FALCHETTI LAW FIRM, PC
Sandra M. Falchetti (SBN 218064)
45 S. Arroyo Parkway
Pasadena, California 91105
Telephone: (626) 831-9070
Facsimile: (626) 387-0717
Email:
sandrafalchetti@falchettilaw.com

Attorney for Plaintiff JANE EG DOE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JANE EG DOE, an individual, Plaintiff, vs. EMPOWER MANAGEMENT, LLC, a California corporation; L3 OASIS HOTEL, a business entity of unknown form; KELLY WOO, an individual; and DOES 1 through 50, inclusive, Defendants.	Case No.: 24STCV22311 **CLASS ACTION** [Assigned for all purposes to the Honorable Elihu M. Berle, Dept. 6] **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY; DECLARATION OF SANDRA M. FALCHETTI IN SUPPORT THEREOF** DATE: June 24, 2026 TIME: 10:00 a.m. DEPT: 6 Complaint Filed: August 30, 2024 Trial Date: None set yet

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 24, 2026 at 10:00 a.m. in Department 6 of the Superior Court of the State of California, Plaintiff, Erika Gonzalez, on behalf of herself and all others similarly situated, will move and hereby does move for Preliminary Approval of the proposed Class Settlement in this case. This motion is unopposed and based on the Joint

Stipulation for Class Action Settlement ("Settlement Agreement"), which is submitted herewith. This motion will be based on this Notice of Motion, the Memorandum of Points and Authorities filed herewith, the Declaration of Sandra M. Falchetti, exhibits attached thereto, argument of counsel and upon such other material contained in the file and pleadings of this action.

Date: May 18, 2026

FALCHETTI LAW FIRM, PC

By: ______________________________________

SANDRA M. FALCHETTI
Attorneys for Plaintiff
ERIKA GONZALEZ, individually, and on behalf of others similarly situated

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II. Introduction

Plaintiff Erika Gonzalez ("Plaintiff") brought this putative class and representative action individually and on behalf of all others similarly situated to remedy alleged wage and hour violations of Empower Management, LLC, Ms. Kelly Woo, and Mr. Aleksander Dyo ("Defendants")[1]. Plaintiff contends that Defendants systematically violated California's labor laws and Business and Professions Code by carrying out a uniform practice and procedure of failing to provide timely, uninterrupted, and duty-free meal breaks and rest breaks, pay premium payments for non-provision of compliant meal and rest breaks, reimburse employees for the uniform/work-attire costs, compensate employees for all hours worked, and provide compliant itemized wage statements. Plaintiff now seeks preliminary approval of the Joint Stipulation of Class and Representative Action Settlement and Release ("Settlement Agreement" or "Stipulation"), which will resolve the litigation in its entirety.[2]

The proposed Settlement creates a non-reversionary Gross Fund Value in the amount of One Hundred Sixty-Six Thousand Two Hundred Twenty-Four Dollars **($166,224.00**) resulting in an average approximate payment of **$874.00** for each of the approximately 81 putative Class Members and aggrieved employees if none opt out of the Settlement. A presumption of fairness exists as: (1) the Settlement was reached through extensive, mediated arm's-length negotiations; (2) sufficient investigation and discovery was conducted, which allowed Class Counsel, Falchetti Law Firm, PC ("Falchetti Law Firm") to act intelligently; and (3) Falchetti Law Firm is experienced in similar wage-and-hour class litigation.

Additionally, preliminary settlement approval is appropriate as the proposed Settlement is

[1] Plaintiff initially named and served additional defendant entities based on information then available concerning the employment relationship and related operations. Those entities were later provisionally dismissed without prejudice pursuant to stipulation and order on September 18, 2025. They are not parties to the proposed Settlement and their prior inclusion does not affect the Settlement approval analysis.

[2] The Settlement Agreement is attached as Exhibit 1 to the Declaration of Sandra M. Falchetti ("Falchetti Decl.").

within the "ballpark" of reasonableness and is fair and adequate to the Settlement Class Members. Therefore, the court should authorize the mailing of the Class Notice to the Class Members. The Class Notice complies with California Rules of Court, Rule 3.766 and 3.769, and direct mailing of the Class Notice to the Class Members at their last known addresses is an appropriate form of giving notice.

Finally, provisional certification of the Class for settlement purposes is appropriate because the proposed Class is ascertainable, common questions of law and fact predominate over any individualized questions, Plaintiff's claims are typical of those of the Class Members, Plaintiff and Falchetti Law Firm have adequately represented, and will continue to adequately represent, the Class, and proceeding as a class action is a superior means of resolving this dispute.

