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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

NORMA MARTINEZ, individually, and on behalf of all others similarly situated, Plaintiff, vs. FLUIDMASTER, INC., a California corporation; and DOES 1 through 10, inclusive, Defendants	Case No. 30-2025-01485295-CU-OE-CXC CLASS AND REPRESENTATIVE ACTION [Hon. David A. Hoffer, Dept CX103] **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AGREEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** [*Filed with the Declarations of Kane Moon, Plaintiff, Jodey Lawrence and Stacie Yee, and [Proposed] Order*] PRELIMINARY APPROVAL HEARING Date: July 6, 2026 Time: 1:30 p.m. Dept. CX103 Action Filed: August 23, 2024 FAC Filed: November 19, 2024 SAC Filed: February 11, 2026 Trial Date: Not set

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

PLEASE TAKE NOTICE that on July 6, 2026, at 1:30 p.m., in Department CX103 of this Court located at the Civil Complex Center at 751 West Santa Ana Blvd., Santa Ana, California 92701, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769 *et seq*., Plaintiff Norma Martinez ("Plaintiff") will move the Court for an Order granting preliminary approval of the proposed class action settlement between Plaintiff and Defendant Fluidmaster, Inc. Plaintiff further moves the Court for an Order:

1. Granting preliminary approval of the Joint Stipulation of Class and Representative Action Settlement Agreement ("Settlement" or "Settlement Agreement");
2. Certifying a Class for settlement purposes;
3. Approving the Court Approved Notice of Class and Representative Action Settlement, the Request for Exclusion Form and the Objection Form, and plan for their distribution;
4. Appointing Plaintiff as Class Representative for settlement purposes;
5. Appointing Plaintiff's Counsel Moon Law Group, PC, as Class Counsel for settlement purposes;
6. Appointing Phoenix Class Action Administration Solutions as the Administrator; and
7. Setting a final approval hearing no earlier than 120 days from preliminary approval.

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

As this Motion is unopposed, the Parties respectfully request relief from the page limit requirement set by California Rules of Court, Rule 3.1113(d).

Respectfully submitted,

Dated: April 21, 2026 MOON LAW GROUP, PC

By:____________________________________
Kane Moon
Jacquelyne VanEmmerik
Nichelle Christopherson
Attorneys for Plaintiff

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I. INTRODUCTION

Plaintiff Norma Martinez ("Plaintiff") seeks preliminary approval of a proposed $225,000.00 non-reversionary, wage and hour class action settlement with Defendant Fluidmaster, Inc. ("Defendant" and together with Plaintiff, the "Parties"). The Settlement will provide substantial monetary payments to approximately 61 class members. As set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, discovery, and negotiations. The negotiations were at arm's-length and were facilitated by experienced neutral mediator, Carl West, through a mediation session. Accordingly, Plaintiff requests that the Court preliminarily approve the proposed Settlement, certify the proposed settlement class, approve the proposed notice, and set a final approval hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims

Defendant is a multinational company that manufactures and distributes plumbing supplies and repair products, headquartered in Orange County. (Declaration of Kane Moon in Support of Preliminary Approval ["Moon Decl."] ¶ 3.) Plaintiff was employed by Defendant from approximately November 2022 until June 2024. (*Id.*) Plaintiff was classified as non-exempt during the entirety of her employment and was subjected to the same unlawful labor practices as her coworkers. (*Id.*)

Plaintiff's claim for unpaid wages is three-fold and stems from Defendant's unlawful alternate workweek schedule resulting in unpaid overtime, Defendant's alleged failure to incorporate all nondiscretionary bonuses into the regular rate of pay for purposes of paying overtime, sick pay, and meal break premiums, and Defendant's alleged failure to pay employees for off-the-clock work. (*Id.* at ¶ 4.) Moreover, Plaintiff alleges that Defendant systematically failed to provide meal periods and rest breaks. (*Id.*) In addition to the foregoing claims, Plaintiff brings claims for reimbursement of necessary business expenses, and derivative claims against Defendant for waiting time penalties, wage statement violations, unfair business practices, and civil penalties under the California Private Attorneys General Act, Labor Code sections 2698, *et seq.* ("PAGA"). (*Id.*)

Because of Defendant's alleged violations of various provisions of the Labor Code, Plaintiff filed a class and representative action on August 23, 2024, which, as amended, alleges that Defendant systematically: (1) failed to pay minimum wages, (2) failed to pay overtime compensation, (3) failed to provide meal periods, (4) failed to authorize and permit rest breaks, (5) failed to indemnify necessary business expenses; (6) failed to timely pay final wages at termination, (7) failed to provide accurate itemized wage statements, (8) engaged in unfair business practices; and (9) violated civil penalty provisions recoverable as PAGA penalties pursuant to Labor Code section 2698 et seq.[1] (*Id.* at ¶ 5.)

