Kane Moon (SBN 249834)
E-mail: kmoon@moonlawgroup.com
Allen Feghali (SBN 301080)
E-mail: afeghali@moonlawgroup.com
Hyunjin Kim (SBN 345518)
E-mail: hkim@moonlawgroup.com
MOON LAW GROUP, PC
725 South Figueroa St., 31st Floor
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiffs Gilbert Villegas and Andrew Bojorquez

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

GILBERT VILLEGAS, and ANDREW BOJORQUEZ, each individually, and on behalf of all others similarly situated,

Plaintiff,

vs.

CIDA SLEEP SYSTEMS, a California corporation; and DOES 1 through 10, inclusive,

Defendants

Case No.: 2023CUOE017908

CLASS AND REPRESENTATIVE ACTION

[Hon. Matthew P. Guasco, Dept. 20]

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

[*Filed with the Declaration of Kane Moon, the Declaration of Plaintiff Gilbert Villegas, the Declaration of Plaintiff Andrew Bojorquez, and [Proposed] Preliminary Approval Order*]

PRELIMINARY APPROVAL HEARING:
Date: February 18, 2025
Time: 8:30 a.m.
Dept.: 20

Complaint filed: December 20, 2023
Trial date: Not set

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

PLEASE TAKE NOTICE that on February 18, 2025, at 8:30 a.m. in Department 20 of this Court located at the Ventura Courthouse, 800 South Victoria Avenue, Ventura, California 93009, pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 *et seq.*, plaintiffs Gilbert Villegas and Andrew Bojorquez ("Plaintiffs") will move the Court for an order granting preliminary approval of the proposed Class action and PAGA Settlement Agreement and Class Notice ("Settlement") between Plaintiffs and defendant Cida Sleep Systems.

Plaintiff will further move the Court for an order:

1. Granting preliminary approval of the Settlement;
2. Certifying a Class, for settlement purposes only;
3. Approving the Class Notice and plan for its distribution;
4. Appointing Plaintiffs as the Class Representatives, for settlement purposes only;
5. Appointing Kane Moon, Allen Feghali, and Hyunjin Kim of Moon Law Group, PC as Class Counsel, for settlement purposes only;
6. Appointing ILYM Group, Inc. as the Administrator; and
7. Scheduling a Final Approval Hearing.

The motion will be based upon this notice, the attached memorandum of points and authorities, the supporting Declarations of Kane Moon (and exhibits attached thereto) and Plaintiff, the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: January 23, 2025

MOON LAW GROUP, PC

By:________________________________

Kane Moon
Allen Feghali
Hyunjin Kim

Attorneys for Plaintiffs

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE STATUTES

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Gilbert Villegas ("Plaintiff Villegas") and Andrew Bojorquez ("Plaintiff Bojorquez" and together with Plaintiff Villegas, "Plaintiffs") seek preliminary approval of a proposed $120,000 non-reversionary, wage and hour class action settlement (the "Settlement") with defendant Cida Sleep Systems ("Defendant") (together with Plaintiffs, the "Parties"). The Settlement will provide substantial monetary payments to roughly 121 Class Members who worked an estimated aggregate of 8,193 Workweeks, of which roughly 60 are Aggrieved Employees who worked an estimated aggregate of 2,756 PAGA Period 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 arm's-length negotiation sessions between the Parties. Accordingly, Plaintiffs requests the Court preliminarily approve the proposed Settlement, certify the proposed Settlement Class, approve the proposed Notice to Class Members, and set a final approval hearing no earlier than 130 days from the date of preliminary approval.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Claims

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 Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ["Moon Decl."], ¶ 2.) Plaintiffs seek to represent any non-exempt, hourly-paid employee of Defendant who worked in California during the period from December 20, 2019, through the date the Court grants preliminary approval, for various alleged violations of the California Labor Code. (*Id.*)

Defendant has employed Plaintiffs and other putative Class Members in California during the putative Class Period. (*Id.* at ¶ 3.) Plaintiff Villegas worked for Defendant from approximately July 2017 to October 2023, and Plaintiff Bojorquez worked for Defendant from approximately September 2017 to April 2024. (*Id.*) Throughout their employment, Plaintiffs were employed in an hourly paid, non-exempt position. (*Id.*) Plaintiffs contend they and their coworkers were subjected to the same unlawful labor practices, including failure to pay wages for all hours worked. (*Id.*)