III. Factual And Procedural Background

A. The Parties

Defendant Empower Management, LLC is a 101-room hotel in Palm Springs, California. (Falchetti Dec **.** ¶ 4). Defendants Kelly Woo and Aleksander Dyo are its principals and managing agents. Plaintiff worked for Defendants as an hourly paid non-exempt Housekeeper from approximately May 18, 2022 until March 28, 2024. Based on information provided by Defendants and from their records, the hotel property was not operational until January 1, 2022, and there are approximately 81 current and former non-exempt employees in California during the Class Period.

B. Procedural History

Plaintiff submitted her PAGA notice on Defendants and the Labor & Workforce Development Agency (LWDA) on June 3, 2024. (Falchetti Dec **.** ¶ 6). The LWDA declined to investigate Plaintiff's claims and therefore Plaintiff filed a wage and hour putative class action complaint against Defendants on August 30, 2024 in this Court alleging, *inter alia*, that Defendants failed to (a) provide required meal and rest periods; (b) pay overtime wages, minimum wages, all wages due to discharged and quitting employees; (c) maintain required records; (d) furnish accurate itemized wage statements; and (e) indemnify employees for necessary expenditures incurred in discharge of duties; and engaged in unfair and unlawful business practices and owes civil penalties under the Labor Code Private Attorneys' General Act of 2004 (PAGA). Plaintiff amended her PAGA notice and civil complaint on or around September 23, 2024 and November 15, 2024, respectively, to include a claim of failure to pay accrued and unused vacation. (Falchetti Dec . ¶ 7).

C. Investigation and Informal Discovery

Prior to mediation, Falchetti Law Firm investigated and researched Plaintiff's claims and Defendants' defenses, interviewed Plaintiff and a number of current and former employees concerning Defendants' policies and practices, obtained Defendants' policy documents and the full set of the Class's time and payroll records, and retained an expert to analyze their data which served as the damages analysis for the mediation. (Falchetti Dec . ¶ 8). Based on this information, Falchetti Law Firm was able to act intelligently and effectively in negotiation the proposed settlement.

D. Settlement Negotiations

On January 23, 2026, the Parties held an all-day mediation session with Gail A. Glick, Esq., at the conclusion of which the Parties did not reach a settlement. The Parties continued to meet and confer and reached a settlement on or around March 6, 2026. The terms of the agreement are outlines in the proposed Settlement Agreement. A true and correct copy is hereby attached as "**Exhibit 1**." The settlement discussions were conducted at arm's length, and the Settlement is the result of an informed analysis of Defendant's potential liability exposure in relation to the costs and risks associated with continued litigation. The Parties went into mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate its position through trial and appeal if a settlement was not reached.

IV. Summary of Settlement

A. The Class

The proposed Class and aggrieved employees consist of approximately 81 current and former non-exempt employees who were employed by Defendant Empower Management, LLC in California during the Class Period of January 1, 2022 through January 23, 2026.

B. Settlement Terms

The proposed Settlement is comprised of a Gross Fund Value of One Hundred Sixty-Six Thousand Two Hundred Twenty-Four Dollars **($166,224.00)**, from which all Individual Settlement Awards to Participating Class Members, the Class Counsel Award, the Class Representative Service Award, PAGA Payment, Settlement Administration Costs and a PAGA payment to the LWDA would be paid. (Stipulation ¶ 26.)

The Gross Fund Value will be Allocated as Follows:

1. Class Representative Incentive Award. In exchange for executing a general release of her claims and in recognition of her efforts and risks in prosecuting this matter, Plaintiff will receive no more than $5,000 as a class representative incentive award. (Stipulation ¶ 62.)

2. Attorneys' Fees and Litigation Costs. Falchetti Law Firm PC will receive an attorney fee award of 33.33 percent of the Gross Fund Value or $55,402.46. (Stipulation ¶ 58.)

3. PAGA Payment. Five Thousand Dollars ($5,000.00) from the Gross Fund Value will be allocated as penalties under PAGA, of which Three Thousand Seven Hundred and Fifty Dollars ($3,750.00) will be paid to the LWDA. (Stipulation ¶ 69.)

4. Settlement Administration Costs. CPT Group the settlement administrator ("Settlement Administrator") will receive expenses estimated not to exceed $6,250.00, for administering the Settlement. (Stipulation ¶ 44.)

5. The "Net Settlement Amount" is the net amount paid as Individual Settlement Payments and constitutes the Gross Fund Value less the Administrative Costs, attorneys' fees and litigation costs, Class Representative Incentive Award and the PAGA Allocation. (Stipulation ¶ 13.)

6. The Individual Settlement Award will be allocated twenty-five percent (25%) as unpaid wages and seventy-five percent (75%) as civil penalties and interest. Defendant will pay the employer's share of payroll taxes separate and apart from the Gross Fund Value. (Stipulation ¶ 67.)

