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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GENESIS AGUILAR, individually, and on behalf of all others similarly situated, *Plaintiff*, vs. LEGACY HEALTHCARE CENTER, LLC, a limited liability company; and DOES 1 through 10, inclusive, *Defendants*.	Case No.: 24STCV22000 [Honorable Laura A. Seigle, Department 17] **PLAINTIFF GENESIS AGUILAR'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AGREEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** [Filed with the Declaration of Kane Moon, Declaration of Plaintiff Genesis Aguilar, and [Proposed] Order] <u>PRELIMINARY APPROVAL HEARING</u> Date: September 11, 2025 Time: 9:00 a.m. Dept: 17 Complaint Filed: August 28, 2024 Trial Date: Not Set

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

PLEASE TAKE NOTICE that on September 11, 2025, at 9:00 a.m., in Department 17 of the Superior Court of the State of California, County of Los Angeles, located at the Spring Street Courthouse, 312 North Spring Street, Los Angeles, California 90012, pursuant to California Code of Civil Procedure section 382, California Rules of Court rules 3.769, *et seq*., and California Labor Code sections 2699, *et seq*., Plaintiff Genesis Aguilar ("Plaintiff") will move the Court for an Order granting preliminary approval of the Joint Stipulation of Class and Representative Action Settlement Agreement ("Settlement") between Plaintiff and Defendant RG Legacy II, LLC, dba Pasadena Nursing Center. Plaintiff will also move the Court for an Order:

1. Certifying the putative Class for settlement purposes;
2. Approving the proposed Class Notice and plan for distribution of the Class Notice to the putative Class;
3. Appointing Plaintiff as Class Representative;
4. Appointing Moon Law Group, P.C. as Class Counsel;
5. Appointing ILYM Group, Inc. as Administrator; and
6. Scheduling a Final Approval Hearing.

The Motion will be based on this Notice, the attached Memorandum of Points and Authorities, the Declaration of Kane Moon, the Declaration of Plaintiff Genesis Aguilar, the records and files in this Action, and any other evidence or argument the Court may properly receive before or at the Hearing.

Respectfully submitted,

Dated: August 13, 2025

MOON LAW GROUP, P.C.

By:____________________

Kane Moon
Allen Feghali
Jacquelyne VanEmmerik

Attorneys for Plaintiff, *Genesis Aguilar*

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I. INTRODUCTION

Plaintiff Genesis Aguilar ("Plaintiff") moves the Court for preliminary approval of the Joint Stipulation of Class and Representative Action Settlement Agreement ("*Settlement*") between Plaintiff and Defendant RG Legacy II, LLC, dba Pasadena Nursing Center ("Defendant") (Plaintiff and Defendant, the "Parties"). The Settlement, which was reached after extensive discovery and analysis, and an arm's-length mediation, satisfies the criteria for settlement approval under California law and provides for substantial payments to approximately seven hundred twenty-one Class Members. (*Declaration of Kane Moon* ["*Moon Decl.*"], ¶ 2.) Plaintiff also moves the Court for certification of the putative Class and approval of the proposed Class Notice.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Relevant Procedural History

On August 24, 2024, Plaintiff submitted to the Labor and Workforce Development Agency ("LWDA"), and sent via certified mail to Defendant, a Notice of California Labor Code Violations ("Labor Code") and ("Notice") pursuant to Labor Code section 2699.3(a). (*Settlement*, ¶ 2.0.) A true and correct copy of the Notice is attached to the Declaration of Kane Moon as **Exhibit 1**. On August 28, 2024, Plaintiff filed a Class Action Complaint against Defendant, which alleged eight causes of action for violation of Labor Code and California Business and Professions Code. (*Id*. at ¶ 2.1.) On November 1, 2024, Plaintiff filed a First Amended Class and Representative Action Complaint against Defendant, which alleged an additional cause of action for civil penalties under the Private Attorney's General Act ("PAGA"). (*Id*. at ¶ 2.2.) On January 14, 2025, Plaintiff filed a Second Amended Class and Representative Action Complaint ("operative Complaint") against Defendant, which alleged specific damages for Plaintiff's individual causes of action. (*Id.* at ¶ 2.3.) On February 18, 2025, Plaintiff filed an Amendment to Complaint, which identified the fictitiously designated DOE 1 Defendant as RG Legacy II, LLC dba Pasadena Nursing Center. (*Id.* at ¶ 2.4.)

On April 10, 2025, Plaintiff submitted to the LWDA, and sent via certified mail to Defendant, an Amended Notice of Labor Code Violations and PAGA Penalties. A true and correct copy of the Notice is attached as **Exhibit 2**. On June 30, 2025, the Parties attempted to resolve the

Action through private mediation with experienced wage-and-hour class and representative action mediator, Michael Ludwig, Esq. (*Settlement*, ¶ 2.5.) A settlement in principle was reached the same day. (*Id*.) Prior to mediation, Plaintiff obtained, through informal discovery, a 100% sample of the time and corresponding payroll records of the Class, the employee handbook and policies in effect during the Class Period, and other data and documents. (*Id*. at ¶ 2.6.)

B. <u>The Parties</u>

Plaintiff worked for Defendant as an Activities Assistant from 2021 to 2023 and as an Activities Director from 2023 to 2024. (*Declaration of Plaintiff Genesis Aguilar* ["*Aguilar Decl.*"], ¶ 4.) Throughout her entire employment with Defendant, Plaintiff was classified as non-exempt; typically worked five days and forty hours per workweek; and was subjected to the same alleged unlawful labor practices as her coworkers. (*Id*. at ¶¶ 7-11.) Defendant, a limited liability company located in Pasadena, California, and is a nursing and rehabilitation center (*Moon Decl.*, ¶ 5.)