Defendant ardently opposes the merits of this case and denies Plaintiff's factual allegations. (*Id.* at ¶ 6.) Defendant contends, among other things, that Plaintiff and Class Members have been paid proper wages. (*Id.*) Moreover, Defendant argues that it met its meal and rest period obligations, and that Plaintiff and Class Members were provided with the opportunity to take all meal and rest periods to which they were entitled. (*Id.*) Defendant also argues that it complied with all its reimbursement obligations. (*Id.*) Furthermore, to the extent that Plaintiff received wage statements that were allegedly inaccurate, Defendant asserts that Plaintiff suffered no actual damage or harm as a result. (*Id.*; *see, e.g., Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013) No. C 12-05860 CRB, 2013 WL 622032, at *10 ["A plaintiff must adequately plead an injury arising from an employer's failure to provide full and accurate wage statements, and the omission of the required information alone is not sufficient."].)

With respect to Plaintiff's claim for waiting time penalties, Defendant alleges that its good-faith belief that it paid all wages precludes the imposition of waiting time penalties since

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[1] Plaintiff initially filed this case in the Superior Court of the State of California, County of Los Angeles, Case No. 24STCV21509, and amended to add a PAGA cause of action on November 19, 2024. (Moon Decl., ¶ 5, n.1.) On December 20, 2024, the Parties filed a Joint Stipulation for Change of Venue to Orange County, and this case was transferred to the Superior Court of the State of California, County of Orange, where it was assigned case no. 30-2025-01485295-CU-OE-CXC. (*Id.*) Following mediation, on February 2, 2026, the Parties filed a joint stipulation to file a second amended complaint to add Plaintiff's alternative workweek theory (the "Operative Complaint"). (*Id.*)

Plaintiff cannot prove that Defendant alleged failure to pay all final wages at the time of separation was "willful." (Moon Decl., ¶ 7; *see, e.g., Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012) No. ED CV 11–298 GHK (DTBx), 2012 WL 9506073, *5.) For these reasons, Defendant claims that it did not engage in any unfair business practices and denies liability under PAGA. (Moon Decl., ¶ 7.) Finally, Defendant disputes the certifiability of the class, due to the individualized and testimony-intensive nature of the wage claims that could bar class certification or significantly reduce Defendant's overall liability. (*Id.*)

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

Following the filing of the complaint, the Parties met and conferred regarding an agreement to mediate the claims. (Moon Decl., ¶ 8.) Thereafter, the Parties agreed to a protocol for exchanging documents and information before the mediation. (*Id.*) Plaintiff obtained from Defendant, through informal but extensive discovery, information sufficient to meaningfully evaluation the claims at issue in the action, including Plaintiff's complete personnel file, a representative sample of time and corresponding payroll records for Class Members, and information regarding the estimated number of current and former Class Members, workweeks, Aggrieved Employees, PAGA pay periods, and average hourly pay. (*Id.*)

In preparation for mediation, Class Counsel reviewed and analyzed all the information Defendant provided, including the sample time/pay records. (Moon Decl., ¶ 9.) Class Counsel retained a statistics expert to analyze the sample records and prepare a damage analysis prior to mediation. (*Id.*) The sample time and pay records analyzed contained 5,663 shifts that Class Members worked (representing approximately 15% of total shifts worked in the Class Period), which allowed Plaintiff's expert to prepare an analysis with a high degree of certainty. (*Id.*) In conjunction with their extensive factual investigation, Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly, Class Counsel were able to evaluate the probability of class certification, success on the merits, and Defendant's maximum and realistic monetary exposure for all claims. (*Id.*) Thus, Plaintiff's and her counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement. (*Id.*)

The Parties aver that they are not aware of the nature of any claims asserted in any case, or the definition of a class of parties on whose behalf any action was brought that would overlap with the putative Class, as defined in this matter, or would otherwise be extinguished or adversely affected by approval of this Settlement. (*Id.* at ¶ 10; Declaration of [Defendant], ¶ XX.)

