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

BOBBY GUTIERREZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

SOTO PROVISION, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants

Case No.: 24STCV16058

CLASS AND REPRESENTATIVE ACTION

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF JOINT STIPULATION
OF CLASS AND REPRESENTATIVE
ACTION SETTLEMENT AGREEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

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

PRELIMINARY APPROVAL HEARING:

Date:

Time:

Dept.: 15

Judge: Timothy Patrick Dillon

Action Filed: June 26, 2024

Trial Date: Not set

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

2 PLEASE TAKE NOTICE that on _____, 2026 at _____ in Department 15 of
3 this Court located at Spring Street Courthouse, 312 N. Spring St, 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 Bobby Gutierrez (“Plaintiff”) will, and hereby does, move the Court for an order granting
6 preliminary approval of the proposed class action settlement between Plaintiff and Defendant Soto
7 Provision, Inc. Specifically, Plaintiff moves the Court for an order:

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

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

22 Respectfully submitted,

23 Dated: March 17, 2026

MOON LAW GROUP, PC

24 By: _____

25 Kane Moon
26 Allen Feghali
27 S. Phillip Song
28 Morgan W. Simpson

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Bobby Gutierrez (“Plaintiff”) seeks preliminary approval of a proposed \$500,000.00 non-reversionary, wage-and-hour class action settlement (the “Settlement”) with Defendant Soto Provision, Inc. (“Defendant”) (together with Plaintiff, the “Parties”). The Settlement will provide substantial monetary payments to an estimated 138 Class Members who worked an estimated aggregate of 15,847 Workweeks, of which roughly 93 are Aggrieved Employees who worked an estimated aggregate of 8,903 PAGA Pay Periods. As set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, informal discovery, and negotiations between the Parties. The negotiations were at arm’s-length and were facilitated through private mediation by an experienced and neutral class action mediator, Steve Rottman, Esq. Accordingly, Plaintiff requests the Court preliminarily approve the Settlement, certify the proposed Class, approve the proposed Class Notice to Class Members, and set a final approval hearing no earlier than 120 days from the date of preliminary approval.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff’s Claims and Procedural History

This is a wage-and-hour class 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 and Representative Action Settlement [“Moon Decl.”], ¶ 2.) Plaintiff seeks to represent a class of all persons who worked for Defendant as an hourly, non-exempt employee at any time during the Class Period, as set forth in the Joint Stipulation of Class and Representative Action Settlement Agreement (the “Settlement”). (*Id.*)

Defendant is a food and beverage distributor doing business in the State of California. (*Id.*) Defendant employed Plaintiff and other non-exempt, hourly-paid employees during the Class Period. (*Id.*) Plaintiff worked for Defendant from approximately 2016 to September 2022, in a non-exempt, hourly-paid position. (Declaration of Plaintiff Bobby Gutierrez in Support of Joint

1 Stipulation of Class and Representative Action Settlement Agreement [“Plaintiff Decl.”], ¶ 2.)
2 Plaintiff contends he and his coworkers were subjected to the same unlawful labor practices,
3 including failure to pay wages for all hours worked. (*Id.* at ¶ 6; Moon Decl., ¶ 3.)

4 Plaintiff’s claim for unpaid minimum and overtime wages stem from allegations that
5 Defendant failed to compensate Plaintiff and others for off-the-clock work and failed to incorporate all
6 remuneration into employees’ regular rate of pay for purposes of paying overtime or sick pay. (Moon
7 Decl., ¶ 4.) Plaintiff’s meal and rest period claims are based on allegations that due to the nature
8 of their work, Class Members’ breaks were often short, late, interrupted, and sometimes missed
9 altogether, and that Defendant did not pay all premium wages for non-compliant breaks. (*Id.*)
10 Plaintiff further brings a claim for unreimbursed necessary business expenses based on allegations
11 that Class Members were required to use their personal cellphones for work purposes, buy their
12 own protective gear such as boots, and maintain their uniforms, all without reimbursement from
13 Defendant. (*Id.*) Finally, Plaintiff also brings derivative claims for waiting time penalties, wage
14 statement violations, unfair business practices, and civil penalties under PAGA. (*Id.*)

15 Because of the foregoing alleged violations of various provisions of the Labor Code,
16 Plaintiff filed a class action complaint on June 26, 2024, which alleges Defendant systematically:
17 (1) failed to pay minimum wages, (2) failed to pay overtime compensation, (3) failed to provide
18 meal periods, (4) failed to authorize and permit rest periods, (5) failed to indemnify necessary
19 business expenses, (6) failed to timely pay final wages at termination, (7) failed to provide accurate
20 itemized wage statements, and (8) engaged in unfair business practices. (*Id.* at ¶ 5.)