The Gross Fund will be Funded as Follows:

Defendant will fund the Gross Settlement Amount of $166,224, as well as its share of employer-side payroll taxes, in installments. Specifically, Defendant will make an initial payment of $55,408 within thirty (30) days after the Court enters the Order Granting Preliminary Approval, followed by two (2) equal installment payments of the remaining balance, each due one hundred eighty (180) days after the preceding payment, until the Gross Settlement Amount is fully funded. (Stipulation, ¶ 54.)

The Parties agreed to this installment structure based on Defendant's financial circumstances, and Defendant represents that it is solvent and capable of satisfying its obligations under the Agreement. In support of preliminary approval, Defendant will provide a declaration attesting to its financial condition, and, if requested by the Court, will submit additional financial information for in camera review. (Stipulation, ¶ 54.)

To facilitate administration, the Settlement Administrator may request that Defendant advance reasonable administrative costs necessary to implement notice and related activities prior to full funding, and Defendant has agreed to cooperate in good faith with such requests. (Stipulation, ¶ 54.)

The Agreement includes meaningful enforcement mechanisms that protect the Settlement Class. If Defendant fails to timely make any required payment, it will have ten (10) days after written notice to cure the default. If the default is not cured, the entire unpaid balance will become immediately due and payable, and Plaintiff may seek enforcement of the Agreement, including entry of judgment for the unpaid balance. (Stipulation, ¶ 54.) Additionally, if Defendant becomes insolvent or files for bankruptcy before fully funding the settlement, Plaintiff may seek immediate entry of judgment and assert the Settlement Class's rights in any bankruptcy proceeding. (*Id.*)

<u>The Gross Fund will be Distributed as Follows</u>:

Distribution of settlement funds will occur only after the Gross Settlement Amount has been fully funded and the Effective Date has occurred. Within ten (10) business days thereafter, the Settlement Administrator will distribute Individual Settlement Payments, any Court-approved service award, attorneys' fees and costs, Administrative Costs, and the PAGA allocation in accordance with the Agreement and the Court's orders. (Stipulation, ¶ 55.) The Settlement Administrator may, however, pay reasonable administrative costs incurred in connection with notice and administration prior to full funding, as necessary to implement the settlement. (*Id.*)

If a check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, will mail the check to the newly identified address. (Stipulation, ¶55.) Individual Settlement Payment checks will be valid and negotiable for at one hundred eighty (180) calendar days from the date they are issued. (Stipulation, ¶56.) After the expiration of the 180 days, the Settlement Administrator will void the checks and the amount of any unpaid residue or unclaimed or abandoned funds will be transmitted to the Controller Unclaimed Property Fund pursuant to Code of Civil Procedure section 384. (Stipulation, ¶56.)

C. The Release

Upon the Effective Date (defined in the Stipulation), all Participating Settlement Class Members, including Plaintiff, will waive and release all claims, rights, demands, damages, liabilities and causes of action, whether known or unknown, contingent or vested, in law or in equity, arising at any time during the Class Period for unpaid wages or other compensation, and/or related penalties, interest, costs, attorneys' fees, punitive damages, and/or injunctive or other equitable remedies, allegedly owed or available, against Defendant and its respective former, current and future parent companies, subsidiaries, affiliates, shareholders, Members, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns, allegedly owed or available, arising out of, or related to the claims, allegations and operative facts asserted in the operative complaint, including that Defendant: (1) failed to provide a required full, timely and uninterrupted meal periods; (2) failed to provide a required full, timely and uninterrupted rest periods; (3) failed to pay all earned wages and/or overtime payments (4) failed to keep accurate payroll records and/or failed to provide accurate wage statements; (5) failed to pay earned an unpaid wages upon ending of employment; and/or (6) in engaging in any or all of the aforementioned conduct, violated, or is liable under the California Labor Code, including, but not limited to, sections 201, 202, 203, 204, 218.5, 218.6, 221, 226, 226.3, 226.6, 226.7, 450, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1198, 2802, 2698 et seq., Cal. Code tit. 5 section 11050 (California Wage Order 5-2001), Business &

Professions Code section 17200 et seq., and/or Code of Civil Procedure section 1021. Stipulation ¶ 42. Plaintiff will also provide a general release of claims after the Effective Date in connection with the Incentive Award. (Stipulation, ¶42.) Lastly, all PAGA Group Members who worked during the PAGA Period will release all PAGA claims during the PAGA Period. (Stipulation, ¶ 43.)