C. Settlement Negotiations

On August 19, 2025, the Parties participated in a full-day mediation with Carl West, a professional and neutral class and PAGA action mediator. (Moon Decl., ¶ 11.) The settlement negotiations were at arm's length and, although conducted in a professional manner, adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive discussion regarding the merits and certifiability of Plaintiff's claims and Defendant's defenses, a settlement was reached by the Parties, the material terms of which are encompassed within the Joint Stipulation of Class and Representative Action Settlement Agreement (*Id.* at ¶ 11, Ex. 2 ["Settlement" or "Settlement Agreement"].)

Class Counsel have conducted a thorough investigation into the facts of this case. (*Id.* at ¶ 19.) Based on the foregoing discovery and their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, reasonable, and adequate. (*Id.*) Furthermore, in light of all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, the defenses that could be asserted by Defendant both to certification and on the merits, the Settlement is in the best interests of the Class Members. (*Id.*) **Indeed, the $225,000.00 Settlement represents approximately 55.8% of Defendant's maximum potential overall liability of $403,397.** (Moon Decl., ¶ 28.)

D. Key Terms of the Proposed Settlement

Under the Settlement, Defendant will pay $225,000.00 to resolve this litigation. This amount is all-inclusive. The Settlement's key terms include:

1. <u>Class or Class Members</u>: The proposed Class for purposes of the Settlement contains approximately 61 members and is defined as: all current and former hourly-paid or non-exempt

employees of Defendant in California employed during the Class Period, which for the avoidance of doubt may also include Aggrieved Employees as defined under the Settlement. (*Id.* at ¶ 20; Settlement, ¶ 1.3.)

2. Class Period: means the period from August 23, 2020, through October 18, 2025. (*Id.* at ¶ 1.11.)

3. Workweek: means any week in which a Participating Class Member worked for Defendant at least one day during the Class Period. (*Id.* at ¶ 1.46.) There are an estimated 8,290 Workweeks during the Class Period. (*Id.* at ¶ 7.)

4. Aggrieved Employees: The proposed Class contains approximately 44 Aggrieved Employees, defined as: all current and former hourly-paid or non-exempt employees of Defendant in California employed during the PAGA Period. (*Id.* at ¶ 1.33; Moon Decl., ¶ 20.)

5. PAGA Period: means the period from August 22, 2023, through the date the Class Period ends (October 18, 2025). (Settlement, ¶ 1.31.)

6. PAGA Pay Period: means any pay period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period. (*Id.* at ¶ 1.30.) There are approximately 1,717 PAGA Pay Periods during the PAGA Period. (Moon Decl., ¶ 20.)

7. No Reversion: No portion of the Gross Settlement Amount will revert to Defendant. (Settlement, ¶ 3.0.)

8. Gross Settlement Amount: This amount is $225,000.00 and excludes Defendant's employer payroll taxes. (*Id.*) Defendant will separately pay the employer payroll taxes owed on the Wage Portions of the Individual Class Payments. (*Id.*) 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.*)

9. Plaintiff's Released Claims: Plaintiff's release includes any and all claims related or in any manner incidental to Plaintiff's employment. (*Id.* at ¶ 5.0.) Plaintiff's Released Claims shall not waive: (i) claims for unemployment or workers' compensation benefits; (ii) any vested rights Plaintiff has under ERISA covered benefit plans as applicable on the date Plaintiff signs this Agreement, and/or claims concerning such rights; (iii) claims that may arise after Plaintiff signs

the Settlement; or (iv) claims which cannot be released by private agreement. (*Id.* at ¶ 5.0.2.) For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of Section 1542 of the Civil Code,. (*Id.* at ¶ 5.0.3.)

10. Release by Participating Class Members: The Released Class Claims include any and all claims, debts, liabilities, demands, obligations, penalties, costs, expenses, attorney's fees, damages, and causes of action that were alleged or that reasonably could have been alleged based on the facts alleged in the Operative Complaint arising during the Class Period. (*Id.* at ¶ 5.1.)

11. Release by Aggrieved Employees: The Released PAGA Claims include 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 Operative Complaint or Plaintiff's PAGA Notice. (*Id.* at ¶ 5.2.)

12. PAGA Penalties: means the total amount of PAGA civil penalties ($20,000.00) to be paid from the Gross Settlement Amount, allocated 35% to the Aggrieved Employees ($7,000.00) and 65% to the LWDA ($13,000.00) in settlement of PAGA claims. (*Id.* at ¶¶ 1.35, 3.1.5) Class Counsel submitted the proposed settlement and the moving papers to the LWDA. (Moon Decl., ¶ 12, Ex. 3.)