21 Pursuant to PAGA, on June 22, 2024, Plaintiff gave written notice to the California Labor
22 and Workforce Development Agency (the “LWDA”) of the alleged Labor Code violations, with
23 certified mail service on Defendant, and paid the required filing fee. (*Id.* at ¶ 6, Ex. 2.) On
24 September 3, 2024, Plaintiff timely filed a First Amended Class and Representative Action
25 Complaint to add a ninth cause of action for civil penalties under PAGA (the “Operative
26 Complaint”). (*Id.* at ¶ 6.) In compliance with Labor Code section 2699(s)(1), Plaintiff
27 subsequently submitted to the LWDA a file-stamped copy of the Operative Complaint containing the
28 Court-assigned case number. (*Id.*) To date, the LWDA has not indicated its intent to investigate the

1 alleged violations or intervene in this Action. (*Id.*)

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

25 **B. Discovery and Investigation**

26 The Parties agreed to mediate this action with Steve Rottman, Esq., an experienced class and
27 PAGA action mediator. (*Id.* at ¶ 8.) In preparation for mediation, the Parties agreed to a protocol for
28 an informal production of documents and information before mediation. (*Id.*) Prior to mediation,

1 Plaintiff obtained from Defendant, through informal discovery, documents and data that were
2 necessary and helpful to evaluate the claims asserted in this action. (*Id.*) Defendant produced a
3 statistically sound sample of time and pay records for approximately 89% of the putative Class,
4 Plaintiff's personnel file and time and pay records, and Defendant's written employment policies in
5 effect during the Class Period. (*Id.*) Defendant also provided information regarding the estimated
6 number of current and formerly employed Class Members, Aggrieved Employees, and PAGA Pay
7 Periods. (*Id.*)

8 In preparation for mediation, Class Counsel reviewed and analyzed all the information
9 Defendant provided, including the sample records and documents regarding Defendant's wage-and-
10 hour policies. (*Id.* at ¶ 9.) Class Counsel retained a statistics expert to analyze the sample records and
11 prepare a damage analysis prior to the mediation. (*Id.*) The sample time and pay records analyzed
12 contained 93,568 actual shifts worked (representing roughly 79% of total shifts worked in the Class
13 Period), which allowed Plaintiff's expert to prepare an analysis with a reasonable degree of certainty.
14 (*Id.*) In conjunction with their extensive factual investigation, Class Counsel also investigated the
15 applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly, Class
16 Counsel was able to evaluate the probability of class certification, success on the merits, and
17 Defendant's maximum and realistic monetary exposure for all claims. (*Id.*) Thus, Plaintiff's and his
18 Counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed
19 them to act intelligently in negotiating the Settlement. (*Id.*)

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

21 On October 6, 2025, the Parties participated in a full day of private mediation with Steve
22 Rottman, Esq. (*Id.* at ¶ 10.) The negotiations were at arm's length and, although conducted in a
23 professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore
24 the potential for a settlement of the dispute, but each side was also prepared to litigate their
25 position through trial and appeal if a settlement had not been reached. (*Id.*) After a full discussion
26 regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses and with
27 the assistance of the mediator, the Parties reached a resolution. (*Id.*) The material terms of the
28 settlement are set out in the Settlement. (*Id.* at ¶¶ 2, 10, Ex. 1.)

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

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

6 Under the Settlement, Defendant will pay a non-reversionary, all-inclusive amount of *no*
7 *less than \$500,000.00* (“GSA”) to resolve this action. (Settlement, ¶ 3.0.) Other key terms of the
8 Settlement are outlined in the counsel declaration submitted concurrently herewith. (Moon Decl.,
9 ¶¶ 12–29.) The proposed Settlement Administrator—Phoenix Class Action Administration
10 Solutions (“Phoenix”)—was jointly selected by the Parties based on its bid of \$7,250.00. (*Id.* at ¶
11 16, Ex. 5; Settlement, ¶ 1.1.)