D. Notice and Settlement Administration

Within fifteen (15) calendar days after entry of the Preliminary Approval Order, Defendant will provide the Settlement Administrator with the Class List for purposes of mailing the Settlement Notices to Class Members and the PAGA Group. (Stipulation ¶ 45.) The List will contain names, social security numbers, dates of employment, number of Compensable Workweeks during the Class Period and PAGA Period, last known addresses and phone numbers. (Stipulation, ¶ 45.) Within fourteen (14) calendar days after receiving the Class List from Defendant, the Settlement Administrator will mail copies of the Class Notice to the Settlement Class and PAGA Group via regular First Class U.S. Mail after running all addresses through the United States Postal Service NCOA database to obtain current addresses. (Stipulation, ¶ 46.)

Any Class Notices returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular first-class U.S. mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice. (Stipulation, ¶ 48.) If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other search and then perform a single re-mailing. (Stipulation, ¶ 48.)

Class Member may object to the Settlement by submitting a Notice of Objection to the Settlement Administrator by the Response Deadline in compliance with the Class Notice. (Stipulation, ¶ 49.) A Class Member may exclude him or herself from the Settlement by sending a Request for Exclusion to the Settlement Administrator by the Response Deadline in compliance with the Class Notice. (Stipulation, ¶ 50.)

The Settlement Administrator will determine the Individual Settlement Payment for each Participating Settlement Class Member and the PAGA Distribution for each Member of the

PAGA Group according to the following formulas:

a. **The Settlement Class**. The Net Settlement Amount will be divided among all Participating Settlement Class Members. Each Participating Settlement Class Member will receive a proportionate share that is equal to (a) the number of Compensable Workweeks he or she worked during Class Period, divided by (b) the total number of Compensable Workweeks worked by all Participating Settlement Class Members during the Class Period (Stipulation, ¶ 52a);

b. **The PAGA Group**. The PAGA Distribution will be divided among all Members of the PAGA Group. Each PAGA Group Member will receive a proportionate share that is equal to (a) the number of Compensable Workweeks he or she worked during the PAGA Period, divided by (b) the total number of Compensable Workweeks worked by all PAGA Group Members during the PAGA Period (Stipulation, ¶ 52b.).

The Settlement Administrator will determine the gross wages for each Class Member. (Stipulation, ¶ 46.) Any dispute over a Class or PAGA Group Member's Compensable Workweeks that is not resolved by the Settlement Administrator will be resolved by the court at the Final Approval hearing. (Stipulation, ¶ 53.)

E. Contents of the Settlement Notice

The Settlement Notice includes the following information: (1) information regarding the nature of the Action; (2) a summary of the Settlement's principal terms; (3) The Settlement Class and PAGA Group definitions; (4) the total number of Compensable Workweeks each Member of the Settlement Class and PAGA Group worked during their respective periods; (5) the formula for calculating Individual Settlement Payments and PAGA Distributions for each Member of the Settlement Class and PAGA Group; (6) the estimated Individual Settlement Payment and PAGA Distribution for each Member of the Settlement Class and PAGA Group; the dates comprising the Class Period and PAGA Period; (8) instructions on how to submit a Request for Exclusion or Notice of Objection; (9) the Response Deadline by which the Members of the Settlement Class must postmark a Request for Exclusion or a Notice of Objection; and

(10) a statement that Settlement Class Members will not be required to submit a claim form in order to receive their individual share of the Settlement. (Stipulation, ¶ 46.)

V. Argument

A. The Court Should Grant Preliminary Approval of the Proposed Settlement

Review of a proposed class action settlement is a two-step process. The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is "within the range of possible approval." (*Armstrong v. Bd. of Sch. Directors of City of Milwaukee* (7th Cir. 1980) 616 F.2d 305, 314, overruled on other grounds by *Felzen v. Andreas* (7th Cir. 1998) 134 F.3d 873, 875.) This hearing is not a fairness hearing; rather, its purpose is to ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing. *Id*. Additionally, Labor Code section 2699, subdivision (l)(2) requires court approval of a PAGA settlement. As the proposed Settlement is within the range of possible approval, the court should grant preliminary approval.

1. The Proposed Settlement is Entitled to a Presumption of Fairness

A presumption of fairness exists where: (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. (*In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723; *7-Eleven Owners for Fair Franchising v. Southland Corp*. (2000) 85 Cal.App.4th 1135, 1146.) As the proposed Settlement was reached through arm's-length negotiations, sufficient investigation and discovery allowed Falchetti Law Firm to act intelligently, and Falchetti Law Firm is experienced in such actions, the proposed Settlement is entitled to a presumption of fairness.[3]

a. <u>The Proposed Settlement was Reached Through Arm's Length Bargaining.</u>

The Settlement was reached following extensive negotiations following a full-day private

[3] At preliminary approval, the fourth factor – the percentage of objectors – is not applicable, as notice has not yet been provided to the Class and the Class Members have not yet had an opportunity to object.

mediation with an experienced mediator. (Falchetti Decl. ¶ 9.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.* at ¶11) The Parties went into mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate its position through trial and appeal if a settlement was not reached. *Ibid.*

b. Plaintiff Conducted Sufficient Investigation and Informal Discovery to Allow the Court and the Parties to Act Intelligently.