Plaintiffs' claims for unpaid minimum and overtime wages stem from allegations that Class Members were not paid for alleged off-the-clock work, that Defendant failed to incorporate all remunerations into the regular rate of pay for purposes of paying Class members overtime wages, sick pay, and meal break premiums, and that Defendant rounded employees' time to their detriment. (*Id.* at ¶ 4.) Plaintiffs' meal and rest period claims are based on allegations that due to the nature of their work, Class Members' breaks were often short, late, interrupted, and sometimes missed altogether, and that Defendant did not pay premium wages for non-code-compliant breaks. (*Id.*) Plaintiffs further bring a claim for unreimbursed necessary business expenses based on allegations that Class Members were required to use their personal cellphones for work purposes, without reimbursement for the same. (*Id.*) Finally, Plaintiffs also bring derivative claims for waiting time penalties, wage statement violations, unfair business practices, and civil penalties under PAGA. (*Id.*)

On December 20, 2023, Plaintiff Villegas commenced this Action by filing a Complaint alleging causes of action against Defendant for Failure to Pay Minimum Wages; Failure to Pay Overtime Compensation; Failure to Provide Meal Periods; Failure to Authorize and Permit Rest Breaks; Failure to Indemnify Necessary Business Expenses; Failure to Timely Pay Final Wages at Termination; Failure to Provide Accurate Itemized Wage Statements; and Unfair Business Practices. (*Id.* at ¶ 5.) On March 6, 2024, Plaintiff Villegas filed a First Amended Complaint adding a cause of action under PAGA. (*Id.*)

On October 14, 2024, the Parties filed a stipulation allowing plaintiffs to file a Second Amended Complaint naming Plaintiff Bojorquez as a second class representative and aggrieved employee representative. (*Id.* at ¶ 6.) The Second Amended Complaint, filed November 14, 2024, is the "Operative Complaint" in this Action. (*Id.*)

Defendant ardently opposes the merits of this case and denies Plaintiffs' factual allegations. (*Id.* at ¶ 7.) Defendant argues the putative Class was paid all minimum and overtime wages owed, that time records accurately reflect employees' time worked and that Class Members were not permitted to work off-the-clock. (*Id.*) Defendant maintains compliance with all its meal and rest period obligations. (*Id.*) As for the unreimbursed business expenses, Defendant maintains it reimbursed Class Members for all necessary business expenses incurred. (*Id.*) To the extent Class Members received wage statements that were allegedly inaccurate, Defendant asserts they suffered no actual damage or harm as a result. (*Id.*; *see, e.g.*, *Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013, No. C 12–05860 CRB) 2013 WL 622032, at *10 ["A plaintiff must adequately plead an injury arising from an employer's failure to provide full and accurate wage statements, and the omission of the required information alone is not sufficient."].) With respect to Plaintiffs' claim for waiting time penalties, Defendant alleges its good-faith belief that it paid all wages precludes the imposition of waiting time penalties since Plaintiffs cannot prove Defendant's alleged failure to pay all final wages at the time of separation was "willful." (Moon Decl., ¶ 7; *see, e.g.*, *Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012, No. ED CV 11–298 GHK (DTBx)) 2012 WL 9506073, *5.) For these reasons, Defendant claims it did not engage in any unfair business practices and denies liability under PAGA. (Moon Decl., ¶ 7.) Defendant also maintains the claims are improper for class treatment, in part, due to the individualized and testimony-intensive nature of the wage claims that could bar class certification or significantly reduce Defendant's overall liability. (*Id.*)

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

Following the filing of the complaint, the Parties discussed early settlement. (*Id.* at ¶ 8.) Because of Defendant's financial restrictions, the Parties did not engage a formal mediator but proceeded to negotiate directly. (*Id.*) Plaintiffs obtained from Defendant, through informal discovery, a statistically significant sample of time and payroll records of the Class, Plaintiffs' time and pay records and personnel file, Defendant's human resource documents as well as employee policies, and information regarding the estimated number of current and former Class Members, Workweeks, Aggrieved Employees, PAGA Pay Periods, and average hourly pay. (*Id.*)