12 The Class is defined as all persons who worked for Defendant as an hourly, non-exempt
13 employee at any time during the period from June 26, 2020 to December 6, 2025. (*Id.* at ¶¶ 1.4,
14 1.12.) “Aggrieved Employees” is defined as all persons who worked for Defendant as an hourly,
15 non-exempt employee at any time during the period from June 22, 2023, to December 6, 2025.
16 (*Id.* at ¶¶ 1.3, 1.31.) The Settlement allocates \$20,000.00 from the GSA for settlement of the
17 Released PAGA Claims, which will be distributed 65% (\$13,000.00) to the LWDA and 35%
18 (\$7,000.00) to Aggrieved Employees pursuant to PAGA law governing Plaintiff’s claims.
19 (Settlement, ¶ 1.34.) Each Aggrieved Employee will be entitled to a pro rata share of the 35%
20 share of the PAGA Penalties directly proportional to their number of PAGA Pay Periods. (*Id.* at ¶
21 3.1.5.1.) This results in an average Individual PAGA Payment of roughly **\$75.27** for each of the
22 estimated 93 Aggrieved Employees (\$7,000 / 93), and a PAGA Pay Period value of roughly **\$0.78**
23 for each of the 8,903 estimated Pay Periods in the PAGA Period (\$7,000 / 8,903). (Moon Decl., ¶
24 18.)

25 After deducting the Class Representative Service Payment, the Class Counsel Fees
26 Payment and Class Counsel Expenses Payment, the PAGA Penalties, and the Administration
27 Expenses Payment from the GSA, in the amounts specifically approved by the Court, any
28 difference in the amounts requested and the amounts awarded will be allocated to the Net

1 Settlement Amount for distribution to Participating Class Members. (Settlement, ¶ 3.1.)
2 Accordingly, the Net Settlement Amount will be *no less than* **\$268,083.33** for an estimated Class
3 of **138 individuals**.¹ (Moon Decl., ¶ 19.) Each Class Member who does not opt-out will be entitled
4 to a pro rata share of the Net Settlement Amount that is directly proportional to the number of
5 Workweeks worked during the Class Period. (Settlement, ¶ 3.1.4.) The estimated **\$268,083.33** Net
6 Settlement Amount results in an average Individual Class Payment of roughly **\$1,942.63** for each of the
7 estimated 138 Class Members ($\$268,083.33 / 138$),² and a Workweek value of roughly **\$16.92** for each
8 of the 15,847 estimated Workweeks in the Class Period ($\$268,083.33 / 15,847$). (Moon Decl., ¶ 21.)

9 To the best of Plaintiff's knowledge, there is no other pending litigation involving similar
10 claims against Defendant that may be impacted by approval of the Settlement at issue, nor has
11 Defendant pointed to any. (Moon Decl., ¶ 30.)

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

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

22
23
24 ¹ The Net Settlement Amount was calculated by deducting the following from the \$500,000.00
25 GSA: \$10,000.00 for the Class Representative Service Payment, up to \$7,250.00 for the
26 Administration Expenses Payment, \$20,000.00 for the PAGA Penalties to the LWDA and Aggrieved
Employees, \$166,666.67 for the Class Counsel Fees Payment, and up to \$28,000.00 for the Class
Counsel Expenses Payment. (Moon Decl., ¶ 19, n.1; Settlement, ¶¶ 3.0–3.1.5.)

27 ² At this time, the actual amounts to Class Members and/or Aggrieved Employees are unknown
28 and will be calculated by the Administrator following preliminary approval and receipt and processing
of the Class Data. (Settlement, ¶ 6.1.) The high and low range of payments will be provided to the
Court in a motion for final approval. (Moon Decl., ¶ 21, n.2.)

percentage of objectors is small.” (*Dunk*, 48 Cal.App.4th at p. 1802 [citing Newberg, Newberg on Class Actions (3rd ed. 1992) § 11.41].)

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

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

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

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

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

Here, Class Counsel have conducted a thorough investigation into the facts of this case. (Moon Decl., ¶ 31.) As previously noted, the Settlement at issue was reached through arms’-length

1 negotiations, private mediation, and the assistance of a statistics expert. (*Id.*) Based on Defendant's
2 informal class-wide discovery production, on Class Counsel independent investigation and
3 evaluation, and on counsel's extensive experience in wage-and-hour litigation, Class Counsel are of the
4 opinion that the proposed Settlement is fair, reasonable, and adequate. (*Id.*)