The Class includes all current and former non-exempt employees of Defendant who worked in the State of California from July 27, 2022, to June 30, 2025. (*Settlement*, ¶ 1.4.) The Aggrieved Employees include all current and former non-exempt employees of Defendant who worked in the State of California from April 10, 2024, to June 30, 2025. (*Id*. at ¶ 1.3.)

C. <u>Plaintiff's Claims</u>

The operative Complaint alleges Defendant, on a class and representative basis, systematically: Failed to Pay Minimum Wages [Labor Code §§ 204, 1194, 1194.2, and 1197]; Failed to Pay Overtime Compensation [Labor Code §§ 1194 and 1198]; Failed to Provide Meal Periods [Labor Code §§ 226.7 and 512]; Failed to Authorize and Permit Rest Breaks [Labor Code § 226.7]; Failed to Indemnify Necessary Business Expenses [Labor Code § 2802]; Failed to Timely Pay Final Wages at Termination [Labor Code §§ 201-203]; Failed to Provide Accurate Itemized Wage Statements [Labor Code § 226]; Engaged In Unfair Business Practices [Business and Professions Code §§ 17200, *et seq*.]; and Is Liable For Civil Penalties Under PAGA [Labor Code §§ 2699, *et seq*.]. (*Moon Decl.*, ¶ 7.)

D. <u>Defendant's Defenses</u>

Defendant denies the allegations in the operative Complaint, denies any failure to comply with the laws identified in the operative Complaint, and denies any and all liability for the causes of action alleged in the operative Complaint and Notice. (*Settlement*, ¶ 11.1.) First, Defendant asserts it complied with all compensation obligations, including by implementing policies and practices which prohibited and prevented off-the-clock work, and therefore, Plaintiff and other Class Members were paid all wages owed. (*Moon Decl.*, ¶ 8.)

Second, Defendant asserts it complied with all meal period and rest break obligations, including by implementing schedules, policies, and supervisory practices that consistently resulted in Class Members taking timely, uninterrupted, off-duty, and full meal periods and rest breaks, and thus, Plaintiff and other Class Members were provided the opportunity to take all code-compliant meal periods and rest breaks to which they were entitled. (*Moon Decl.*, ¶ 9.) Third, Defendant asserts it did not direct Class Members to make business-related purchases and that Class Members did not need to incur losses in direct discharge of their duties, and therefore, Plaintiff and other Class Members are not owed reimbursements for necessary business expenses. (*Id*.) Fourth, Defendant asserts it did not willfully fail to pay any wages, and thus, Plaintiff and other Class Members are not owed waiting time penalties for wages untimely paid at termination. (*Id*.; *See Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012) No. ED CV 11–298 GHK (DTBx), 2012 WL 9506073, *5.)

Fifth, Defendant asserts it complied with all wage statement requirements, and thus, Plaintiff and other Class Members suffered no actual damages or harm from inaccurate wage statements. (*See 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"]; *Moon Decl*., ¶ 10.) Sixth, Defendant denies further derivative liability on these bases, asserting it did not engage in unfair business practices and is not liable for civil penalties under PAGA. (*Id*.) Last, Defendant asserts Plaintiff's claims are individualized and denies that, for any purpose other than settlement, this Action is appropriate for class or representative treatment. (*Settlement*, ¶ 11.2.)

E. <u>Discovery, Analysis, and Settlement Negotiations</u>

In preparation for mediation, the Parties agreed to an informal exchange of data and documents. The exchange of data included, but was not limited to, the total number of putative Class Members and Aggrieved Employees, and the total number of Workweeks and Pay Periods worked by all putative Class Members and Aggrieved Employees during the Class and PAGA Periods. (*Moon Decl*., ¶ 11.) The exchange of documents included a one-hundred percent sample of the time and corresponding payroll records of the Class, the employee handbook and policies in effect during the Class Period, and other data and documents. (*Id*.)

These exchanges enabled Class Counsel and their expert to analyze, among other information, the minimum, overtime, meal period premium, and rest break premium wages and reimbursements received by Class Members during the Class Period, and compare the same to the minimum, overtime, meal period premium, and rest break premium wages and reimbursements to which Class Members were entitled during the Class Period pursuant to the Labor Code. (*Moon Decl*., ¶ 12.) In turn, this enabled Class Counsel and their expert to determine the violation rates for each cause of action, and thus, Defendant's maximum monetary exposure. (*Id*.) Defendant's maximum monetary exposure is detailed in Paragraph 45 of the Declaration of Kane Moon.

On June 30, 2025, the Parties attempted to resolve the Action through private mediation with experienced wage-and-hour class and representative action mediator, Michael Ludwig, Esq. (*Settlement*, ¶ 2.5.) A settlement in principle was reached the same day. (*Id*.)

F. <u>Material Terms of the Settlement</u>

The material terms of the Settlement are set out in the Parties' Joint Stipulation of Class and Representative Action Settlement Agreement. A true and correct copy of the Settlement is attached to the Declaration of Kane Moon as **<u>Exhibit 3</u>**. Class Counsel submitted the Settlement to the LWDA on August 13, 2025. A true and correct copy of the LWDA case record of this Action is attached to the Declaration of Kane Moon as **<u>Exhibit 4</u>**.

1. "Administrator" means ILYM Group, Inc., the neutral entity the Parties have designated to administer the Settlement. (*Settlement*, ¶ 1.1.)