In preparation for the negotiation sessions, Class Counsel reviewed and analyzed all the information and records Defendant provided, including the sample records and documents regarding Defendant's wage and hour policies. (*Id.* at ¶ 9.) In conjunction with their extensive factual investigation, Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly, Class Counsel were able to evaluate the probability of class certification, success on the merits, and Defendant's maximum and realistic monetary exposure for all claims. (*Id.*) Thus, Plaintiffs' and Class Counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement. (*Id.*)

C. Settlement Negotiations

The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.* at ¶ 10.) The Parties went into the negotiations willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses, the Parties reached a settlement, the material terms of which are encompassed within the Class Action and PAGA Settlement Agreement and Class Notice. (*Id.*, Exh. 1 [the "Settlement Agreement" or "Settlement"].) The Parties and their Counsel represent they are not aware of any related case that would be extinguished or adversely affected by approval of this Settlement Agreement. (*Id.* at ¶ 12.)

Class Counsel have conducted a thorough investigation into the facts of this case. (Moon Decl., ¶ 19.) Based on the foregoing document and information exchange and on their own independent investigation and evaluation, Class Counsel are of the opinion that the proposed Settlement is fair, reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, and the defenses that Defendant may assert both to certification and on the merits, the Settlement is in the best interests of the Class. (*Id.*; *see also id.* at ¶¶ 19–33.) **Indeed, the $120,000 gross settlement figure represents roughly 83% of the realistic (*risk-adjusted*) recovery estimated to be $144,680.19.** (*Id.* at ¶ 28.)

D. Key Terms of the Proposed Settlement

Under the Settlement, Defendant will pay a non-reversionary, all-inclusive amount of $120,000 to resolve this litigation, and in addition to Defendant's employer's share of payroll taxes associated with the wage portion of Individual Class Payments to Settlement Class Members. (Settlement Agreement, ¶ 3.1.) The Settlement's key terms include:

1. Class Members or Settlement Class: The proposed Class for purposes of the Settlement contains approximately 121 members and is defined as: all persons who worked for the Defendant in California as an hourly, non-exempt employee at any time during the Class Period. (*Id.* at ¶¶ 1.5, 4.1.) The Class will exclude any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion. (*Id.* at ¶ 1.29.)

2. Class Period: means the period from December 20, 2019, through the date the Court grants Preliminary Approval. (*Id.* at ¶ 1.12.)

3. Aggrieved Employees: There are an estimated 60 Aggrieved Employees, defined as any non-exempt, hourly-paid employee of the Defendant who worked in California during the PAGA Period. (*Id.* at ¶¶ 1.4, 4.1.)

4. PAGA Period: means the period from December 17, 2022 to the date the Court grants Preliminary Approval. (*Id.* at ¶ 1.31.)

5. Gross Settlement Amount: means $120,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 of the Settlement. (*Id.* at ¶ 1.22.) The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator's Expense. (*Id.*)

6. Net Settlement Amount: means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. (*Id.* at ¶ 1.28.) The remainder is to be paid to Participating Class Members as Individual Class Payments. (*Id.*)

7. Individual Class Payment: means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period. (*Id.* at ¶ 1.23.) "Workweek" means any week during which a Class Member worked for Defendant for at least one day, during the Class Period. (*Id.* at ¶ 1.45.)

8. Individual PAGA Payment: means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period. (*Id.* at ¶ 1.24.) "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period. (*Id.* at ¶ 1.30.)

9. Tax Treatment: Individual Class Payments will be allocated as 20% to unpaid wages, subject to applicable tax withholdings and deductions, 40% to interest, and 40% penalties; Individual PAGA Payments will be allocated as 100% penalties. (*Id.* at ¶¶ 3.2.4.1, 3.2.5.)

10. Released Parties: means Defendant and its affiliated individuals and entities, and each their respective (current and former) subsidiaries, officers, directors, members, partners, owners, shareholders, investors, employees, agents, servants, attorneys, assigns, independent contractors, clients, predecessors, successors, parent companies and organizations, insurers, and any all other persons, firms, and corporations in which Defendant may have an interest or which may have an interest in Defendant, whether previously or hereafter affiliated in any manner. (*Id.* at ¶ 1.41.)