5 Based on Class Counsel's review of the time, payroll, and additional data provided by
6 Defendant, on Plaintiff's expert's analysis of the sample records provided by Defendant, and on
7 information from Plaintiff, Class Counsel evaluated the estimated maximum and risk-adjusted
8 exposure that Defendant faced. (*Id.* at ¶ 32.) Specifically, based on the information provided for
9 mediation, the total estimated **realistic recovery** (adjusted for risks at certification and proof on the
10 merits) for the alleged claims, including penalties, is estimated to be **\$626,604.23**. (Moon Decl., ¶
11 32.) This amount was calculated as follows: **\$181,664.50** (50% discount) for the regular rate claim;
12 **\$81,599.82** (85% discount) for the off-the-clock work claim; **\$102,028.58** (75% discount) for the
13 meal period claim; **\$146,156.84** (85% discount) for the rest period claim; **\$21,150.60** (85% discount)
14 for the unreimbursed business expenses claim; **\$31,288.90** (95% discount) for the waiting time
15 penalties claim; **\$18,200.00** (95% discount) for the wage statement claim; and **\$44,515.00** (95%
16 discount) for the PAGA penalties claim. (*Id.* at ¶¶ 32–38.) The foregoing discounts were based on
17 the evidence presented for mediation and arguments made during arm's-length settlement
18 negotiations. (*Id.*)

19 **The \$500,000.00 gross settlement figure represents roughly 79.8% of the total realistic**
20 **recovery.** (*Id.* at ¶ 39.) This is an excellent result for the Class, particularly because, under the
21 Settlement, Class Members will receive timely and guaranteed relief, avoiding the risk of not being
22 able to recover anything. (*Id.*)

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

24 **and Significant Risks to Certification and Proof on the Merits**

25 A settlement is not judged against what a plaintiff might recover had he prevailed at trial, nor
26 does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba*
27 *v. Apple Comp., Inc.* (2001) 91 Cal.App.4th 224, 246, 250 ["Compromise is inherent and necessary
28 in the settlement process . . . even if 'the relief afforded by the proposed settlement is substantially

1 narrower than it would be if the suits were to be successfully litigated,’ this is no bar to a class
2 settlement because ‘the public interest may indeed be served by a voluntary settlement in which each
3 side gives ground in the interest of avoiding litigation.’”] [quoting *Air Line Stewards v. Am. Airlines,*
4 *Inc.* (7th Cir. 1972) 455 F.2d 101, 109].)

5 Here, considering all known facts and circumstances, the risk of significant delay, trial risk,
6 appellate risk, and the defenses Defendant may assert both to certification and on the merits, the
7 Settlement is in the best interest of the Class and LWDA. (Moon Decl., ¶ 31.) While Plaintiff is
8 confident in the merits of his claims, a legitimate controversy exists as to each cause of action. (*Id.*
9 at ¶ 42.) Plaintiff also recognizes that proving the amount owed to each Class Member would be an
10 expensive, time-consuming, and uncertain proposition. (*Id.*)

11 The Settlement obviates the significant risk that this Court may deny certification of all or
12 some of Plaintiff’s claims. (*Id.* at ¶ 43.) Class Counsel took into account the risk of not prevailing at
13 trial due to low or no participation by Class Members. (*Id.*) Indeed, the individualized and testimony-
14 intensive nature of the claims could bar manageability of the representative claims or otherwise
15 significantly reduce any recovery whatsoever. (*Id.*) For example, the rest period and unreimbursed
16 expense claims are testimony-driven claims and assume a 100% violation rate, which would not
17 likely be demonstrated at trial, as it assumes either the participation of all employees (which would
18 be difficult given the reality that many, if not all, employees would be unwilling to participate due to
19 fear of retaliation), or alternatively, the use of surveys or statistical data as a surrogate (which would
20 still require the participation of a majority of employees to establish a sound representation of all
21 non-exempts). (*Id.*) Even assuming employees would be willing to participate, obtaining declarations
22 would potentially reveal that each individual employee had a different experience. (*Id.*)

23 Furthermore, even if Plaintiff was able to pursue his claims on a class-wide basis and obtain
24 certification of all or some of the claims, continued litigation would be expensive, involving a trial
25 and possible appeals, and would substantially delay and reduce any recovery by the Class. (*Id.* at ¶
26 44.) Although the Parties have engaged in a significant amount of investigation, informal discovery,
27 and class-wide data analysis, they have not conducted extensive formal discovery. (*Id.*) Moreover,
28 preparation for class certification and a trial would remain for the Parties as well as the prospect of

1 appeals in the wake of a disputed class certification ruling for Plaintiff and/or any summary judgment
2 ruling. (*Id.*) As a result, the Parties would incur considerably more attorneys’ fees and costs through
3 trial. (*Id.*) In sum, this Settlement avoids the risks, burdens, and the accompanying expense of further
4 litigation. (*Id.*)

5 The proposed \$500,000.00 Settlement therefore represents a substantial recovery when
6 compared to the reasonably forecasted recovery for the Class. (*Id.* at ¶ 45.) When considering the
7 risks of litigation, the uncertainties involved in continued litigation, the burdens of proof necessary
8 to establish liability, and the probability of appeal, it is clear the Settlement amount is within the
9 “ballpark” of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*; (*Kullar*,
10 *supra*, 168 Cal.App.4th at p. 133; *see Munoz, supra*, 186 Cal.App.4th at pp. 408–09.)

