices are re-mailed shall have 15 additional calendar days (75 days total) to object to, dispute, or opt out from the Settlement." (Settlement, § E(r).)

18. Opting Out of the Settlement: "Class Members who do not wish to participate in the Settlement may exclude themselves by submitting a timely written request for exclusion to the Claims Administrator. The request for exclusion should state that he or she has received the Class

Notice of Settlement, that he or she has decided not to participate in the Settlement, and words to the effect that he or she desires to be excluded from the Settlement. The request for exclusion must also state the individual's full name, address, telephone number, and Social Security Number's last four digits. The request for exclusion must be signed, dated and mailed by U.S. First-Class mail to the Claims Administrator. All requests for exclusion must be postmarked and mailed to the Claims Administrator no later than sixty (60) calendar days after the Claims Administrator mails the Class Notice of Settlement to the Class Members, plus fifteen (15) calendar days for Class Members whose Class Notices were re-mailed (75 days total). Any individual who submits a request for exclusion will not be allowed to object to the terms of the Settlement. If a Class Member both objects to the Settlement and opts out of the Settlement, their objections will be disregarded, and they will be deemed to have opted out of the Settlement." (Settlement, § E(t).)

19. Disputes Regarding Workweeks: "Class Members will have the opportunity to submit written disputes regarding any calculation of Qualifying Weeks to the Claims Administrator for resolution within forty-five (45) calendar days of the date the Claims Administrator mails the Class Notice of Settlement. All Qualifying Week disputes will be resolved and decided by the Claims Administrator, and the Claims Administrator's decision regarding such disputes shall be final." (Settlement, § E(e).)

20. Objecting to Settlement: "Any individual who does not exclude himself or herself from the Settlement can object to the terms of the Settlement before or at the final fairness and approval hearing date. Participating Class Members may send written objections to the Claims Administrator by fax, email, or mail. In the alternative, participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the final approval hearing. A participating Class Member who elects to send a written objection to the Claims Administrator must do so no later than 60 days after the Claims Administrator's mailing of the Class Notice (plus 15 days for Class Members whose Class Notices were re-mailed). If the Court rejects the objection, the individual will be bound by the terms of the Settlement and will receive his or her portion of the Settlement." (Settlement, § E(u).)

21. Payment Processing: "Defendant will deposit the Maximum Settlement Amount within thirty (30) calendar days of the Effective Date as defined in this Agreement. At no time shall Defendant have the obligation to segregate the funds comprising the Maximum Settlement Amount, and Defendant shall retain exclusive authority over, and the responsibility for, those funds until they are paid to the Claims Administrator. All payments to Class Members, attorneys' fees and costs, Service Payment to Plaintiff, PAGA payment to the LWDA and Aggrieved Employees, and claims administration expenses, and the employer's share of payroll taxes shall be paid out of the Maximum Settlement Amount." (Settlement, § E(b).)

22. Mailing of Settlement Awards. The Claims Administrator shall cause the Settlement Awards to be mailed to the Class Members within fourteen (14) calendar days after receipt of payment of the Maximum Settlement Amount and the employer's portion of payroll taxes on wages from Defendant. The expiration date of the Settlement Award checks will be one hundred eighty (180) calendar days from the date the Settlement Award checks are issued. (Settlement, § E(h).)

23. Uncashed Settlement Checks: "The Claims Administrator will send one reminder notice to all Class Members who have not cashed their Settlement Award checks thirty (30) calendar days prior to the 180-day deadline. Uncashed Settlement Award checks will not be reissued except for good cause and as mutually agreed upon by the Parties in writing. Funds represented by individual Settlement Award checks returned as undeliverable and individual Settlement Award checks remaining un-cashed for more than one hundred eighty (180) calendar days after issuance shall be tendered by the Claims Administrator to the State of California Controller's Unclaimed Property Fund in the name of the Class Member." (Settlement, § E(i).)