11. Released Class Claims: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims, charges, complaints, liens, demands, causes of action, obligations, damages, penalties, attorneys' fees, costs, and liabilities that were alleged, or could have been alleged, in the Operative Complaint and/or PAGA Notices based on the facts, circumstances, transaction, events, occurrences, acts, disclosures, statements omissions or failures to act alleged, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law. (*Id.* at ¶ 5.2.) The Released Claims specifically include, without limitation, claims for failure to pay minimum wage, failure to pay overtime, failure to provide real and meal periods and premiums, failure to indemnify necessary business expenses, failure to pay final wages at termination, failure to provide timely and acuate itemized wage statements, unfair business practices, and any an all penalties, interest and attorneys' fees and costs for such claims. (*Id.*) Except as set forth in Sections 5.1 and 5.3 of the Settlement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance,

disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (*Id.*)

12. Released PAGA Claims: All Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and/or PAGA Notice within the PAGA Period. (*Id.* at ¶ 5.3.)

13. Uncashed Settlement Checks: Settlement checks to Class Members will be valid for 180 days after issuance by the Administrator; any checks that remain uncashed after 180 days will be voided and transmitted to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384 subd. (b). (*Id.* at ¶¶ 4.4.1, 4.4.3.)

14. PAGA Penalties: means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees ($3,000.00) and the 75% to LWDA ($9,000.00) in settlement of PAGA claims. (*Id.* at ¶ 1.34.) The 25% ($3,000.00) of the PAGA Penalties will be distributed as Individual PAGA Penalties. (*Id.*) Plaintiffs sent to Defendant and the LWDA PAGA notices of alleged Labor Code violations, and Plaintiffs' PAGA administrative exhaustion period expired without the LWDA indicating its intent to investigate the alleged violations. (Moon Decl., ¶ 11, Exh. 2.) Additionally, a file-stamped copy of Plaintiffs' first amended complaint and second amended complaint containing the Court-assigned case number was submitted to the LWDA. (*Id.*) Class Counsel also submitted the proposed Settlement Agreement to the LWDA. (*Id.* at ¶ 13, Exh. E.)

15. Class Representative Service Payment: means the payment of not more than $7,500.00 to each Class Representative (for a total of $15,000.00) for initiating the Action and providing services in support of the Action. (Settlement Agreement, ¶ 1.14, 3.2.1.) In the event the amount approved by the Court is less, the difference will revert to the Net Settlement Amount. (*Id.* at ¶ 3.2.1.)

16. Class Counsel Fees and Costs: Defendant will not oppose a fee application of up to one-third of the Gross Settlement Amount (currently estimated to be $40,000.00) for Class Counsel's

attorneys' fees, plus reimbursement for out-of-pocket litigation costs not to exceed $6,000.00. (*Id.* at ¶ 3.2.2.) In the event the amount of actual costs is less and/or the amount of fees and costs approved by the Court are less than the requested amounts, the difference will revert to the Net Settlement Amount. (*Id.*) Class Counsel's litigation costs are currently $3,042.26. (Moon Decl., ¶ 15, Exh 4.)

17. Administration Expenses Payment: The Parties jointly appoint ILYM Group, Inc. as the neutral entity to administer this Settlement. (Settlement Agreement, ¶¶ 1.2. 7.1.) The Administrator will be paid from the Gross Settlement Amount in an amount up to $6,000.00, for its fees and expenses in administering this Settlement. (*Id.* at ¶ 3.2.3.) ILYM Group, Inc. has submitted a flat fee bid for $5,950.00 as costs. (Moon Decl., ¶ 17, Exh. 5.)

18. Class Notice: The proposed Class Notice sets forth, in plain terms, a statement of case, the terms of the Settlement Agreement, the approximate amounts of attorneys' fees, costs, PAGA Penalties, and service award being sought, an explanation of how the individual payments are calculated, and a Final Approval Hearing date. The proposed method for providing notice of the proposed Settlement and distribution thereof is the one most likely to give actual notice to the greatest number, if not all, of the Class Members. Class Members will be notified of the proposed Settlement by first-class mail of the Class Notice. The Administrator will undertake its best efforts to ensure the Class Notice is provided to the current addresses of Class Members, including conducting a national change of address search and re-mailing the notice to updated addresses; otherwise, the Administrator shall use the address provided by Defendant in the Class Member Data. If a Notice Packet is "undeliverable" and no forwarding address is provided, the Administrator shall employ standard skip-tracing to obtain updated address information and then shall re-mail the Notice to those Class Members. The Class Notice will be translated and mailed in English and Spanish to each Class Member. (Settlement Agreement, ¶¶ 7.4.1-7.4.5.)