2. "Administration Expenses Payment" means the court-approved amount allocated to the Administrator for reimbursement of its reasonable fees and expenses incurred to administer the Settlement, not to exceed $13,000.00. (*Id*. at ¶ 1.2.) A true and correct copy of ILYM Group Inc.'s bid to administer the Settlement is attached to the Declaration of Kane Moon as **<u>Exhibit 5</u>**.

3. Class Certification. The Parties stipulate to class certification for Settlement purposes only. (*Settlement*, ¶ 11.2.)

4. "Class Counsel Fees Payment" means the court-approved amount allocated to Class Counsel for reimbursement of their reasonable fees incurred to prosecute the Action, not to exceed one-third of the Gross Settlement Amount (*Id*. at ¶ 1.6.)

5. "Class Counsel Expenses Payment" means the court-approved amount allocated to Class Counsel for reimbursement of their reasonable expenses incurred to prosecute the Action, not to exceed $17,000.00. (*Id*. at ¶ 1.7.) A true and correct copy of Class Counsel's expenses to-date is attached to the Declaration of Kane Moon as **Exhibit 6**.

6. "Class Notice" means the court-approved Notice of Class and Representative Action Settlement Agreement and Final Approval Hearing to be mailed to Class Members in English and Spanish, substantially in the form attached to the Settlement as **Exhibit A** and incorporated by reference into this Agreement. (*Id*. at ¶ 1.11.)

7. "Class Representative Service Payment" means the court-approved payment allocated to the Class Representative for her service in support of the Action and General Release, not to exceed $7,500.00. (*Id*. at ¶ 1.14.)

8. "Effective Date" means the date both of the following have occurred: (a) the Court enters a Judgment on its Final Approval Order; and (b) the Judgment is final. The Judgment is final as of the latest of the following: (a) if no Participating Class Member timely objects to the Settlement, the day the Court enters the Judgment; (b) if one or more Participating Class Members object(s) to the Settlement and does not withdraw his or her objection, the day after the deadline for filing a Notice of Appeal of the Judgment; or (c) if a timely Appeal of the Judgment is filed, the day after the appellate court affirms the Judgment and issues a Remittitur. (Settlement, ¶ 1.18.)

9. Escalator Clause. It is estimated that there are 10,000 Workweeks during the Class Period. If the actual number of Workweeks during the Class Period exceeds 10,000 by more than 10%, Defendant shall have the option of (a) increasing the Gross Settlement Amount by the percentage increase in the number of Workweeks worked by the Class Members above 10% (e.g. if the number of Workweeks increases by 11%, the Gross Settlement Amount will increase by 1%); or (b) rolling back the Class and PAGA Periods to the date in which 10,000 Workweeks is met. Defendant shall be prepared to inform the Court of its selection at the Preliminary Approval Hearing. If Defendant exercises option (b), it shall also be prepared to inform the Court of the Class Period end date at the Preliminary Approval Hearing. (*Settlement*, ¶ 7.0.)

10. Funding of Gross Settlement Amount. The Gross Settlement Amount and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments shall be fully funded by transmission of such funds to the Administrator within thirty (30) calendar days of the Effective Date. (*Id*. at ¶ 4.0.)

11. "Gross Settlement Amount" means $225,000.00, the total amount Defendant agrees to pay under the Settlement, except as provided in Paragraph 7.0. The Gross Settlement Amount will pay the Individual Class Payments, Individual PAGA Payments, LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment, Class Representative Service Payment, and Administration Expenses Payment. (*Id*. at ¶ 1.22.)

12. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount, calculated according to the number of Workweeks he or she worked during the Class Period. (*Id*. at ¶ 1.23.)

13. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 35% of the PAGA Penalties allocated pursuant to Labor Code section 2699(m) and calculated according to the number of PAGA Pay Periods he or

she worked during the PAGA Period. (*Settlement*, ¶ 1.24.)

14. "LWDA PAGA Payment" means the LWDA's 65% share of the PAGA Penalties, allocated pursuant to Labor Code section 2699(m). (*Id*. at ¶ 1.26.)

15. "Net Settlement Amount" means the Gross Settlement Amount less the following court-approved payments: Individual PAGA Payments, LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment, Class Representative Service Payment, and Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments. (*Id*. at ¶ 1.27.)

16. Non-reversionary. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. (*Id*. at ¶ 3.0.) None of the Gross Settlement Amount will revert to Defendant. (*Id*.)

17. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount in settlement of the Released PAGA claims, not to exceed $15,000.00. (*Id*. at ¶ 1.34.)

18. Release by Participating Class Members: All Participating Class Members fully and finally release and discharge the Released Parties from any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, damages, actions or causes of action of whatever kind or nature, contingent or accrued, that were allegedly or that reasonably could have been alleged based on the facts alleged in the Action, as amended, that accrued in, or are related to the allegations in the Action, under federal, state, and/or local law. This release includes, without limitation, release of all claims alleged in the Action and under state law for alleged failure to pay minimum wages, failure to pay overtime, failure to provide meal periods, failure to authorize and permit rest breaks, failure to indemnify necessary business expenses, failure to pay all unpaid wages at termination, failure to provide accurate itemized wage

statements, any violations of Business and Professions Code § 17200, *et seq.*, and statutory penalties based on the foregoing (collectively, the "Released Class Claims") (*Settlement*, ¶ 5.1.)

(a) The Released Class Claims exclude claims not permitted by law and are limited to claims arising during the Class Period. (*Id*. at ¶ 5.1.1.)