Prior to mediation, Falchetti Law Firm interviewed Plaintiff at length and investigated, researched Plaintiff's claims and the potential defenses, obtained, inter alia, defendant's wage and hour policies, meal and rest break policies, settlement class members' payroll information and wage statements, and a representative sampling of class members' time and payroll records, which was analyzed by Plaintiff's expert and formed the basis of a damages model for use at the mediation. (*Id*. at ¶8.) Based on this work, Falchetti Law Firm was able to act intelligently and effectively in negotiating the proposed settlement. (*Ibid*.)

c. Falchetti Law Firm Has Extensive Experience in Class Action Litigation

The settlement negotiations were conducted by highly capable and experienced counsel. Ms. Falchetti is a respected members of the bar with a strong record of vigorous and effective advocacy for her clients, experienced in handling complex wage-and-hour class action litigation. Although Plaintiff and Falchetti Law Firm were prepared to litigate this Action, they support the proposed Settlement as being in the best interests of the Class Members. (*Id.* at ¶ 26.)

2. The Proposed Settlement is Fair, Adequate, and Reasonable

The trial court has "broad discretion to determine "whether a settlement [is] fair and reasonable." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389. In order to determine whether a class settlement is fair, adequate, and reasonable, courts must be provided with "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133; *Clark v. American Residential Services*, *LLC* (2009) 175 Cal.App.4th 785, 802-803.) A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement need to recoup the maximum amount of damages available to be found fair and reasonable. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 246, 250, disapproved on other grounds in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 270.)

In considering whether a settlement is reasonable, the trial court should consider relevant factors, which may include the strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. (*Kullar*, 168 Cal.App.4th at 128.) In order to approve a class action settlement, the court must satisfy itself that the class settlement is within the "ballpark" of reasonableness. (*Id*. at 133.) Falchetti Law Firm has satisfied the so-called "*Kullar* analysis" by providing the court with a detailed evaluation of the maximum potential damages and penalties of the claims that were alleged in this matter: $1,233,733.01, as well as the material litigation risks and considerations that support the reasonableness of the proposed settlement. (Falchetti Decl. ¶23.)

The proposed Settlement is fair, adequate, and reasonable based on a number of factors: (1) proving the amount of wages due to each Class Member would be an expensive, time-consuming, and uncertain proposition; (2) the court may deny class certification; (3) the court may reduce the amount of PAGA penalties under Labor Code section 2699(e)(1), which authorizes a court to exercise discretion in assessing a civil penalty; (4) continued litigation would very likely reduce and substantially delay recovery by Class Members; (5) a legitimate controversy exists as to each cause of action; and (6) Class Members will receive timely relief, substantial compensation, and avoid the risk of an unfavorable judgment and the likelihood of an appeal which would delay resolution of the Action for approximately one and one-half years. (*Id.*

at ¶ 13.)

The Settlement Agreement yields approximately 81 Class Members with a significant average financial recovery of approximately **$874.34**. (*Id*. at ¶13.) In sum, when the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, and the probability of appeal of a favorable judgment are considered, it is clear that the $**166, 224.00** non-reversionary Settlement is within the "ballpark" of reasonableness and in the best interests of the Class and PAGA Members. (*Id.* at ¶17.)

B. The Proposed Class Notice is an Appropriate Form of Giving Notice to the Class and Satisfies Due Process

The proposed Class Notice will be sent to Class Members in a timely fashion via first-class United States mail and provides all the information a reasonable person would need to make a fully informed decision about the Settlement Agreement. (Stipulation, ¶47; Ex. A.) The Class Notice summarizes the Action, explains the terms and conditions of the Settlement, informs Class Members of their rights and options and that each Class Member will receive an Individual Settlement Payment unless he or she opts out of the settlement. Stipulation, Ex. A. As such, the Class Notice comports with the requirements of California Rules of Court, Rules 3.769 and 3.766. "The principal purpose of notice to the class is the protection of the integrity of the class action process." (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 970.) The notice "'must fairly apprise the class members of the terms of the proposed compromise and of the options open to the dissenting class members.'" (*Wershba,* 91 Cal.App.4th at 224, 251.) Additionally, the notice given should have a reasonable chance of reaching a substantial percentage of the class members. (*Cartt* 50 Cal.App.3d at 974.) However, there is no statutory or due process requirement that all class members receive action notice. (*Ibid*.)