11 **3. The PAGA Settlement Is Fair Considering the Parties’ Respective Positions**
12 **and Significant Risks**

13 With regards to the PAGA claims, the Settlement is a fair and reasonable resolution that
14 satisfies PAGA’s dual statutory purposes of deterrence and punishment, on the one hand, and
15 providing Aggrieved Employees with genuine and meaningful relief, on the other. (Moon Decl., ¶ 40;
16 Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendant has had to hire legal counsel, engage
17 in informal class-wide discovery, and participate in mediation. (Moon Decl., ¶ 40.) Defendant will also
18 have to pay civil penalties to the LWDA under the Settlement, assuming final settlement approval is
19 granted. (*Id.*) Not including its own attorneys’ fees and costs as well as the employer’s share of payroll
20 taxes, Defendant will pay no less than \$500,000.00 to resolve this matter—of which \$20,000.00 is
21 allocated toward the PAGA claims and will be distributed, in compliance with PAGA law governing
22 the claims in this action, as 65% (\$13,000.00) to the LWDA and 35% (\$7,000.00) to Aggrieved
23 Employees—and the release obtained under the Settlement does not preclude Aggrieved Employees
24 from pursuing any individual claims they may have against Defendant or the other Released Parties.
25 (*Id.*)

26 Moreover, Class Counsel are of the opinion that because the issues here are fairly contested,
27 there is a possibility of the Court not awarding the PAGA penalties even if Plaintiff prevailed on the
28 merits due to the largely discretionary nature of awarding PAGA penalties. (*Id.*) Indeed, under PAGA,

1 a Court can reduce penalties “if, based on the facts and circumstances of the particular case, to do
2 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” (Lab.
3 Code § 2699(e)(2).) In other words, were this matter to go to trial, any award granted would be at the
4 discretion of the Court and subject to a substantial reduction. (Moon Decl., ¶ 40.) Further, Class
5 Counsel took into account the risk of not being able to proceed on a representative basis due to the potential
6 manageability issues and that even if Plaintiff prevailed at trial, penalties would likely be limited due to
7 the largely discretionary nature of awarding PAGA penalties and in light of other defenses available to
8 Defendant. (*Id.* at ¶ 41.) Thus, it is entirely possible that even if Plaintiff would be successful at trial,
9 assuming he is first able to certify the claims and defeat the manageability issues presented at litigation,
10 Plaintiff could be awarded substantially less than what was obtained through the Settlement. (*Id.*)

11 In sum, the \$20,000 for PAGA Penalties under the Settlement constitutes “genuine and
12 meaningful” that is “consistent with the underlying purpose of the statute to benefit the public.” (*See*
13 *O’Connor v. Uber Tech., Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133–35 [denying settlement
14 approval where allocation for PAGA claims was 0.1% of the estimated full worth].)

15 **4. Class Counsel Have Extensive Experience in Class and PAGA Action**
16 **Litigation, Which Was Integral to Negotiating the Settlement**

17 The Settlement negotiations were conducted by highly capable counsel with considerable
18 experience and demonstrated competence with litigating wage-and-hour class actions. (Moon Decl.,
19 ¶¶ 50–65.) Class Counsel have a strong record of vigorous and effective advocacy for their clients
20 and are experienced in handling complex wage-and-hour class action litigation. (*Id.*) Their experience
21 was helpful in assessing the reasonableness of the Settlement at issue here, and from this experience
22 they concluded that this litigation could not have been settled on better terms than provided under
23 the Settlement. (*Id.* at ¶ 66.) Although Plaintiff and his counsel were prepared to try the claims alleged
24 in the litigation, they support the proposed Settlement as being in the best interest of the Class based
25 on objective evidence that has been considered and weighed against the risks, expenses, and time
26 consumption to both sides of continued litigation. (*Id.* at ¶¶ 10, 31.)