19. Release by Aggrieved Employees: All Aggrieved Employees fully and finally release and discharge the Released Parties from any and all claims for civil penalties, and attorneys' fees and costs, under PAGA that were alleged or that reasonably could have been alleged based on the facts alleged in the First Amended Class and Representative Action Complaint or PAGA Notice, including, but not limited to, 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 pay all unpaid wages at termination, and failure to provide accurate itemized wage statements (collectively, "Released PAGA Claims"). (*Id*. at ¶ 5.2.)

(a) The Released PAGA Claims are limited to claims arising during the PAGA Period. In light of the binding nature of a PAGA judgment on non-party employees under *Arias v. Sup. Ct. (Angelo Dairy)* (2009) 46 Cal.4th. 969 and *Cardenas v. McLane Foodservice, Inc.* (2011) 796 F.Supp.2d 1246, individuals otherwise meeting the definition of an Aggrieved Employee who are eligible to receive an Individual PAGA Payment shall be deemed to have released the Released PAGA Claims, regardless of whether their check for the Individual PAGA Payment is chased or not, and regardless of whether they are a Non-Participating Class Member. (*Id*. at ¶ 5.2.1.)

20. "Released Parties" means Defendant and all of its present and former members, parent companies, subsidiaries, affiliates, joint venturers, and licensees, and all of their shareholders, officers, directors, employees, agents, servants, registered

representatives, attorneys, insurers, successors and assigns, and any other persons acting under them. (*Settlement*, ¶ 1.40.)

21. "Response Deadline" means forty-five (45) calendar days from the date the Administrator mails the Class Notice to the Class and shall be the last date on which Class Members may: (a) mail a Request for Exclusion from the Settlement; or (b) mail an Objection to the Settlement. (*Id*. at ¶ 1.41.)

22. Tax Allocation. Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to the settlement of claims for wages. Eighty percent (80%) of each Participating Class Member's Individual Class Payment will be allocated to the settlement of claims for interest and penalties. (*Id*. at ¶ 3.1.3.2.) One hundred percent (100%) of each Individual PAGA Payment will be allocated as penalties. (*Id*. at ¶ 3.1.4.2.)

23. Unpaid Residue. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, or for any Class Member whose envelope is returned and no forwarding address can be located for the Class Member after reasonable efforts have been made, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure ("CCP") section 384(b). (*Id*. at ¶ 4.1.3.)

III. THE SETTLEMENT MERITS PRELIMINARY APPROVAL

A. The Circumstances Of The Settlement Support Preliminary Approval

The circumstances of the Settlement support preliminary approval for the following reasons: First, the law favors the settlement of lawsuits, particularly in class actions and other complex cases. Here, the Settlement resolves a putative class and representative action. (*See e.g., Neary v. Regents of Univ. of California* (1992) 3 Cal.4th 272, 277-81.)

Second, the law favors a discretionary finding that a settlement is fair and reasonable when the settlement terms indicate fairness and reasonableness on balance of the following factors: (1) the strength of the 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 amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. (*See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-1801; *see also Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) The law also favors a discretionary finding that a settlement is fair and reasonable when the settlement is within the ballpark of fairness and reasonableness. (*Kullar*, 168 Cal.App.4th at 133; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-409 [holding that *Kullar* requires only an "understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."].)

Here, the Settlement terms indicate fairness and reasonableness on balance of the above factors. For example, Plaintiff has strong claims supported by the one-hundred percent sample of the time and corresponding payroll records of all Class Members from July 27, 2022, through May 1, 2025; the risk, expense, complexity, and likely duration of further litigation is high (*Settlement*, ¶¶ 11.1, 11.2); the consideration putative Class Members and Aggrieved Employees will receive for their releases is reasonable in light of the strengths and weaknesses of their claims (*Moon Decl*., ¶¶ 40-46); the amount of discovery completed was exhaustive (*Id*. at ¶¶ 11-13); Class and Defense Counsel are highly experienced in wage-and-hour class action litigation (*See, e.g., id*. at ¶¶ 48-58); and the Parties reached the Settlement with the mutual understanding that it is within the ballpark of fairness and reasonableness.

Last, a presumption of fairness and reasonableness is triggered when the following factors are present: (1) the investigation was sufficient to allow class counsel and the court to act intelligently; (2) the settlement was reached through arm's-length bargaining; (3) class counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk, supra*, 48 Cal.App.4th at p. 1800.) Here, the above factors are present, and therefore, this presumption is triggered:

1. <u>The Investigation Was Sufficient To Allow Class Counsel And The Court To Act Intelligently</u>

The investigation was sufficient to allow Class Counsel and the Court to act intelligently for two main reasons: First, the investigation was comprised of an exhaustive data analysis. The data analysis involved Class Counsel and their expert examining a one-hundred percent sample of the time and corresponding payroll records of all Class Members from July 27, 2022, through May 1, 2025. These records, with other documents produced by Defendant and testimony by Plaintiff, enabled Class Counsel to determine and/or make fact-based assumptions about the following information: the total number of shifts worked by all Class Members; the average hourly rate of pay, average hourly regular rate of pay, and average overtime rate of pay of all Class Members; the total amount of minimum, overtime, meal period premium, and rest break premium wages paid, underpaid, and not paid to Class Members; the total amount of reimbursements made and not made to Class Members; the total number of code-compliant meal periods and rest breaks that were taken, missed, short, and/or not taken by Class Members; the dates on which Class Members were paid, including the dates on which terminated Class Members were paid their final paychecks; and the accuracy and completeness of the wage statements issued to Class Members. This information enabled Class Counsel to approximate Defendant's maximum monetary exposure for all claims, in the event Plaintiff prevailed on all claims at trial, including all claims for unpaid minimum, overtime, meal period premium, and rest break premium wages, unreimbursed expenses, and statutory and civil penalties. At mediation, Class Counsel used Defendant's maximum monetary exposure as the upper limit of a fair and reasonable settlement.