13. Net Settlement Amount: means the Gross Settlement Amount, less the following court-approved payments: Individual PAGA Payments, the LWDA PAGA Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Class Representative Service Payment, and the Administration Expenses Payment. (Settlement, ¶ 1.26.) The remainder is to be paid to Participating Class Members as Individual Class Payments. (*Id.*)

14. Individual Class Payment: means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked he or she worked during the Class Period. (*Id.* at ¶ 1.21.) An Individual Class Payment will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (*Id.* at ¶ 3.1.4.)

15. Individual PAGA Payment: means the Aggrieved Employee's pro rata share of 35% of the PAGA Penalties allocated pursuant to California Labor Code ("Labor Code") section 2699(m) and calculated according to the number of PAGA Pay Periods he or she worked during the PAGA Period. (*Id.* at ¶ 1.22.) The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 35% share of PAGA Penalties ($7,000.00) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. (*Id.* at ¶ 3.1.5.1.)

16. Uncashed Settlement Checks: Settlement checks to Class Members will be valid for 180 days after issuance by the Administrator; any checks that remain uncashed after 180 days will be voided and transmitted to the California Controller's Unclaimed Property Fund in the name of the Class Member. (*Id.* at ¶¶ 4.1.1, 4.1.3.) There shall be no "unpaid residue" in accordance with the requirements of California Code of Civil Procedure Section 384(b). (*Id.* at ¶¶ 4.1.1, 4.1.3.)

17. Tax Allocation of Settlement Payments: 20% of each Participating Class Members Individual Class Payment will be allocated to settlement of claims for wages and 80% will allocated to settlement of claims for interest and penalties. (*Id.* at ¶ 3.1.4.1.) 100% of the Individual PAGA Payments to Aggrieved Employees will be allocated as penalties. (*Id.* at ¶ 3.1.5.2.)

18. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment: means the court-approved amount allocated to Class Counsel for reimbursement of their reasonable fees and costs incurred to prosecute the Action. (*Id.* at ¶¶ 1.5, 1.6.) The Settlement provides, subject to Court approval, a Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement, which is currently estimated to be $75,000.00, and a Class Counsel Litigation Expenses Payment of not more than $17,000.00. (*Id.* at ¶ 3.1.2.) At this time, Class Counsel's costs are approximately $14,338.62. (Moon Decl., ¶ 15, Ex. 4.)

19. Class Representative Service Payment: Subject to Court approval, Plaintiff shall be paid a Class Representative Service Payment not to exceed $5,000. (*Id.* at ¶ 3.1.1.) This amount is for Plaintiff initiating the Action and providing services in support of the Action. (*Id.* at ¶ 1.13.)

20. Notice of Proposed Settlement: The Class Notice sets forth in plain terms, a statement of case, the terms of the Settlement Agreement, the approximate amount of attorneys' fees, costs, and service awards being sought, and an explanation of how the settlement allocations are calculated. (*Id.* at Ex. A.) The Class Notice will be mailed to Class Members in English and Spanish via first class mail. (*Id.* at ¶ 6.3.) Phoenix Class Action Administration Solutions ("Phoenix"), the proposed Administrator, will undertake its best efforts to ensure that the notice is provided to the current addresses of class members, including conducting a cross-check against the United States Postal Services (USPS)' National Change of Address List. (*Id.*) Defendant will provide the Administrator the Class Data not later than 14 calendar days after the Court grants preliminary approval of the Settlement. (*Id.* at ¶ 6.1.) The Administrator will mail Class Notices to Class Members within 14 calendar days after receiving the Class Data from Defendant. (*Id.* at ¶ 6.3.) Not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, as defined in the Settlement at paragraph 1.9, and re-mail the Class Notice to the most current address obtained. (*Id.* at ¶ 6.4.) Settlement administration costs are estimated to be $5,250.00. (Moon Decl., ¶ 17, Ex. 6.) The Settlement Agreement provides the Administrator will be paid an Administration Expenses Payment from the Gross Settlement Amount, in an amount up to $5,250.00, for its fees and expenses in administering this Settlement. (Settlement, ¶ 3.1.3.) In the event the amount of costs is less and/or the amount approved by the Court is less than the requested amount, the difference will revert to Participating Class Members. (*Id.*) The Declaration of Jodey Lawrence on Behalf of Phoenix ("Lawrence Decl.") is filed concurrently herewith and describes Phoenix's qualifications and experience, including evidence that Phoenix has procedures in place to protect the security of class data, and sufficient insurance in the event of a data breach of mishandling of the settlement funds. (Lawrence Decl., ¶¶ 9–11.)