III. DISCUSSION

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

A. <u>A Presumption of Fairness Exists Over The Settlement</u>

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

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

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

On May 15, 2023, the Parties participated in private mediation with experienced class action mediator Francis J. Ortman, III, Esq. (Class Counsel Decl., at ¶ 7.) The Parties' settlement discussions were conducted at arms' length and although the Parties were professional, the settlement negotiations were adversarial with each of the Parties prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id*.) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached the Settlement. (*Id.*)

2. The Parties Conducted Sufficient Investigation

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

3. Class Counsel Has Extensive Experience in Class Action Litigation

The settlement negotiations were conducted by highly capable and experienced counsel. Class Counsel have a strong record of vigorous and effective advocacy for their clients and are experienced in handling complex wage and hour class action litigation. (*Id.* at ¶¶ 37-57.) Although Plaintiffs and Class Counsel were prepared to litigate the claims alleged in the Action, they believe the proposed Settlement is in the best interests of the Class.

4. The Percentage of Objectors Is Small

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

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

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

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

1. Plaintiff's Strengths and Risks of Continued Litigation

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

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

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

2. The Maximum Settlement Amount Is Reasonable

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

A settlement is not judged against what might plaintiff 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 Computers, 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."].)

The proposed Maximum Settlement Amount represents a substantial recovery when compared to Plaintiff's reasonably forecasted recovery. (Class Counsel Decl. at ¶¶ 14-27.) Because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id.*) When considering the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the Settlement is within the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) ***Indeed, each Class Member is eligible to receive an average net benefit of approximately $384.27.*** (*Id.* at ¶ 27.)

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

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

1. Class Counsel Request an Award of the Attorneys' Fees and Costs Based on the "Common Fund" Method

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

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

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

2. The Requested Attorneys' Fees and Costs Are in Line with Typical Cases

According to a leading treatise on class actions, "[n]o general rule can be articulated on what is a reasonable percentage of a common fund. Usually, 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (*See* Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03.) Attorneys' fees that are fifty percent of the fund are typically considered the upper limit, with thirty to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also*

Van Vranken v. Atlantic Richfield Company (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most cases where 30-50 percent was awarded involved "smaller" settlement funds of under $10 million].)

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

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

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

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

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possess considerable expertise in litigating class actions. (Class Counsel Decl., ¶¶ 37-57.) Class Counsel has been involved as lead counsel or co-counsel in several class actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class counsel commensurate with their skill, reputation and experience, Class Counsel's requested fee award is supported here.

Class Counsel's experience in wage and hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the Settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation. Based on these and other factors, Class Counsel has frequently received fee awards of this percentage from the gross recovery for the class. Therefore, the requested Class Counsel Fees are reasonable and fair.

D. <u>The PAGA Allocation is Reasonable</u>

Where settlements negotiate a good faith amount for PAGA penalties and there is no indication that this amount was the result of self-interest at the expense of other class members, such amounts are generally considered reasonable. Courts have approved amounts for PAGA penalties in the range of zero to two percent of the total maximum amount of the Settlement. (*See Jack v. Hartford Fire Ins. Co.* (S.D. Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a PAGA payment of 0.25%]; *McKenzie v. Fed. Express Corp*. (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5 [acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement].)

Here, the PAGA Amount is larger than many other PAGA settlement amounts approved by the courts where seemingly nominal amounts were allocated for such claims. (*See, e.g., Zubia v. Shamrock Foods Co*. (C.D. Cal. Dec. 21, 2017) No. CV1603128ABAGRX, 2017 WL 10541431, at *14 [approving a PAGA settlement of 0.1%]; *Hopson, supra*, 2008 WL 3385452, at *1 [approving a PAGA settlement of 0.3% or $1,500]; *Garcia v. Gordon Trucking, Inc*. (E.D. Cal. Oct. 31, 2012) No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 [approving a PAGA settlement of 0.27%].) The Parties negotiated the PAGA Penalties, 25% to the Aggrieved Employees ($18,750.00) and 75% to LWDA ($56,250.00) in settlement of PAGA claims. (Settlement, § 13.) The PAGA Amount equates to approximately 5% of the Gross Settlement Amount, which far exceeds amounts that are routinely approved. The Parties negotiated to allocate

5% of the Gross Settlement Amount to PAGA Penalties in good faith and this amount is reasonable. (Class Counsel Decl., ¶ 22.)