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

2 Subject to the Court’s approval, the Settlement provides a fee application of one-third of the
3 GSA for Class Counsel’s attorneys’ fees, plus reimbursement for out-of-pocket litigation costs not to
4 exceed \$28,000.00.³ (Settlement, ¶ 3.1.2.) These amounts are disclosed to Class Members in the
5 proposed Class Notice and are reasonable. (*Id.* at Ex. A.)

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

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

13 Class Counsel seek an award of attorneys’ fees on the “percentage of recovery/common fund”
14 theory. (Moon Decl., ¶ 68.) The purpose of this approach is to “spread litigation costs proportionately
15 among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.”
16 (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California*
17 (1975) 15 Cal.3d 162, the California Supreme Court stated, “one who expends attorneys’ fees in
18 winning a suit which creates a fund from which others derive benefits, may require those passive
19 beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in *City and County*
20 *of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the
21 common fund doctrine has been applied “consistently in California when an action brought by one
22 party creates a fund in which other persons[] are entitled to share.” (*Id.* at pp. 110–11 [pincite
23 omitted].)

24 The California Supreme Court affirmed in *Laffitte v. Robert Half International Inc.* (2016) 1
25 Cal.5th 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
26

27
28 ³ Class Counsel’s current litigation costs are \$25,811.54, and they anticipate incurring additional
costs up to final approval. (Moon Decl., ¶ 73, Ex. 4.)

1 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
2 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
3 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
4 method—including relative ease of calculation, alignment of incentives between counsel and the
5 class, a better approximation of market conditions in a contingency case, and the encouragement it
6 provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation[]—
7 convince us the percentage method is a valuable tool that should not be denied our trial courts.” (*Id.*
8 [internal citations omitted].) This line of legal authority supports a request for attorneys’ fees based
9 on the percentage of recovery/common fund method.

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

11 According to a leading treatise on class actions: “No general rule can be articulated on what
12 is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a
13 reasonable fee award from a common fund in order to assure that the fees do not consume a
14 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
15 are not unprecedented.” (Newberg, *Newberg on Class Actions* (3rd ed. 1992) § 14.03.) Attorneys’
16 fees that are fifty percent of the fund are typically considered the upper limit, with thirty to forty
17 percent commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also Van*
18 *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 297 [stating that most cases
19 where 30–50% was awarded involved “smaller” settlement funds of under \$10 million].)

20 Here, Class Counsel’s fees request for one-third of the GSA is in line with the prevailing
21 guidelines established in California case law and academic literature and is consistent with awards in
22 California. (*Compare Settlement*, ¶ 3.1.2, with *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66,
23 n.11 [“Empirical studies show that, regardless whether the percentage method or the lodestar method
24 is used, fee awards in class actions average around one-third of the recovery.”].) Accordingly,
25 Plaintiff requests the Court preliminarily approve the attorneys’ fees as negotiated by the Parties.

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

27 Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable
28 fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(k)(1),

1 2802(d).) Under these sections, Plaintiff would be permitted to recover his actual attorneys’ fees,
2 even if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) This
3 Settlement is beneficial in that it limits the risk of continued expenses and consumption of time,
4 energy, and resources facing Defendant while at the same time rewarding Class Counsel for their
5 decision to assume risk by taking on this matter on a contingent basis with no guarantee of recovery.
6 (Moon Decl., ¶¶ 69–74.) In fact, prosecution of this action involved significant financial risk for
7 Class Counsel. (*Id.*) Once Class Counsel undertook this litigation, they committed to pursue it to its
8 conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶ 71.)

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

10 As demonstrated by their past experience in pursuing class actions on behalf of consumers
11 and employees, Class Counsel possess considerable expertise in litigating class actions. (*Id.* at ¶¶ 50–
12 65.) Class Counsel have been involved as lead counsel or co-counsel in numerous class actions that
13 resulted in millions in recovery. (*Id.*) As noted above, their experience in wage-and-hour litigation
14 was integral in evaluating the strengths and weaknesses of the case against Defendant and the
15 reasonableness of the Settlement. (*Id.* at ¶ 66.) Practice in the narrow field of wage-and-hour litigation
16 requires skill and knowledge concerning the rapidly evolving substantive law (state and federal) as
17 well as the procedural law of class action litigation. (*Id.* at ¶ 64.) Based on these and other factors,
18 Class Counsel have frequently received fee awards of this percentage from the gross recovery for the
19 class. (*See id.* at ¶¶ 54, 59, 61, 63.) Because it is reasonable to compensate counsel commensurate
20 with their skill, reputation, and experience, the requested fee award is supported here.