The proposed notice plan in this matter is consistent with class notices approved in state courts, is the best notice practicable, and the method of dissemination is likely to give the best actual notice to the greatest number of Class Members. Individual notice by mail is preferred when possible and dissemination of combined certification/settlement notice is a common and accepted practice. (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820, 828.) Accordingly, the proposed Class Notice is an appropriate form of giving notice to the greatest number of class members and should be approved by the Court.

C. The Court Should Certify the Class for Settlement Purposes Only

Code of Civil Procedure section 382 provides that three basic requirements must be met in order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined community of interest in the question of law or fact affecting the parties to be represented; and (3) certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class is superior to other methods. (*Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1089; *see also Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) Courts utilize a less stringent standard for class certification during settlement. (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859.) The reason: "no trial is anticipated in a settlement class case, so the case management issues inherent in the ascertainable class determination need not be confronted." (*Id*.)

1. The Class is Ascertainable and Sufficiently Numerous.

To determine whether a class is ascertainable, courts looks at: (1) the class definition; (2) the size of the class; and (3) the means available for identifying class members. (*Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal.App.3d 1263, 1271; *Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919 (class members are ascertainable where "they may be readily identified without unreasonable expense or time by reference to official [or business] records.").) Here, the Class is objectively defined, and Class Members can be identified through Defendant's personnel records. (Falchetti Decl. ¶ 5; Stipulation, ¶¶ 27, 51.) The Class is also sufficiently numerous. In California, no set number is required as a matter of law for the maintenance of a class action. (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934 [finding that class of 42 was sufficiently numerous].) Here, the Class is comprised of approximately 81 persons. (Falchetti Decl. ¶ 5.) Thus, the ascertainability requirement is satisfied and the Class is sufficiently numerous.

2. The Proposed Class Shares a Well-Defined Community of Interest.

The community of interest requirement embodies three factors: (1) predominant questions of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1806; *Richmond v. Dart Indus. Inc.* (1981) 29 Cal.3d 462, 473-475.) In this case, all three factors are met.

a. <u>Common Issues of Law and Fact Predominate Over Individual Issues.</u>

The commonality criterion requires the existence of common question of law or fact and is generally established with the issues of predominance and typicality. (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 713-14.) All that is required is a common question of fact or law exists which predominates over issues unique to individual plaintiffs. The existence of individual issues or facts is not a bar to class certification as long as they do not render class litigation unmanageable or predominate over the common issues. (*B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1354 ("presence of individual damages issues cannot bar certification").)

Plaintiff's claims present common issues of law and fact that predominate over individual issues and thus warrant class certification. Among other things, Plaintiff alleges that Defendants failed to provide timely, uninterrupted, and duty-free meal breaks and rest breaks, particularly in their systemic failure to provide any rest breaks at all or set forth any policy thereto according to our interviews of a number of current and former employees. (Falchetti Decl. ¶ 19.) Plaintiff further alleges that Defendants failed to pay premium payments for non-provision of compliant meal and rest breaks, failed to reimburse employees for shoes and pants as part of their uniform as well as the use of their cell phones to communicate during work hours, failed to compensate for all hours worked, and failed to provide compliant itemized wage statements. Plaintiff further alleges that these violations were the result of policies and practices that were applied uniformly to Plaintiff and other non-exempt employees. (Falchetti Decl. ¶8.) Thus, class treatment is appropriate.

b. <u>Plaintiff's Claims Are Typical of the Class's Claims.</u>

To satisfy the typicality requirement, California law does not require that Plaintiff have claims identical to the other class members. Rather, the test of typicality for a class representative is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiff, and whether other class members have been injured by the same course of conduct. (*Seastrom v. Neways, Inc*. (2007) 149 Cal.App.4th 1496, 1502.) The typicality requirement for a class representative refers to the nature of the claim or defense of the representative, and not to the specific facts from which it arose or the relief sought. *Id*. As Plaintiff and other Class Members' claims are based on the same legal theories as stated above, and arise out of the same unlawful policies and practices, the typicality requirement is satisfied.

c. <u>Plaintiff and Falchetti Law Firm Will Fairly and Adequately Represent the Class.</u>

The question of adequacy of representation "depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests of the class." (*McGee v. Bank of America* (1976) 60 Cal.App.3d 422, 450.) Here, Falchetti Law Firm and its attorney Sandra Falchetti are well-qualified and experienced in wage-and-hour class action litigation. (Falchetti Decl. ¶¶ 26.) Furthermore, because Plaintiff's claims are typical of those of the other Class Members, and are not based on unique circumstances that might jeopardize the Class's claims, there is no antagonism of interests between Plaintiff and the Class. Therefore, the adequacy requirement is satisfied.