Second, the investigation was comprised of a comprehensive evaluation of all factors reasonably affecting full recovery of Defendant's maximum monetary exposure, or Defendant's maximum potential liability, including, but not limited to, the evidence supporting Plaintiff's claims; the evidence supporting Defendant's defenses; the risks, expenses, and length of further litigation, including the class certification and appeal processes; the present state of the law as it applies to wage-and-hour class actions; the present value of the Settlement versus the long wait necessitated by any potential judgment in the Class' favor; and the burdens of proof necessary to establish liability against Defendant. This evaluation resulted in Class Counsel reasonably reducing Defendant's maximum monetary exposure, such that each claim was lowered in proportion to the presumed effect of any applicable mitigating factors. For example, the estimated risk-inclusive exposure for the unpaid wages claim due to unpaid off-the-clock work is $7,572.75, which reflects a 95% discount; for the meal period claim is $107,701.00, which reflects an 80% discount; for the rest break claim is $28,238.15 which reflects a 95% discount; for the unreimbursed expenses claim is $3,801.60, which reflects a 95% discount; and for all derivative statutory and civil penalty claims is $128,022.21, which reflects a 97% discount. The total projected reasonable recovery was therefore $275,335.71. (*Moon Decl*., ¶¶ 40-46.) In the Settlement, the Parties stipulate to a Gross Settlement Amount of $225,000.00, which is 81.72 % of the total projected reasonable recovery. (*Id*. at ¶ 45.)

These facts support the assertion that the investigation was sufficient to allow Class Counsel and the Court to act intelligently, as they demonstrate the Gross Settlement Amount (1) was reached in view of an upper limit, which was calculated by Class Counsel and their expert according to the data and documents produced by Defendant; and (2) reflects a comprehensive comprise, which accounts for all conceivable, relevant risks and uncertainties. (*See, e.g*., *Viceral v. Mistras Grp., Inc*. (N.D. Cal. 2016) No. 15-cv-02198-EMC, 2016 WL 5907869 [approving wage-and-hour class action settlement amounting to 8.1% of potential damages]; *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 [approving settlement which represented "roughly one-sixth of the potential recovery."].)

2. <u>The Settlement Was Reached Through Arm's-Length Negotiations</u>

The Settlement was reached through arm's-length negotiations between the Parties at private mediation, which was presided over by experienced wage-and-hour class and representative action mediator Michael Ludwig, Esq. (*Moon Decl*., ¶¶ 11-13.) The Parties' use of a neutral to intermediate their disparate factual assertions, legal arguments, and valuations supports this fact. (*Kullar*, *supra*, 168 Cal.App.4th at p. 129 ["The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's length transaction..."].) The Parties' comprehensive exchange of informal discovery ahead of mediation supports the same because it shows the Settlement was based on evidence, rather than an arbitrary or collusive procedure. (*See Moon Decl*., ¶¶ 11-13.)

3. <u>Class Counsel Have Substantial Experience In Class Action Litigation</u>

Class Counsel have substantial experience, in both state and federal court, and in all facets of class action litigation, including discovery, law and motion practice, trial, appeals, arbitration, and mediation. (*Moon Decl*. ¶¶ 48-58.) For example, Class Counsel have litigated numerous wage-and-hour class actions on behalf of plaintiffs and have been lead counsel, or otherwise exercised significant case handling responsibilities in numerous cases, resulting in millions of dollars in class action settlements. (*Id*.) Class Counsel are, therefore, qualified to evaluate the strength of Plaintiff's claims, the strength of Defendant's defenses against certification and on the merits, and the fairness of the Settlement. (*See id*.)

4. <u>The Percentage Of Objections Is Likely To Be Small</u>

The percentage of objections to the Settlement is likely to be small, as the average recovery for each Class Member is considerable and reliable, given the arm's-length negotiations and experience of Class Counsel. (*Moon Decl*., ¶¶ 48-58; *see In re Lifelock, Inc. Marketing and Sales Practices Litigation* (D. Ariz. 2010) 2010 WL 3715138, *6 (relatively few objections and requests for exclusion support approval); *Kullar, supra*, 168 Cal.App.4th at p. 128 (among the factors to be considered in evaluating a class action settlement include "the reaction of the class members to the proposed settlement.")

The foregoing indicates that the Settlement is comprised of all factors which trigger a presumption of fairness and reasonableness. In addition, it indicates that other discretionary factors the court considers in making a finding of fairness and reasonableness are also present. On these bases, the Settlement merits preliminary approval.

B. <u>The Terms Of The Settlement Are Fair And Reasonable</u>

The terms of the Settlement, including the Class Counsel Fees Payment, Class Counsel Expenses Payment, and Class Representative Service Payment, are fair and reasonable for the reasons outlined below. (*See Wershba* v. *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 ["In general, questions of whether a settlement [is] fair and reasonable, whether certification of the class [is] proper, and whether the attorneys' fee award [is] proper are matters addressed to the trial court's broad discretion."].) The Class Counsel Fees Payment is not to exceed $75,000.00 or one-third of the Gross Settlement Amount; the Class Counsel Expenses Payment is not to exceed $17,000.00; and the Class Representative Service Payment is not to exceed $7,500.00. (*See Settlement*, ¶¶ 3.1, *et seq*.)