21 **C. The Service Payment to Plaintiff Is Reasonable**

22 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
23 compensate them for the expense or risk they have incurred in conferring a benefit on other members
24 of the class.” (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Courts routinely grant approval of class
25 action settlement agreements containing enhancements for the class representatives, which are
26 necessary to provide incentive to represent the class and are appropriate given the benefit the class
27 representatives help to bring about for the class. (*See Rodriguez v. W. Publ’g Corp.* (9th Cir. 2009)
28 563 F.3d 948, 958–59.) Service Payments are particularly important to plaintiffs in wage-and-hour

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

10 Under the Settlement here, subject to the Court’s approval, a Class Representative Service
11 Payment of \$10,000.00 will go to Plaintiff, in addition to his amount as a Class Member. (Settlement,
12 ¶ 3.2.1.) This award is for having initiated and provided services in support of the Action and in
13 recognition of the risks attendant to the role as the named Plaintiff and Class Representative. (*Id.* at ¶
14 1.14.) Plaintiff has devoted a great deal of time and work assisting counsel in the case and
15 communicated with counsel frequently for litigation and to prepare for mediation. (Moon Decl., ¶¶
16 46–49; Plaintiff Decl., ¶¶ 19–22.) The requested award is fair and reasonable, particularly considering
17 the substantial benefits Plaintiff generated for all Class Members. (Moon Decl., ¶ 45.)

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

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

2 **A. Legal Standard**

3 The proposed Settlement Class is well suited for class certification. The claims all derive from
4 a core set of alleged violations of California’s wage and hour laws and regulations. (Moon Decl., ¶¶
5 3–4.) For the reasons set forth more fully below, the Class, for purposes of Settlement, satisfies the
6 prerequisites for certification under Code of Civil Procedure section 382. (Code Civ. Proc. § 382.)
7 Section 382 provides that “when the question is one of a common or general interest, of many
8 persons, or when the parties are numerous, and it is impracticable to bring them all before the court,
9 one or more may sue or defend for the benefit of all.” (*Id.*) There are two requirements to section
10 382: “(1) there must be an ascertainable class[]; and (2) there must be a well defined community of
11 interest in the questions of law and fact involved affecting the parties to be represented.” (*Daar v.*
12 *Yellow Cab Co.* (1967) 67 Cal. 2d 695, 704 [internal citations omitted].) To clarify these
13 requirements, the California Supreme Court has looked to Federal Rule of Civil Procedure 23 to
14 explain that the community-of-interest requirement itself embodies three factors: “(1) predominant
15 common questions of law or fact; (2) class representatives with claims or defenses typical of the
16 class; and (3) class representatives who can adequately represent the class.” (*Richmond v. Dart*
17 *Indus., Inc.* (1981) 29 Cal. 3d 462, 470.)

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

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

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

26 When determining whether a class is ascertainable, California courts focus on the following
27 three factors: “(1) the class definition, (2) the size of the class and (3) the means of identifying class
28 members.” (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, Plaintiff maintains there is an

1 easily ascertainable Class, defined by objective and precise criteria. (Settlement, ¶¶ 1.4, 1.12.) The
2 proposed Class that Plaintiff seeks to represent is ascertainable because (1) the Class definition is
3 sufficiently precise, (2) the Class consists of approximately 138 individuals, and (3) Class Members
4 can be readily identified by Defendant’s records. (*Id.* at ¶¶ 1.4, 1.8, 1.12, 4.1.) Because Class
5 Members are identified using specific criteria in the regular business records of Defendant—their
6 employment by Defendant in California, non-exempt classification, hourly wage, and actual work
7 during the Class Period—the Class is ascertainable. (*See Wilner v. Sunset Life Ins. Co.* (2000) 78
8 Cal.App.4th 952, 959–60 [class membership defined by ownership of product that is the subject of
9 the lawsuit is sufficient to make the class ascertainable].) “The requirement of Code of Civil
10 Procedure section 382 that there be ‘many’ parties to a class action suit is indefinite and has been
11 construed liberally.” (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934.) “Where a question
12 is of common interest to ‘many’ persons, an action may be maintained as a class action even where
13 the parties are numerous and it is in fact practicable to join them all.” (*Id.*) “No set number is required
14 as a matter of law for the maintenance of a class action.” (*Id.*) “Thus, our Supreme Court has upheld
15 a class representing the 10 beneficiaries of a trust in an action for removal of the trustees.” (*Id.* [citing
16 *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574]; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding
17 a class of 9 plaintiffs and 35 members].) Therefore, numerosity is plainly satisfied.