21. Response Deadline and Procedure for Challenging Workweeks and/or Pay Periods, Opting Out, or Objecting: Class Members will have 45 calendar days from the date of initial Class

Notice mailing to object to the Settlement, opt out of the Settlement, or challenge the number of Workweeks and/or PAGA Pay Periods, which will be extended by 10 calendar days for any re-mailed Notice. (Settlement Agreement, ¶ 6.4.1.) The Class Notice explains the procedure under which a Class Member and/or Aggrieved Employee can challenge the number of his or her individual Workweeks and/or Pay Periods stated in their Notice. (*Id.* at Ex. A.) Additionally, the Class Notice explains how Class Members may, should they choose to do so, request exclusion, or otherwise submit a written objection or state an oral objection at the Final Approval Hearing. (*Id.*) A Request for Exclusion Form and an Objection Form will be provided to the Class. (*Id.* Ex. A.) Class Members need not file or serve, or state in any written objection, a notice of intention to appear at the Final Approval Hearing. (*Id.* at ¶ 6.12.3, Ex. A.)

22. <u>Funding of the Gross Settlement Amount</u>: Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes, by transmitting the funds to the Administrator no later than fourteen (14) business days after the Effective Date. (*Id.* at ¶ 4.0.)

23. <u>Distribution of Gross Settlement Amount</u>: No later than fourteen (14) calendar days after Defendant funds the entire Gross Settlement Amount, the Administrator shall mail checks for the Individual Class Payments, Individual PAGA Payments, LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and Administration Expenses Payment. (*Id.* at ¶ 4.1.) Disbursement of the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payment shall not precede disbursement of the Individual Class Payments and Individual PAGA Payments. (*Id.*) The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail with postage prepaid. (*Id.* at ¶ 4.1.1.) Before mailing any checks, the Administrator must update the recipient's mailing addresses using the National Change of Address Database. (*Id.*)

24. <u>Website, Email Address, and Toll-Free Number</u>: The Administrator will establish, maintain, and use an internet website to post information of interest to Class Members, including the date, time, and location of the Final Approval Hearing and copies of the Settlement Agreement, Motion for

Preliminary Approval, Preliminary Approval, Class Notice, Motion for Final Approval, and Final Approval and Judgment. (*Id.* at ¶ 6.11.) The Administrator will also maintain and monitor an email address and toll-free telephone number to receive Class Member calls, faxes, and emails. (*Id.*) The Class Notice will include the URL of the Settlement website prior to mailing. (*Id.* at Ex. A.)

25. Notice of Final Judgment: The Administrator will provide notice of final judgment to the Class by posting it on the Settlement website. (*See id.* at ¶ 6.11.)

III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL

To prevent fraud, collusion, or unfairness to the class, the settlement of a class action requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached through arm's-length bargaining; (2) investigation is sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk,* 48 Cal.App.4th at p. 1800.)

In evaluating a settlement, the trial court considers the following factors: 1) the strength of plaintiff's case; 2) the risk, expense, complexity, and likely duration of further litigation; 3) the risk of maintaining class action status through trial; 4) the 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. (*Kullar v. Foot Locker Retail, Inc*., (2008) 168 Cal.App.4th 116, 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 p. 133.) The record need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not require "an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims", but instead, only an "understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."].)

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

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

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

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

The Settlement was reached following extensive negotiations following an in-person mediation session with experienced employment mediator Carl West. (Moon Decl., ¶ 11.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their or its position through trial and appeal if a settlement had not been reached. (*Id.*)

Prior to reaching this Settlement, Class Counsel conducted informal discovery and investigation into the claims alleged by Plaintiff, including, among other things, reviewing the time and pay records and preparing a damage analysis. (Moon Decl., ¶¶ 19-32.) Significantly, Class Counsel's calculations are based on the analysis of a statistics expert[2] retained by Class Counsel to analyze the records produced by Defendant. (*Id.* at ¶¶ 9, 20.) In conjunction with their extensive factual investigation, Class Counsel investigated the applicable law regarding the claims and

[2] A true and correct copy of the expert's curriculum vitae is attached to the Moon Decl. as Exhibit 1.

defenses asserted in the litigation. (*Id.*) Thus, Plaintiff and her counsel were able to act intelligently and effectively in negotiating the proposed settlement. (*Id.* at ¶ 9.)

Class Counsel also have considerable experience and have demonstrated competence with litigating wage and hour class actions. (Moon Decl., ¶¶ 40-55.) Again, this supports the conclusion that the terms of the Settlement are based on objective evidence that has been considered and weighed against the risks, expenses, and time consumption to both sides of continued litigation of this action.