1. The Class Counsel Fees Payment Is Fair And Reasonable

The Class Counsel Fees Payment is fair and reasonable because it (1) was calculated using the common fund doctrine and aligns with leading treatises on awards calculated using the common fund doctrine, (2) comports with Labor Code section 2699(g); and (3) is commensurate with Class Counsel's significant experience, reputation, and ability in class action settlements.

a) The Class Counsel Fees Payment Was Calculated Using The Common Fund Doctrine And Aligns With Leading Treatises On Awards Calculated Using The Common Fund Doctrine

(i) The Common Fund Doctrine Is Applicable.

The common fund doctrine provides that, when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff for the benefit of all results in the creation or preservation of that fund, the plaintiff may be awarded attorneys' fees and costs out of the fund. (*Progressive West Ins. Co. v. Superior Court* (2005) 135 Cal.App.4th 263, 273.) The common fund doctrine is therefore applicable in class action settlements, as class action settlements produce a specific fund to which a number of persons are entitled in common and are the product of an action brought by a plaintiff for the benefit of a class. (*See Petrovic v. Amoco Oil Co.* (8th Cir. 1999) 200 F.3d 1140, 1153.)

(ii) The Common Fund Doctrine Is Favorable.

The common fund doctrine was recognized in *Quinn v. State of California* (1995) 15 Cal.3d 162 as the favorable method for calculating the attorneys' fees award in class actions. In *Quinn*, the California Supreme Court explained that the common fund doctrine promotes "…fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; and encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly…compensated should his efforts be successful." (*Quinn*, 15 Cal.3d at 162.) Even before *Quinn*, California Courts routinely used the common fund doctrine to determine a reasonable award of attorneys' fees. (*See*, *e.g., In re Pacific Enterprises Securities City and County of San Francisco Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79; *see also City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110 [recognizing 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"]; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769 [finding the common fund doctrine attempts to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone."].)

The common fund doctrine is also recognized as the favorable method for calculating the attorneys' fees award in class actions when compared to the alternative lodestar approach, which requires courts to wade through, oftentimes, voluminous and indecipherable time records to determine the reasonable hours expended by class counsel. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel opined in *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373: "This court is compelled to ask, 'Is this process necessary?' Under a cost-benefit analysis, the answer would be a resounding, 'No!' Not only do the *Lindy Kerr-Johnson* analyses consume an undue amount of court time with little resulting advantage to anyone, but in fact, it may be to the detriment of the Class Members" because it incentivizes counsel to expend unnecessary time and/or take superfluous action in litigation, prolonging a lawsuit to increase their prospective award. In contrast to the loadstar approach, the common fund doctrine encourages the efficient resolution of litigation by providing an incentive for early settlement, reducing the demands on judicial resources, and endorsing practice by experienced attorneys. (*Id*. at pp. 1378-79.)

(iii) The Class Counsel Fees Payment Aligns With Leading Treatises On Fee Awards Calculated Using the Common Fund Doctrine.

The Class Counsel Fees Payment aligns with leading treatises on fee awards calculated using the common fund doctrine, which concur that "[n]o general rule can be articulated on what is a reasonable percentage of a common fund. Usually, [fifty percent] of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (*See* Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03.) Here, the

Class Counsel Fees Payment is not to exceed $75,00.00 or one-third of the Gross Settlement Amount, which aligns with prevailing guidelines established in California case law and academic literature and is consistent with prior awards approved in California. (*Compare, Settlement*, ¶ 3.1.2 with *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."]; *see also Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F.Supp. 294 [stating that cases where 30-50 percent was awarded involved "smaller" settlement funds of under $10 million.].)

b) <u>The Class Counsel Fees Payment Comports With California Labor Code Section 2699(g)</u>

Labor Code section 2699(g) states: "any employee who prevails in any action shall be entitled to an award of reasonable attorneys' fees and costs." This fee-shifting provision reflects the understanding that counsel must accept significant risk of substantial expenses and consumption of time and other resources in litigating a PAGA action, and thus, that it is reasonable for counsel to recover reasonable fees and costs if successful in litigating the same. Notably, the reasonableness of an award is unaffected when the fees are larger than the total recovery for the aggrieved employees at the conclusion of the case because once counsel undertake the litigation, they are committed to pursuing the case to its conclusion, placing the fiduciary duty to the aggrieved employees ahead of all other concerns. Here, this Action arose, in part, under Labor Code sections 2699, *et seq*. Therefore, Labor Code section 2699(g) applies. The prosecution of this Action involved significant financial risk to Class Counsel, as they undertook this matter solely on a contingency basis, with no guarantee of recovery. (*Moon Decl*., ¶¶ 59-63.) The Class Counsel Fees Payment therefore comports with the fee-shifting provision of Labor Code section 2699(g).

c) <u>The Class Counsel Fees Payment Is Commensurate With Class Counsel's Significant Experience, Reputation, and Ability In Class Action Settlements</u>

Here, the experience, reputation, and ability of Class Counsel support the Class Counsel Fees Payment, as fees are generally awarded commensurate with the experience, reputation, and skill of counsel, and Class Counsel have significant and specific experience in litigating class and representative actions on behalf of employees. (*Moon Decl.*, ¶¶ 48-58.) Moreover, Class Counsel have been involved as lead or co-counsel in a multitude of class and representative actions resulting in beneficial results to class members in California. (*Id.*) This experience has familiarized Class Counsel with this rapidly evolving area of law, such that they possess significant expertise in this narrow field. (*Id.*)