19. Procedure for Disputing Workweeks and/or Pay Periods, Opting Out, or Objecting: The Notice Packet explains the procedure under which a Class Member and/or Aggrieved Employee can dispute the number of his or her individual Workweeks and/or PAGA Period Pay Periods stated in their Notice. Additionally, the Notice explains how Class Members may, should they choose to do so, request exclusion, or otherwise submit a written objection or state an oral objection at the Final

Approval Hearing. Class Members need not file or serve, or state in any written objection, a notice of intention to appear at the Final Approval Hearing. (*Id.* at ¶¶ 7.5-7.7.)

20. Funding of the Gross Settlement Amount: Defendant shall fully fund the Gross Settlement Amount, and fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds, in three equal installments[1] to the Administrator paid every 45 days, with the first installment due 20 days after the Effective Date; the second installment due 45 days after the first installment is paid; and the third and final installment due 45 days after the second installment is paid. (*Id.* at ¶ 4.3.)

III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL

The law favors the settlement of lawsuits, particularly in class actions and other complex cases. (*See, e.g.*, *Neary v. Regents of Univ. of Cal.* (1992) 3 Cal.4th 272, 277–81.) 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 [citing authority omitted].) To approve a settlement, the Court must find "the settlement is fair, adequate, and reasonable." (*Id.*) This Court has wide discretion in making this determination. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness, adequacy, and reasonableness are presumed, as here, when: "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are 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*, 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.) In order to approve

[1] The funding timeline was critical in settling the action to ensure Defendant could fund the Gross Settlement Amount within its financial constraints. (Moon Decl., ¶ 18, n.1.)

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 information exceeding the threshold required to provide this Court with materials and information necessary to determine that the proposed Settlement is fair, adequate, and reasonable.

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

1. The Settlement Is the Product of Discovery, Investigation, and Informed and Non-Collusive 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; thus, there is a presumption here that the negotiations were conducted in good faith. (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."].)

The proposed Settlement at issue here was reached following extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses. (Moon Decl., ¶ 10.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses, the Parties reached a settlement. (*Id.*)

Plaintiffs obtained from Defendant, through informal discovery, a statistically significant sample of time and payroll records of the Class, Plaintiffs' time and pay records and personnel file, Defendant's human resource documents as well as employee policies, and information regarding the estimated number of current and former Class Members, Workweeks, Aggrieved Employees, PAGA Pay Periods, and average hourly pay. (*Id.* at ¶ 8.) In preparation for the negotiation sessions, Class Counsel reviewed and analyzed all the information and records Defendant provided, including the sample records and documents regarding Defendant's wage and hour policies. (*Id.* at ¶ 9.) In conjunction with their extensive factual investigation, Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly, Class Counsel were able to evaluate the probability of class certification, success on the merits, and Defendant's maximum and realistic monetary exposure for all claims. (*Id.*) Thus, Plaintiffs' and Class Counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement. (*Id.*)

Furthermore, Class Counsel have considerable experience and demonstrated competence with litigating wage and hour class actions. (*Id.* at ¶¶ 39–55.) The experience of Class Counsel was helpful in assessing the reasonableness of the Settlement at issue here, and from this experience Class Counsel concluded that this litigation could not have been settled on better terms than provided under the proposed Settlement. (*Id.* at ¶ 56.) Again, this supports the conclusion that the terms of the Settlement are based on objective evidence that has been considered and weighed against the risks, expenses, and time consumption to both sides of continued litigation of this action.

2. The Settlement Is Fair and Reasonable in Light of the Parties' Respective Legal Positions

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

Here, the Settlement obviates the significant risk that this Court may deny certification of all or some of Plaintiffs' claims. (Moon Decl., ¶ 31.) Furthermore, even if Plaintiffs were able to pursue their claims on a class-wide basis and obtain certification of all or some of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the Class. (*Id.*) While Plaintiffs are confident in the merits of their claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 29.) Plaintiffs also recognize that proving the amounts of wages owed to each Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id.*) Class Counsel are also of the opinion that because the issues here are fairly contested, there is a possibility of the Court not awarding the PAGA penalties even if Plaintiffs prevailed on the merits due to the largely discretionary nature of awarding PAGA penalties. (*Id.* at ¶ 30.) Indeed, under Labor Code section 2699, subdivision (e)(2), a Court can reduce PAGA penalties "if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (Lab. Code § 2699(e)(2).) In other words, were this matter to go to trial, any award granted would be at the discretion of the Court and subject to a substantial reduction. (Moon Decl., ¶ 30.)