E. <u>The Class Representative Service Payment Is Reasonable</u>

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

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

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

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

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

IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

A. Legal Standard

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

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

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

B. <u>Plaintiff Maintains That the Criteria for Class Certification Are Satisfied for Settlement Purposes.</u>

1. The Class is Ascertainable and Numerous

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

a) Class Definition

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

Here, the Class definition (as stated above) is objective as it is limited in scope to a specific time frame (during the Class Period) and is limited to the potential class members' employment classification (hourly, non-exempt employees). Further, there are common facts that exist here (such as those employees who worked without pay, were not given proper meal or rest periods, etc.) that are encapsulated by the causes of action alleged in the Action. This definition therefore provides sufficiently clear information to allow current and former employees to readily and reasonably determine whether or not they are a putative Class Member in this Action based upon this definition. (*ABM* at 304, stating "As long as the potential class members may be identified without unreasonable expense or time and given notice of the litigation, and the proposed class definition offers an objective means of identifying the persons who will be bound by the results of the litigation, the ascertainability requirement is met.") Thus, the proposed Class that Plaintiff seeks to represent is easily ascertainable and includes approximately former and current 2,225 employees of Defendant.

b) *Numerosity*

"The requirement of Code of Civil Procedure section 382 that there be 'many' parties to a class action suit is indefinite and has been construed liberally." (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934.) "Where a question is of common interest to 'many' persons, an action may be maintained as a class action even where the parties are numerous and it is in fact practicable to join them all." (*Id.*) "No set number is required as a matter of law for the maintenance of a class action." (*Id.*) "Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a trust in an action for removal of the trustees." (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.]) If even as little as 10 persons can constitute a class, then certainly the 2,225 Class Members here satisfy the numerosity requirement.

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

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

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

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

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

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

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

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

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

All of these requirements are met here for settlement purposes. Plaintiff retained Class Counsel, whom have extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Class Counsel Decl., ¶¶ 37-57.) Class Counsel unquestionably is "qualified, experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 875.) In addition, Plaintiff has no conflicts, and Plaintiff have, with Class Counsel, litigated this Action and diligently reviewed the Settlement terms, showing their dedication. Plaintiff's willingness to serve as Class Representative and to sacrifice the value of their own individual claims by executing a general release broader than that of the other Class Members so that the Class may benefit from this Settlement demonstrates Plaintiff's serious commitment to bringing about the best results possible for the Class, thereby also demonstrating that Plaintiff's interests are aligned with those of the Class and no conflict exists. (*McGhee*, *supra,* 60 Cal.App.3d at p. 451.)

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

Finally, in making its Class certification decision, the Court must determine that a class action would be superior to alternative means for the fair and efficient adjudication of the litigation.

By consolidating many potential individual actions into a single proceeding, this Court's use of the class action device enables it to manage this litigation in a manner that serves the economics of time, effort and expense for the litigants and the judicial system. 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. (*Gentry, supra,* 42 Cal.4th at pp. 457-62; *Leyva v. Medline Ind.* (9th Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the superiority concerns are essentially non-existent.

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

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

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

B. <u>The Class Notice is Accurate and Informative</u>

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

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

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

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

VI. **CONCLUSION**

For the foregoing reasons, Plaintiff respectfully request that the Court grant preliminary approval of the proposed Settlement and set a final approval hearing on or after March 19, 2027.

Respectfully submitted,

Dated: June 4, 2026

WILSHIRE LAW FIRM, PLC

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