2. <u>The Class Counsel Expenses Payment Is Fair And Reasonable</u>

The Class Counsel Expenses Payment is fair and reasonable because class counsel are entitled to recover the out-of-pocket litigation costs they reasonably incur in investigating, prosecuting, and settling a class and representative action, and the Class Counsel Expenses Payment reflects such costs. (*Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 974.) Here, Class Counsel has reasonably incurred $14,386.45 in litigation costs. Such costs were reasonably incurred because they were actually incurred and required to prosecute the Action. (*Moon Decl.*, Exhibit 6.) For example, they include, but are not limited to, the complaint filing fee and mediation fee. (*Id.*) The complaint filing fee was required for Plaintiff to initiate this Action, and the mediation fee facilitated the Parties' settlement discussions, which ultimately led to the Settlement. (*Id.*; *Settlement*, ¶ 2.5.) The Parties have agreed to reimbursement of litigation costs not to exceed $17,000.00, and any un-awarded litigation costs shall become part of the Net Settlement Amount for allocation to Participating Class Members. (*Settlement*, ¶ 3.1.2.)

3. <u>The Class Representative Service Payment Is Fair And Reasonable</u>

The Class Representative Service Payment is fair and reasonable, as named plaintiffs in class action lawsuits "are eligible for reasonable incentive payments to compensate them for the expense or risk they incur in conferring a benefit on other members of the class," and the Service Payment here is reasonable and compensate Plaintiff for the benefit she conferred on the Class. (*Munoz*, *supra*, 86 Cal.App.4th at 412; *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 806; *See In re Cont'l Ill. Sec. Litig*. (7th Cir. 1992) 962 F.2d 566, 571 ["Since without a named plaintiff there can be no class action, such compensation as may be necessary to induce him to participate in the suit could be thought the equivalent of the lawyers' nonlegal but essential case-specific expenses, such as longdistance phone calls, which are reimbursable".].) Here, Participating Class Members will receive an average payment of $135.23, equating to approximately 5.39 hours of work, based on their average hourly rates. (*Moon Decl*., ¶ 45.) In addition to this monetary benefit, Plaintiff has likely effectuated lawful wage-and-hour policies and practices at Pasadena Nursing Center from which currently employed Class Members are deriving benefit in the form of proper pay and working conditions.

Courts routinely approve class action settlement agreements containing enhancements for class representatives, acknowledging they are necessary to provide incentive to represent classes and appropriate given the benefit class representatives help bring about for the class. (*See Rodriguez v. W. Publ'g Corp*., (9th Cir. 2009) 563 F.3d 948, 958-59.) "[C]riteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation; and 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. (*In re Cellphone Fee Termination Cases*, (2010) 186 Cal.App.4th 1380, 1394-95.) Here, to bring about her goal of remediation and deterrence, Plaintiff had to initiate this Action and actively participate in its litigation for nearly a year, which should be fairly compensated given the classwide benefits.

Incentive awards are particularly important to plaintiffs in wage-and-hour cases because they (1) promote the important public policies underlying the wage-and-hour laws, and (2) compensate employees for the significant risk they face to their future employability. (*See* California Labor Code section 90.5(a) ["It is the policy of [the State of California] to vigorously enforce minimum labor standards [to] ensure employees are not required or permitted to work under substandard unlawful conditions or for employers that have not secured the payment of compensation, and to protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards."]; *Gentry v. Super. Ct.*, (2007) 42 Cal.4th 443, 460-61 [the California Supreme Court recognizing that "retaliation against employees for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes designed to protect employees]; *see also Frank v. Eastman Kodak Co.*, (W.D.N.Y. 2005) 228

F.R.D. 174, 187.) Here, Plaintiff's action promoted the State of California's explicit intention to protect hourly employees from underpayment, non-payment, and non-compliant working conditions, which further supports a fair enhancement award.

In light of the benefits she helped produce for the Class, the risks she undertook in pursuing this Action, the important public policy her efforts supported, and the time and work Plaintiff spent assisting Class Counsel in the case, Plaintiff should be awarded the full Service Payment of $7,500.00, which the Parties have agreed to under the Settlement. (*Moon Decl*., ¶¶ 65-68; *Settlement*, ¶ 3.1.1.; *see generally Aguilar Decl*.)

IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

A. Legal Standard

For the reasons set forth below, and for purposes of settlement, the Class satisfies the prerequisites for certification under the California Code of Civil Procedure section 382: that there be an ascertainable class; and that there 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.) There is an ascertainable class when: the class is identifiable, is numerous, and shares a well-defined community of interest. (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) There is a well-defined community of interest when there are predominant questions of law or fact; the class representative possesses claims or defenses typical of the class; and the class representative can adequately represent the class. (*Richmond v. Dart Indus., Inc.*, (1981) 29 Cal. 3d 462, 470.)

1. The Class Is Identifiable

Here, the Class is identifiable because its definition is precise and comprised of objective criteria rendering Class Members discernable. The objective criteria include the nature of the position held by the Class Member, i.e., non-exempt; the time period during which the Class Member held the position, i.e., July 27, 2022, through June 30, 2025; the state in which the Class Member worked, i.e., California; and the employer of the Class Member, i.e., Defendant. (*Settlement*, ¶ 1.4.) Such objective terms are sufficient for finding a class identifiable. (*See e.g., Wilner v. Sunset Life Ins. Co.*, (2000) 78 Cal.App.4th 952, 959-60.)