Because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of not being able to recover anything. (*Id.* at ¶ 28.) This Settlement avoids the risks, burdens, and the accompanying expense of further litigation. (*Id.* at ¶ 32.) Although the Parties have engaged in a significant amount of investigation, informal discovery, and class-wide data analysis, they have not conducted expert discovery or taken depositions. (*Id.*) Moreover, preparation for class certification and a trial would remain for the Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiffs and/or any summary judgment ruling. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through trial. (*Id.*)

The proposed settlement of $120,000.00 therefore represents a substantial recovery when compared to Plaintiffs' reasonably forecasted recovery. (*Id.* at ¶ 34.) When considering the risks of litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to establish liability, and the probability of appeal, it is clear the Settlement amount of $120,000.00 is within the "ballpark" of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*)

Indeed, the Net Settlement Amount available for settlement payments is currently estimated to be **$41,000.00** for an estimated Class size of **121 individuals**.[2] (*Id.* at ¶ 33.) As a result, it is estimated each Participating Class Member is eligible to receive an average benefit of approximately **$338.84** prior to tax withholdings on the wage portion of payments. Considering Class Members' average hourly rate is $21.50, the average benefit is approximately **15.8 hours of work**. (*Id.*) Additionally, it is estimated there are **60 Aggrieved Employees** who are each receive an estimated average of **$50.00** from the 25% share of PAGA Penalties, or $3,000.00, which results in an estimated **pay period value of $1.09** based on the estimated **2,756 pay periods** during the PAGA Period. (*Id.*) The actual amounts to Participating Class Members and Aggrieved Employees will vary based on each individual's duration of work during the Class Period or PAGA Period, respectively; thus, those who worked longer for Defendant during the relevant period will receive a benefit greater than the average estimated amount. (*Id.*) At this time, the high and low range of payments to Class Members is unknown. (*Id.*) These ranges will be calculated by the Administrator following preliminary approval and receipt and processing of the Class Data, and will be provided to the Court in a motion for final approval. (*Id.*)

3. Class Counsel Have Extensive Experience in Class Action Litigation

The Settlement negotiations were conducted by highly capable and experienced counsel. (*Id.* at ¶¶ 39–55.) 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.*) Although

---

[2] The Net Settlement Amount is at least $120,000 less the following: $15,000 for the Class Representative Service Payments ($7,500 to each Plaintiff), $6,000 for the Administration Expenses Payment, $12,000 for the PAGA Penalties to the LWDA and to Aggrieved Employees, $40,000 for Class Counsel's attorneys' fees, and up to $6,000.00 for Class Counsel's litigation costs. (Settlement Agreement, ¶ 3.1.)

Plaintiffs and their counsel were prepared to try the claims alleged in the litigation, they support the proposed Settlement as being in the best interest of the Class. (*Id.* at ¶¶ 10, 19.)

B. <u>The Proposed Class Notice of Settlement Should Be Approved</u>

The proposed Class Notice, in the form attached to the Settlement as Exhibit A, 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 or object to the Settlement. (Settlement Agreement, Exh. A.) Accordingly, the proposed Class Notice meets all the requirements of Rule 3.769(f) of the California Rules of Court. (Cal. Rules of Court, rule 3.769(f).)

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

Subject to the Court's approval, Defendant will not oppose a fee application of up to one-third of the Gross Settlement Amount (currently estimated to be $40,000.00) for Class Counsel's attorneys' fees, plus reimbursement for out-of-pocket litigation costs not to exceed $6,000.00. (Settlement Agreement, ¶ 3.2.2.) These amounts are disclosed to Class Members in the proposed Class Notice and are reasonable. (*Id.* at Exh. A.)

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

California courts have long awarded attorneys' fees as a percentage of the benefit created by counsel in pursuing claims on behalf of a class. (*See, e.g.*, *Serrano v. Priest* (1977) 20 Cal.3d 25.) The California Supreme Court has held, "when a number of persons are 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 attorney's fees out of the fund." (*Id.* at p. 34.)