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

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

The settlement obviates the significant risk that this Court may deny certification of all or some of Plaintiff's claims. (Moon Decl., ¶ 31.) While Plaintiff is confident in the merits of her claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 29.) Plaintiff also recognizes that proving the amount of wages due to each class member would be an expensive, time-consuming, and uncertain proposition. (*Id.*) Furthermore, even if Plaintiff was able to pursue her claims on a class-wide basis and thereafter obtained certification of all or some of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the Class Members. (*Id.* at ¶ 31.)

The proposed settlement of $225,000.00 therefore represents a substantial recovery when compared to Plaintiff's reasonably forecasted recovery. (*Id.* at ¶ 34.) Because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id.* at ¶ 28.) When considering the risks of litigation, including the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement amount of $225,000.00 is within the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id*. at ¶ 34.)

Indeed, the Net Settlement Amount available for settlement payments is currently estimated to be **$102,750.00** for an estimated Class size of **61 individuals**.[3] (*Id.* at ¶ 33.) As a result, it is estimated each Participating Class Member is eligible to receive an average benefit of approximately **$1,684.43** prior to tax withholdings on the wage portion of payments. (*Id.*) Considering Class Members' average hourly rate is $32.95, the average benefit is approximately **51.12 hours of work**. (*Id.*) Additionally, there are **44 Aggrieved Employees** who are each expected to receive an estimated average of **$159.09** from the total Individual PAGA Payments of $7,000.00, or a **PAGA Pay Period value of $4.08** based on the **1,717 PAGA Pay Periods** during the PAGA Period. (*Id.*) The actual amounts to Participating Class Members and Aggrieved Employees will vary based on each individual's duration of work during the Class Period or PAGA Period, respectively; thus, those who worked longer for Defendant during the relevant period will receive a benefit greater than the average estimated amount. (*Id.*) Based on 8,290 Workweeks, **the average Workweek value is estimated to be $12.39**. (*Id.*) Assuming a Class Member worked one Workweek, the estimated lowest Individual Class Payment is $12.39. (*Id.*) There are approximately 269 Workweeks from beginning date of the Class Period August 23, 2020 to the October 18, 2025 date that marks the end of the Class Period. (*Id.*) Assuming a Class Member worked for the entire duration of this period, the estimated highest Individual Class Payment is $3,332.91 ($12.39 Workweek value x 269 Workweeks). (*Id.*) Assuming an Aggrieved Employee worked one PAGA Pay Period, the lowest Individual PAGA Payment is estimated to be $4.08 ($4.08 average PAGA Pay Period value x 1 PAGA Pay Period). (*Id.*) There are approximately 57 pay periods from the

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[3] The Net Settlement Amount is at least $225,000 less the following: $5,000 for the Class Representative Service Payment, $5,250 for the Administration Expenses Payment, $20,000 for the PAGA Penalties payments to the LWDA and to Aggrieved Employees, $75,000.00 for Class Counsel's attorneys' fees, and up to $17,000.00 for Class Counsel's litigation costs. (Settlement Agreement, ¶¶ 1.26, 3.)

beginning date of the PAGA Period August 22, 2023, to the October 18, 2025 date that marks the end of the PAGA Period. (*Id.*) Assuming an Aggrieved Employee worked for the entire duration of this period, the highest Aggrieved Employee Payment is estimated to be $232.56 ($4.08 average PAGA Pay Period value x 57 PAGA Pay Periods). (*Id.*) Plaintiff's Individual Class Payment is estimated to be $1,003.59 and Plaintiff's Individual PAGA Payment is estimated to be $85.68. (*Id.* at ¶ 38.) Accurate estimates of the high, low, and average payments will be provided to the Court in Plaintiff's Motion for Final Approval after the Administrator has processed the Class Data and will be provided to the Court in a motion for final approval. (*Id.* at ¶ 33.)

3. Class Counsel Have Extensive Experience in Class Action Litigation

The settlement negotiations were conducted by highly capable and experienced counsel. (*See id.* at ¶¶ 40-55.) Class Counsel have a strong record of vigorous and effective advocacy for their clients and are experienced in handling complex wage and hour class action litigation. (*Id.* at ¶¶ 40-55.) Although Plaintiff and her counsel were prepared to litigate the claims alleged in the litigation, they support the proposed Settlement as being in the best interest of the Class Members. (*Id.* at ¶ 19.)

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

The proposed Notice of Class and Representative Action Settlement ("Class Notice"), in the form attached to the Settlement as Exhibit A, should be approved for dissemination to the Class. The Class Notice informs the class of the terms of the Settlement and of their rights to be excluded from the Settlement. Additionally, if there are Class Members who wish to object to this proposed Settlement, they will have the opportunity to file their objections and be heard at the Final Approval Hearing. Accordingly, the proposed Class Notice meets all the requirements of Rule 3.769(f) of the California Rules of Court.