2. The Class Is Numerous

Here, the Class is numerous because it consists of an estimated seven hundred twenty-one Class Members, and such a class size has regularly been found sufficient for finding of numerosity. (*See e.g., id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574 ["Thus, our Supreme Court has upheld a class representing the ten beneficiaries of a trust in an action for removal of the trustees."]; *see Rose v. City of Hayward*, (1981) 126 Cal.App.3d 926, 934 ["The requirement of California Code of Civil Procedure section 382 that there be 'many' parties to a class action suit is indefinite and has been construed liberally"] ["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"] ["No set number is required as a matter of law for the maintenance of a class action."].)

3. <u>The Class Shares A Well-Defined Community Of Interest</u>

Here, the Class shares common questions of law and fact that predominate over individual issues. The questions of law and fact center around (1) whether Defendant had legally compliant policies and practices to: pay employees all wages owed; provide employees with code-compliant meal periods; authorize and permit its employees to take code-compliant rest breaks; and ensure reimbursement of all necessary business expenses incurred; (2) whether Defendant timely paid final wages to employees; and (3) whether Defendant had legally compliant wage statements. The operative Complaint establishes that all Class Members would need to answer these same questions of law and fact to prevail on their injuries; all Class Members have suffered from and seek redress for the same injuries; and all Class Members' legal remedies would be identical in the event they prevailed. Such is sufficient for finding a class shares common questions of law and fact. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605.)

Here also, the Class Representative has claims typical of the Class. A class representative has claims typical of the class when his or her claims arise from the same event, practice, or course of conduct, and if the claims rest on the same legal theories. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["The only requirements are that common questions of law and fact predominate and that the class representative be similarly situated" vis-à-vis the class."].) This is precisely the case here. Like all other Class Members, Plaintiff was a former non-exempt employee of Defendant; Plaintiff worked for Defendant in California; Plaintiff typically worked five days and forty hours per workweek; and

Plaintiff was subjected to the employment policies and practices of Defendant, which are the basis of her individual and class claims and legal theories in support thereof. The Class Members are also all non-exempt employees of Defendant; who worked for Defendant in California; who worked the same average workday and workweek as Plaintiff; and who were also subjected to the same policies and practices as Plaintiff, which are also the basis of their claims and alleged legal theories. The Class Representative, therefore, has identical claims to those of the Class.

Here, last, the Class Representative adequately represents the Class. A class representative adequately represents the class when he or she is represented by counsel qualified to conduct the pending litigation; and his or her interests are not antagonistic to those of the class. (*McGhee v. Bank of America*, (1976) 60 Cal.App.3d 442, 451.) Plaintiff retained counsel with extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (*Moon Decl*., ¶¶ 48-58.) With their combined experience, Class Counsel are unquestionably "qualified, experienced and generally able to conduct the proposed litigation." (*Miller*, *supra*, (1983) 148 Cal.App.3d at 875.) In addition, Plaintiff has no conflicts of interest with any Class Members, and Plaintiff has, with counsel, helped bring about the Settlement in this Action and diligently reviewed the Settlement terms, showing her dedication. Plaintiff's willingness to serve as a representative demonstrates her goal to bring about the best results possible for the Class. (*McGhee*, 60 Cal.App.3d at 451.)

4. <u>**A Class Action Is Superior To A Multiplicity Of Litigation**</u>

If a Court finds all other requirements for class certification are satisfied, it must finally determine that a class action is superior to alternative means for the fair and efficient adjudication of the litigation. By consolidating many potential individual actions into a single proceeding, this Court's use of the class action device enables it to manage a litigation in a manner that serves the economics of time, effort, and expense for the litigants and the judicial system. Absent class treatment, similarly situated employees with small but meritorious claims for damages would, as a practical matter, have no means of redress because of the time, effort, and expense required to prosecute individual actions. (*Gentry v. Super. Ct.*, (2007) 42 Cal. 4th 443, 457-62; *Leyva v. Medline Ind.*, (9th Cir. 2013) 716 F.3d 510, 515.) For this reason, and those detailed in this Section, the Class satisfies the requirements for provisional certification.

V. THE CLASS NOTICE MERITS APPROVAL

A. The Class Notice Satisfies State Law

Notice requirements are set forth in the California Rules of Court rules 3.766(e) and 3.766(f). California law vests the Court with broad discretion to fashion an appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no statutory or Due Process requirement that all class members receive actual notice. However, as the Court of Appeals has explained, "[t]he notice given should have a reasonable chance of reaching a substantial percentage of the class members..." (*Id.* at p. 974.) Here, the Class Notice will be provided to Class Members by direct mailing through First Class U.S. Mail, the best possible form of notice under the circumstances. (*Settlement*, ¶ 6.4.2.)

B. The Class Notice is Accurate and Informative

The Class Notice, in substantially the form attached to the Settlement as **Exhibit A**, should be approved for dissemination to the Class Members. The Class Notice informs the Class Members of the purpose and terms of the Settlement; their right, and the steps that must be taken, to be excluded from the Settlement; and their right, and the steps that must be taken, to object to the Settlement and be heard at the Final Fairness Hearing. Accordingly, the Class Notice meets all requirements of California Rules of Court rule 3.769(f).

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

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VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court to grant preliminary approval of the Settlement and set a Final Fairness Hearing.

Respectfully submitted,

Dated: August 13, 2025

MOON LAW GROUP, P.C.

By: ______________________

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