3. Proceeding as a Class Action Is Superior to Individual Actions.

Under the circumstances, proceeding as a class action is a superior means of resolving this dispute, as the Class Members will derive substantial benefits. (Falchetti Decl. ¶ 20.) Class certification would serve as the only practical means to deter and redress the alleged Labor Code violations. (*Linder v. Thrifty Oil Co*. (2000) 23 Cal.4th 429, 434 (relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress the alleged wrongdoing).) In the absence of a class mechanism, it is unlikely that Class Members would pursue their claims individually or have sufficient resources to do so given the relatively modest potential recovery compared to the burden and expense of litigation. Furthermore, individual actions arising out of the same operative facts would unduly burden the courts and could produce inconsistent results, which may be avoided by proceeding on a collective basis.

D. Plaintiff's Incentive Award is Reasonable

Plaintiffs in class action lawsuits are eligible for reasonable service payments as compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz v. BCI Coca-Cola Bottling Company of Los Angeles* (2010) 186 Cal.App.4th 399, 412.) Here, the Settlement Agreement provides for a Class Representative Incentive Award not to exceed $5,000.00 to Plaintiff. (Stipulation, ¶62-63.) The requested award is reasonable according to controlling and persuasive case law. (*See Clark,* 175 Cal.App.4th at 805-806.) The payment is intended to recognize the time, effort, risks and waiver of rights that Plaintiff undertook on behalf of the Class. (Falchetti Decl. ¶¶ 19-22.)

Throughout the litigation, Plaintiff cooperated with her counsel and took actions to protect the interests of the Class. (*Id.* at ¶19.) Plaintiff provided valuable information and documents regarding Defendants' meal period and rest period practices, potential witnesses, Defendants' reimbursement practices, and Defendants' failure to pay all wages. *Ibid.* Plaintiff remained in regular and consistent contact with her counsel throughout the pre-litigation investigation, the litigation itself, and the settlement process, collecting and providing responsive documents in her possession, reviewing documents, coordinating with potential witnesses, furnishing salient information to assist in the prosecution of the Action, keeping informed of developments in the Action, making herself available to her attorneys and for the mediation, and reviewing the Settlement Agreement. (*Ibid.*; Declaration of Erika Gonzalez, ¶ 7.) The information and documentation provided by Plaintiff was instrumental in establishing the wage and hour violations alleged in this action, and the recovery provided for in the Settlement Agreement would have been impossible to obtain without her active participation. (*Ibid.)*

Plaintiff also faced many risks in bringing this lawsuit as a class action, given the efforts and time off she has taken to pursue this case.(*Id.* at ¶ 20; Gonzalez Decl. ¶ 13.) Additionally, as a result of acting as the Class Representative, Plaintiff may face reputational risk among potential future employers that could adversely impact her future job opportunities because she may be viewed as litigious. (*Id.* at ¶ 21 Gonzalez Decl.¶ 13.) Because of her efforts, approximately 81 Class Members will now have the opportunity to participate in a settlement and to recover substantial payments for wage violations they may have never known about on their own or been willing to pursue on their own. (*Ibid.*) If each Class Member attempted to pursue his or her legal remedies individually, each person would have been required to expend a significant amount of his or her own monetary resources and time. (*Ibid.*)

Furthermore, Plaintiff will agree to a broader release than other Class Members and a waiver of Civil Code section 1542. (Stipulation, ¶45; Gonzalez Decl. ¶ 10.) This release is not intended to release claims in a separate FEHA-related matter that has already been resolved and for which payment is still pending. In sum, this action would not have been possible without the aid of Plaintiff, who put her own time and efforts into the litigation, and placed herself at risk for the sake of the other Class Members. (Falchetti Decl. ¶ 21.) The requested award is therefore reasonable to compensate Plaintiff for her instrumental participation in this Action. *Ibid.*

E. The Requested Attorneys' Fees and Costs are Reasonable

The Settlement Agreement provides for attorney fees to Falchetti Law Firm in an amount not to exceed one-third of the Gross Fund Value for a maximum fee award of $55,402.46, plus an award of actual costs which are currently estimated to be under $25,000.00. (Stipulation, ¶54; Falchetti Decl. ¶23.) Plaintiff requests attorney fees pursuant to the "common fund theory."

A request for attorneys' fees as a percentage of the settlement amount is supported by the common fund theory, where "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." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 35 [quoting *Quinn v. State of California* (1975) 15 Cal.3d 162, 167].) The percentage is properly based upon the gross settlement rather than on the amount of claims made. (*Williams v. MGM-Pathe Communications Co*. (9th Cir. 1997) 129 F.3d 1026, 1027.)

The purpose of the common fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Schwartz Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. In *Quinn,* 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 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, 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." (fn. omitted.)

The lodestar analysis may be used to cross-check percentage-of-recovery award. (*See In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 556-558.) However, in a recent case involving an objection to a one-third percentage-based recovery in a $19 million employment class action lawsuit, the Supreme Court of California clarified that:

> [W]hen an attorney fee is awarded out of the common fund preserved or recovered by means of litigation [citation], the award is not per se unreasonable merely because it is calculated as a percentage of the common fund.