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

The Settlement provides a Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement, which is currently estimated to be $75,000.00 and a Class Counsel Litigation Expenses Payment of not more than $17,000.00. (Settlement, ¶ 3.1.2.) These amounts are subject to Court approval. (*Id.*) These amounts will be disclosed to all Class Members in the proposed Class Notice and are reasonable.

1. Class Counsel Will Request an Award of Fees Based on The "Common Fund" Method

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

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

The California Supreme Court affirmed in *Laffitte v. Robert Half Int'l Inc*. (2016) 1 Cal.5th 480 that, "when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." (*Id*. at p. 503.) The court explained: "The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—

convince us the percentage method is a valuable tool that should not be denied our trial courts." (*Id*. [internal citations omitted].)

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

According to a leading treatise on class actions, "No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (*See* Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03.) Attorneys' fees that are fifty percent of the fund are typically considered the upper limit, with thirty to forty percent commonly awarded in cases where the settlement is relatively small. (*Id*; *see also Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F.Supp. 294 [stating that most cases where 30-50 percent was awarded involved "smaller" settlement funds of under $10 million].)

Here, Plaintiff requests attorneys' fees equal to one-third of the Gross Settlement Amount, which is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. (*Compare* Settlement, ¶ 3.1.2 *with Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].) Accordingly, Plaintiff respectfully requests that the Court approve the attorneys' fees as negotiated by the Parties and requested herein.

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

Labor Code §§ 218.5, 226, 1194 and 2699, *et seq*. provide for the recovery of reasonable attorney's fees, and costs of suit, for the claims made in this action. Under these sections, Plaintiff would be permitted to recover her actual attorneys' fees, even if those fees were larger than the total class recovery at the conclusion of this case. This Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Class Counsel for their decision to assume risk by taking on this matter. (*See* Moon Decl., ¶ 32.) In fact, prosecution of this action involved significant financial risk for

Class Counsel. (*Id.* at ¶¶ 59-64.) Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once Class Counsel undertook this litigation on behalf of the Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶ 61.)

4. The Experience, Reputation and Ability of Class Counsel Support the Requested Fee Award

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possess considerable expertise in litigating class actions. (Moon Decl., ¶¶ 40-55.) Class Counsel has been involved as lead counsel or co-counsel in several class actions that resulted in millions in recovery. (*Id*. at ¶¶ 44, 48.) Because it is reasonable to compensate class counsel commensurate with their skill, reputation and experience, Class Counsel's requested fee award is supported here.

Class Counsel's experience in wage and hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. (*Id.* at ¶ 56.) Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation. (*Id*. at 55.) Based on these and other factors, Class Counsel have frequently received fee awards of this percentage from the gross recovery for the class. (*Id*. at ¶¶ 44, 48.) Therefore, the requested fee award is reasonable and fair.

D. <u>The Service Payment To Plaintiff Is Reasonable</u>

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

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

The Settlement provides a Class Representative Service Payment to Plaintiff in the amount of $5,000 to Plaintiff, subject to Court approval. (Settlement, ¶ 3.1.1.) Class Counsel represent that Plaintiff devoted a great deal of time and work assisting counsel in the case and communicated with counsel very frequently for litigation and to prepare for mediation. (Moon Decl., ¶¶ 35-39.) This amount is reasonable particularly in light of the substantial benefits Plaintiff generated for all class members. (*Id*.)

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

IV. <u>CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED</u>

A. <u>Legal Standard</u>

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

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

B. <u>Plaintiff Maintains That The Criteria For Class Certification Are Satisfied</u>

1. The Class Is Ascertainable and Numerous

When determining whether a class is ascertainable, California courts focus on the following three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying class members. *See Miller v. Woods*, 148 Cal. App. 3d 862, 873 (1983). Here, the proposed class that Plaintiff seeks to represent is ascertainable because (1) the class definition is sufficiently precise,

(2) consists of 61 class members, and (3) Class Members can be readily identified by looking at Defendant's records.