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

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

25 Here, Plaintiff’s claims satisfy all three requirements. The employment practices at issue
26 include whether Defendant: paid employees all minimum, overtime, and sick pay wages owed;
27 reimbursed employees for necessary business expenses; provided employees with and authorize meal
28 and rest periods or paid premiums for non-compliant breaks; paid all final wages to employees at the

1 time of termination; intentionally failed to pay all final wages; provided inaccurate itemized wage
2 statements and whether Class Members were harmed; engaged in unfair business practices; and
3 violated civil penalty provisions under PAGA. (Moon Decl., ¶¶ 3–4.) Plaintiff contends the factual
4 and legal issues are the same for all Class Members, and further that all Class Members suffered from
5 and seek redress for the same alleged injuries. (Plaintiff Decl., ¶¶ 3–6.) Considering Class Members
6 would need to prove the same issues of law and fact to prevail, and their legal remedies are identical,
7 it would be preferable to resolve all claims through a settlement than to force each Class Member to
8 litigate their own individual claims. Thus, the Court should grant conditional class certification for
9 settlement purposes because common questions of law and fact predominate over any individual
10 questions within the Class.

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

12 The typicality requirement does not focus on the individual characteristics or circumstances
13 of the representative plaintiff compared to those of the remainder of the class, but rather, upon the
14 typicality of the proposed representative’s claims as they relate to the defendant’s conduct and
15 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 [“The only requirements a re [sic] that
16 common questions of law and fact *predominate* and that the class representative be *similarly* situated”
17 vis-à-vis the class.] [emphasis in original].) A representative plaintiff’s claims are typical of the class
18 if they arise from the same event, practice, or course of conduct, and if the claims rest on the same
19 legal theories. (*Id.*) That is precisely the case here. Plaintiff is a former employee of Defendant and
20 alleges he was subject to the same policies and practices as other similarly situated employees.
21 (Plaintiff Decl., ¶¶ 2–7.)

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

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

27 Here, all requirements are met. Plaintiff retained counsel with extensive experience in
28 prosecuting complex class actions, including similar class actions that previously settled. (Moon

Decl., ¶¶ 50–65.) Based on their experience, Class Counsel unquestionably are “qualified, experienced and generally able to conduct the proposed litigation.” (*Miller, supra*, 148 Cal.App.3d at p. 874.) Plaintiff has, with counsel, litigated this case and diligently reviewed the settlement terms, showing dedication, and with full knowledge and acceptance of duties, he has committed to his role as Class Representative. (Plaintiff Decl., ¶¶ 11–22.) In addition, Plaintiff and his Counsel have no conflicts with one another, other Class Members, or the proposed Administrator. (*Id.* at ¶¶ 8–10; Moon Decl., ¶ 67.)

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

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

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

Class Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court, rule 3.766(e)–(f), rule 3.769(f).) Here, the proposed Class Notice, in the form attached to the Settlement as **Exhibit A**, meets all the requirements of California Rules of Court. The Class Notice summarizes the proceedings to date and the terms and conditions of the proposed Settlement in an informative and coherent manner. (Settlement, ¶ 7.1, Ex. A.) It also states that the final approval decision has yet to be made, and provides the date, time, and location of the Final Approval Hearing. (*Id.*) It explains the right and procedures to opt-out or submit any written objections and/or arrange to appear at the Final Approval Hearing and verbally state any objections. (*Id.*) It makes clear the

1 Settlement does not constitute an admission of liability by Defendant, who denies all liability, and it
2 recognizes that this Court has not ruled on the merits of the action. (*Id.*) Thus, the proposed Notice
3 meets all the requirements of California Rule of Court 3.769(f). (Cal. Rules of Court, rule 3.769(f).)

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

8 California law vests the Court with broad discretion in fashioning an appropriate notice
9 program. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 970, 973–74.) There is no statutory or due
10 process requirement that all class members receive actual notice, but in this matter, Class Members
11 will receive direct mailed notice, which is the best possible form of notice under the circumstances.
12 (Settlement, ¶ 6.3.) As the Court of Appeals has explained, “[t]he notice given should have a
13 reasonable chance of reaching a substantial percentage of the Class Members . . .” (*Cartt*, 50
14 Cal.App.3d at p. 974.)

15 **VI. CONCLUSION**

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

19 Respectfully submitted,

20 Dated: March 17, 2026

MOON LAW GROUP, PC

21
22 By: _____

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