(Laffitte v. Robert Half Intern, Inc. (2016) 1 Cal.4th 480, 486.) The Court further held that ". . . trial courts have discretion to conduct a lodestar cross-check on a percentage fee . . . [and] also retain the *discretion to forego a lodestar cross-check* and use other means to evaluate the reasonableness of a requested percentage fee." (*Id*. at 506, emphasis added.)

Indeed, several courts have expressed frustration with the alternative "lodestar" approach for deciding fees, which usually involves wading through voluminous and often indecipherable time records. (See, e.g., *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F. Supp. 1373, 1375.) The percentage approach is preferable to the lodestar because: (1) it provides predictability to class counsel and class members; (2) encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) reduces the demands on judicial records. (*Id.* at 1378-79.)

In fact, "[a] task force commissioned by the Third Circuit concluded that the lodestar approach" had numerous deficiencies including "(1) increas[ing] the workload of an already overtaxed judicial system, (2) is insufficiently objective and produces results that are far from homogenous, (3) creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law, (4) is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the Claimants or of an overall dollar amount, (5) encourages lawyers to expend excessive hours, and engage in duplicative and unjustified work, (6) creates a disincentive for the early settlement of cases, (7) deprives trial courts of flexibility to reward or deter lawyers so that desirable objectives, such as early settlement, will be fostered, (8) works to the particular disadvantage of the public interest bar, and (9) results in confusion and lack of predictability." (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 28 (citations and quotation marks omitted).) As the *Lealo* court noted, the Third Circuit Task Force concluded that "the lodestar technique is a 'cumbersome, enervating, and often surrealistic process of preparing and evaluating fee petitions that now plagues the Bench and Bar' and recommended a return to the percentage of the recovery fee formula in cases involving a settlement fund." (*Id.* at 28.)

The percentage of attorneys' fees set forth in the Settlement Agreement, 33.33% of the Gross Fund Value or common fund, is reasonable. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. Newberg on Class Actions (4th Ed. 2002) §14:6. California and federal courts have long recognized that a percentage of recovery for attorneys' fees is properly awarded on the basis of the total value. (*Boeing v. Van Gemert* (1980) 444 U.S. 472, 480-481; see also *Consumer Privacy Cases*, 175 Cal.App.4th at 558, fn.) 13 ["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." (emphasis added.)][4]

The requested fee percentage is less than that charged by Falchetti Law Firm for other employment cases and is in line with the one-third recovery that has been recognized as standard for class actions in California. (Falchetti Decl. ¶ 23) Additionally, Falchetti Law Firm invested

[4] Attorney fee applications in California class actions based upon a percentage of the common fund also have substantial support in the Ninth Circuit Court of Appeals and other federal courts. See, e.g., *Paul, Johnson, Alston & Hunt v. Graulty* (9th Cir. 1989) 886 F.2d 268, 272; *Camden I Condominium Ass'n v. Dunkle* (11th Cir. 1991) 946 F.2d 768, 774; *Swedish Hosp. Corp. v. Shalala* (D.C. Cir. 1993) 1 F.3d 1261, 1271.

significant time into the Action – over one and one-half years since the date that Plaintiff retained Falchetti Law Firm in April 2024 – with payment deferred to the end of the case, and then, of course, contingent on the outcome. (*Id.* at ¶¶ 24-25.) Falchetti Law Firm's work has resulted in substantial benefits to Class Members in the form of a significant settlement fund established to compensate Class Members for Defendants' alleged unlawful wage and hour practices. (*Ibid.*) It is a virtual certainty that without Falchetti Law Firm's efforts, Class Members would not have received any monetary recovery. (*Ibid.*)

VI. Conclusion

For the reasons set forth above, Plaintiff respectfully requests that the court: (1) grant preliminary approval of the Settlement Agreement; (2) provisionally certify the Class for settlement purposes only; (3) appoint Plaintiff as the Class Representative; (4) appoint Falchetti Law Firm PC as Class Counsel; (5) appoint CPT Group as the Settlement Administrator; (6) approve the proposed Class Notice and the plan for distribution; and (7) schedule a final fairness hearing.

Note Regarding Execution: The parties have finalized the Settlement Agreement through counsel. At the time of filing, Defendants' signature is pending. Plaintiff will promptly lodge the fully executed version upon receipt.

Date: May 18, 2026

Respectfully submitted,
FALCHETTI LAW FIRM, PC

By: ______________________
SANDRA M. FALCHETTI

Attorneys for Plaintiff
ERIKA GONZALEZ, individually, and on behalf of others similarly situated