Class Counsel will seek an award of attorneys' fees on the "percentage of recovery/common fund" theory. (Moon Decl., ¶ 58.) The purpose of this approach is to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1975) 15 Cal.3d 162, the California Supreme Court stated, "one 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 pp. 110–11 [pincite omitted].)

The California Supreme Court recently affirmed in *Laffitte v. Robert Half International 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].) This line of legal authority supports a request for attorneys' fees based on the percentage of recovery/common fund method.

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

According to a leading treatise on class actions: "No 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." (Newberg, Newberg on Class Actions (3rd ed. 1992) § 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 Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 297 [stating that most cases where 30–50% was awarded involved "smaller" settlement funds of under $10 million].)

Here, Class Counsel will request fees 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. (*Compare* Settlement Agreement, ¶ 3.2.2 *with*

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, Plaintiffs request the Court preliminarily approve their counsel’s ability to request attorneys’ fees as negotiated by the Parties.

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

Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(g)(1), 2802(d).) Under these sections, Plaintiffs 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 case. (*Id.*) This 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 matter. (*See* Moon Decl., ¶¶ 32, 61.) In fact, prosecution of this action involved significant financial risk for Class Counsel. (*Id.* at ¶¶ 60–64.) Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once Class Counsel undertook this litigation on behalf of the Class, they committed to pursue it to its conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id*.)

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

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. (*Id.* at ¶¶ 39–55.) Class Counsel have been involved as lead counsel or co-counsel in numerous class actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate Class Counsel commensurate with their skill, reputation, and experience, the 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. (*Id.* at ¶ 56.) 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 have frequently received fee awards of this percentage from the gross recovery for the class. (*See id.* at ¶¶ 43, 48, 53.) Therefore, the requested fee award is fair, reasonable, and adequate.

D. <u>The Service Payments to Named Plaintiffs Are 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*, 186 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, "[i]t 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 . . ." (Lab. Code § 90.5.) 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 here, subject to the Court's approval, Defendant agrees to pay a Class Representative Service Payment in the amount of $7,500.00 to each Plaintiff (for a total of $15,000.00). (Settlement Agreement, ¶ 3.2.1.) This award is in recognition of Plaintiffs' time and effort, as well as their exposure to substantial risk, in bringing and presenting the action, and for their general release of claims, both known and unknown, and waiver of Section 1542 rights. (*Id.* at ¶¶ 1.14, 3.2.1, 5.1.) Plaintiffs have devoted a great deal of time and work assisting counsel in the case and communicated with counsel frequently for litigation and to prepare for the mediation session. (Moon Decl., ¶¶ 35–38; Declaration of Plaintiff Gilbert Villegas in Support of Motion for Preliminary

Approval of Class Action and PAGA Settlement ["Villegas Decl."], ¶¶ 11–21; Declaration of Plaintiff Andrew Bojorquez in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement ["Bojorquez Decl."], ¶¶ 11–21.) The requested awards are fair and reasonable, particularly considering the substantial benefits Plaintiffs generated for all Class Members. (Moon Decl., ¶¶ 28–34.)

When compared with the amounts awarded in typical class action cases, the amount requested here is particularly reasonable. 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 $4357." (Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L. Rev. 1303, 1307–08.) The 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. 1333.) 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.)

IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

A. Legal Standard

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

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

B. <u>Plaintiff Maintains that the Criteria for Class Certification Are Satisfied</u>

1. The Class Is Ascertainable and Numerous

When determining whether a class is ascertainable, California courts focus on the following three factors: "(1) the class definition, (2) the size of the class and (3) the means of identifying class members." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, the proposed Class that Plaintiffs seek to represent is ascertainable because (1) the Class definition is sufficiently precise, (2) the Class consists of about 121 individuals, and (3) Class Members can be readily identified by looking at Defendant's records. (Settlement Agreement, ¶¶ 1.5, 1.12, 1.8.)

Plaintiff maintains there is an easily ascertainable Class, defined by objective and precise criteria. (*Id.*) Because Class Members are identified using specific criteria in the regular business records of Defendant—their employment by Defendant in California, non-exempt classification, and actual work during the Class Period—the Class is ascertainable. (*See Wilner v. Sunset Life Ins. Co*. (2000) 78 Cal.App.4th 952, 959–60 [class membership defined by ownership of product that is the subject of the lawsuit is sufficient to make the class ascertainable].)