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

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

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

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

In this case, the employment practices at issue are: whether Defendant had legally compliant policies and practices to pay employees all wages owed; whether Defendant had legally compliant policies and practices to provide employees with meal periods; whether Defendant had legally compliant policies and practices authorizing and permitting its employees to take rest periods; whether Defendant had legally compliant policies and practices reimbursing its employees for business expenses; whether final payment of wages was untimely and excluded unpaid wages, including meal period premium wages, and rest period premium wages; whether all wages were paid to employees at the time of termination of the employment relationship; and whether the wage statements were consequently non-compliant. Plaintiff contends that the factual and legal issues are the same for all identified class members, including Plaintiff. Further, all Class Members suffered from and seek redress for the same alleged injuries. Considering that Class Members would need to prove the same issues of law and fact to prevail and their legal remedies are identical, it would be preferable to resolve all claims through a settlement agreement than to force each Class Member to litigate their own individual claims. Thus, the Court should grant conditional class certification for settlement because common questions of law and fact predominate over any individual questions within the class.

3. Plaintiff's Claims Are Typical of the Claims of the Class

The typicality requirement does not focus on the individual characteristics or circumstances of the representative plaintiff compared to those of the remainder of the class, but rather upon the typicality of the proposed representative's claims as they relate to the defendant's conduct and activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["[t]he only requirements are that common questions of law and fact predominate and that the class representative be similarly situated" vis-à-vis the class.].) A representative plaintiff's claims are typical of the class if they arise from the same event, practice or course of conduct, and if the claims rest on the same legal theories. (*Id*.) That is precisely the case here. Plaintiff is a former employee of Defendant; as such, she alleges that she was subject to the same policies and practices as other similarly situated employees. (Declaration of Plaintiff Norma Martinez in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ["Plaintiff Decl."], ¶ 6.)

4. Plaintiff and Her Counsel Meet the Adequacy Requirement

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

Here, all requirements are met. Plaintiff retained counsel with extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Moon Decl., ¶¶ 40-55.) With their combined experience, Class Counsel unquestionably are "qualified, experienced and generally able to conduct the proposed litigation." (*Miller*, *supra*, 148 Cal.App.3d at 875.) In addition, Plaintiff has no conflicts, and Plaintiff has, with counsel, litigated this case and diligently reviewed the settlement terms, showing her dedication. (Plaintiff Decl., ¶¶ 9-11.) Plaintiff's willingness to serve as a representative demonstrates her serious commitment to bringing about the best results possible for the class. (*Id.*; *McGhee*, *supra,* 60 Cal.App.3d at p. 451.)

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

Finally, in making its class certification decision, the Court must determine that a class action would be superior to alternative means for the fair and efficient adjudication of the litigation. By consolidating many potential individual actions into a single proceeding, this Court's use of the class action device enables it to manage this litigation in a manner that serves the economics of time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly situated employees with small but nevertheless meritorious claims for damages would, as a practical matter, have no means of redress because of the time, effort and expense required to prosecute individual actions. (*Gentry v. Super. Ct.* (2007) 42 Cal. 4th 443, 457-62; *Leyva v. Medline Ind.* (9th Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the superiority concerns are essentially non-existent.

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

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

Notice requirements are set forth in the California Rules of Court. Cal. Rules of Court, Rule 3.766 (e) and (f). California law vests the Court with broad discretion in fashioning an appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no statutory or due process requirement that all class members receive actual notice, but in this matter, the class members will receive direct mailed notice. (Settlement, ¶ 6.3.) As the Court of Appeals has explained, "[t]he notice given should have a reasonable chance of reaching a substantial percentage of the Class Members . . . ." (*Id.* at p. 974.) In this case, notice of the proposed settlement will be provided by direct mailing, the best possible form of notice under the circumstances.

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

The proposed Class Notice should be approved. It will be disseminated through direct U.S. first class mail to the last known address for each Class Member and will be provided in both English and Spanish. (Settlement, ¶¶ 1.10, 6.3.) It informs the Class Members of the terms of the settlement and their right to be excluded from the Settlement. (*Id.* at Ex. A.) And if there are Class Members who wish to object to this proposed class action settlement, they will have the opportunity to file their objections and be heard at the Final Approval Hearing. (*Id.*)

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

VI. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed settlement and set a Final Approval Hearing no earlier than 120 days from preliminary approval.

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Respectfully submitted,

Dated: April 21, 2026 MOON LAW GROUP, PC

By: ______________________________

Kane Moon
Jacquelyne VanEmmerik
Nichelle Christopherson

Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1055 W. Seventh St., Suite 1880, Los Angeles, California 90017. On **April 21, 2026**, I served the foregoing document described as:

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

X__ by placing ___ the original _X_ a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Attorneys for Defendant

[✓] **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service **CASE ANYWHERE.** I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this**, April 21, 2026** at Los Angeles, California.

______________________________ ____

Type or Print Name Signature