"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 class of 9 plaintiffs and 35 members].) Therefore, numerosity is plainly satisfied.

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

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

Here, Plaintiffs' claims satisfy all three requirements. The employment practices at issue include whether: Defendant had legally compliant policies and practices to pay employees all minimum and overtime wages owed; Defendant had legally compliant policies and practices to provide employees with and authorize meal and rest periods; Defendant had legally compliant policies to reimburse employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge of their duties; paid all final wages to employees at the time of termination; Defendant's failure to pay all final wages was intentional; itemized wage statements were inaccurate; Defendant engaged in unfair business practices; and Defendant violated civil penalty provisions recoverable under PAGA. (Moon Decl., ¶ 3–4.) Plaintiffs contend the factual and legal issues are the same for all Class Members, including Plaintiffs, and further, that all Class Members suffered from and seek redress for the same alleged injuries. (*Id.*) Considering Class Members would need to prove the same issues of law and fact to prevail, and their legal remedies are identical, it would be preferable to resolve all claims through a settlement agreement than to force each Class Member to litigate their own individual claims. Thus, the Court should grant conditional class certification for settlement purposes because common questions of law and fact predominate over any individual questions within the Class.

3. Plaintiffs' Claims Are Typical of the Claims of the Class

The typicality requirement does not focus on the individual characteristics or circumstances of the representative plaintiff compared to those of the remainder of the class, but rather, upon the typicality of the proposed representative's claims as they relate to the defendant's conduct and activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["The only requirements a re [sic] that common questions of law and fact *predominate* and that the class representative be *similarly* situated" vis-à-vis the class.] [emphasis in original].) A representative plaintiff's claims are typical of the class if they arise from the same event, practice, or course of conduct, and if the claims rest on the same legal theories. (*Id.*) That is precisely the case here. Plaintiffs are former employees of Defendant; as such, they allege they were subject to the same policies and practices as other similarly situated employees. (Moon Decl., ¶ 2.)

4. Plaintiffs and Their Counsel Meet the Adequacy Requirement

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

Here, all requirements are met. Plaintiffs retained counsel with extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Moon Decl., ¶¶ 39–55.) With 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.) In addition, Plaintiffs have no conflicts, and Plaintiffs have, with counsel, litigated this case and diligently reviewed the settlement terms, showing dedication. (Gilbert Decl., ¶¶ 8–21; Bojorquez Decl., ¶¶ 8–21.) Plaintiffs' willingness to serve as the representative demonstrates their serious commitment to bringing about the best results possible for the Class. (*Id.*)

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

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

Class 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, 970, 973–74.) There is no statutory or due process requirement that all class members receive actual notice, but in this matter, the Class Members will receive direct mailed notice. (Settlement Agreement, ¶ 7.4.2.) 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 . . ." (*Cartt,* 50 Cal.App.3d at p. 974.) In this case, notice of the proposed Settlement will be provided by direct mailing in both English and Spanish, the best possible form of notice under the circumstances. (Settlement Agreement, ¶ 7.4.2.)

B. <u>The Notice Is Accurate and Informative</u>

The proposed Class Notice should be approved. It will be disseminated through direct U.S. first-class mail to the current address for each Class Member. (*Id.*) It informs the Class Members of the terms of the Settlement and their right to be excluded from the Settlement. (Settlement Agreement, ¶ 7.5, Exh. A.) And if there are Class Members who wish to object to the proposed

Settlement, they will have the opportunity to submit written objections and/or be heard at the Final Approval Hearing. (*Id.* at ¶ 7.7, Exh. A.)

The Class Notice also fulfills the requirement of neutrality in class notices. (Newberg, Newberg on Class Actions (3rd ed. 1992) § 8.39.) It summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner. (Settlement Agreement, Exh. A.) It makes clear the Settlement does not constitute an admission of liability by Defendant, who denies all liability, and it recognizes that this Court has not ruled on the merits of the action. (*Id.*) 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.*) Accordingly, the Class Notice complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court grant this motion, enter the proposed order submitted herewith regarding preliminary approval, and set a final approval hearing no earlier than 130 days from the preliminary approval order.

Respectfully submitted,

Dated: January 23, 2025

MOON LAW GROUP, PC

By: ____________________________________
Kane Moon
Allen Feghali
Hyunjin Kim

Attorneys for Plaintiffs