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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

MARIBEL ROMAN, individually, and on behalf of all others similarly situated, Plaintiff, vs. NONGSHIM AMERICA, INC., a California corporation; and DOES 1 through 10, inclusive, Defendants.	Case No. CIVSB2409449 ASSIGNED FOR ALL PURPOSES TO: HON. HON. THOMAS S. GARZA; DEPT. 27 **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND COLLECTIVE ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** <u>PRELIMINARY APPROVAL HEARING</u>: Date: April 15, 2026 Time: 8:30 a.m. Dept.: S27 Action Filed: April 17, 2024 Trial Date: Not Set

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

PLEASE TAKE NOTICE that on April 25, 2026, at 8:30 a.m. in Department S27 of this Court located at 247 West Third Street, San Bernardino, California 90415, pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 *et seq*., Plaintiff Maribel Roman, Plaintiff Aldo Marquez, and Plaintiff Karla Bulnes (collectively, "Plaintiffs") will, and hereby do, move the Court for an order granting preliminary approval of the proposed class action settlement between Plaintiffs and Defendant Nongshim America, Inc.

Specifically, Plaintiffs move the Court for an order:

1. Granting preliminary approval of the Class and Collective Action and PAGA Settlement Agreement;
2. Certifying a Class, for settlement purposes only;
3. Approving the Class Notice and plan for its distribution;
4. Appointing Plaintiffs as the Class Representative, for settlement purposes only;
5. Appointing Plaintiffs' Counsel Moon Law Group, PC, Koul Law Firm, Majarian Law Group, APC, and Haines Law Group as Class Counsel, for settlement purposes only;
6. Appointing Phoenix Settlement Administrators. as the Administrator; and
7. Setting a Final Approval Hearing no earlier than 130 days from preliminary approval.

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

Respectfully submitted,

Dated: November 21, 2025

MOON LAW GROUP, PC

By: ______________________________

Kane Moon
Allen Feghali
Julie S. Oh
Jamie C. Osganian
Attorneys for Plaintiffs

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I. INTRODUCTION

Plaintiff Maribel Roman ("Plaintiff Roman"), Plaintiff Aldo Marquez ("Plaintiff Marquez"), and Plaintiff Karla Bulnes ("Plaintiff Bulnes") (collectively, "Plaintiffs") seek preliminary approval of a proposed $470,000.00 non-reversionary, all-inclusive class action settlement (the "Settlement") with Defendant Nongshim America, Inc. ("Defendant") (together with Plaintiffs, the "Parties"). The Settlement will provide substantial monetary payments to roughly 991 Class Members worked an estimated aggregate of 47,000 Workweeks during the Class Period. As set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, informal discovery, and negotiations between the Parties. The negotiations were at arm's-length and were facilitated during mediation by experienced, neutral, class action mediator Eve Wagner, Esq. Accordingly, Plaintiffs request the Court preliminarily approve the proposed Settlement, certify the proposed Class, approve the proposed Class Notice to Class Members, and set a final approval hearing no earlier than 130 days from the date of preliminary approval.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Claims

This is a wage and hour class action and representative action for alleged Labor Code violations and claims for civil penalties pursuant to the California Private Attorneys General Act, Labor Code sections 2698, *et seq.* ("PAGA"). (Declaration of Kane Moon in Support of Plaintiffs' Motion for Preliminary Approval of Class and Collective Action and PAGA Settlement ["Moon Decl."], ¶ 2.) Plaintiffs seek to represent a class of all persons who worked for Defendant as a non-exempt, hourly employee in California at any time from August 29, 2022, through January 14, 2025 ("Class Period"). (*Id.*) Defendant produces instant noodles and snacks in North America. (*Id.*) Defendant has employed Plaintiffs and other putative Class Members in California during the putative Class Period. (*Id.*) Plaintiff Roman worked for Defendant as a "Production Employee" from approximately June 2022 to December 2023. (Declaration of Plaintiff Maribel Roman in Support of Plaintiffs' Motion for Preliminary Approval of Class and Collective Action and PAGA

Settlement ["Roman Decl."], ¶ 2.) Plaintiff Bulnes worked for Defendant as an "Operator" from approximately September 2020 to November 2023. (Declaration of Plaintiff Karla Bulnes in Support of Plaintiffs' Motion for Preliminary Approval of Class and Collective Action and PAGA Settlement ["Bulnes Decl."], ¶ 2.) Plaintiff Marquez worked for Defendant as an "Machine Operator" and "General Laborer" until December 2022. (Declaration of Plaintiff Aldo Marquez ["Marquez Decl."], ¶ 3.) Throughout their employment, Plaintiffs were employed in a non-exempt position. (Moon Decl., ¶ 2.) Plaintiffs contend they and their coworkers were subjected to the same unlawful labor practices, including failure to pay wages for all hours worked. (Roman Decl., ¶ 6; Bulnes Decl., ¶¶ 3-5; Marquez Decl., ¶ 5.)

Plaintiffs' claims for unpaid minimum and overtime wages stem from allegations that Defendant required Class Members to work off-the-clock, uncompensated and that Defendant failed to incorporate all remunerations into the regular rate of pay for purposes of paying Class Members overtime, meal break premiums, and sick pay. (Moon Decl., ¶ 3.) Plaintiffs' meal and rest period claims are based on allegations that due to the nature of their work, Class Members' breaks were often short, late, interrupted, and sometimes missed altogether, and that Defendant did not pay all premium wages for non-code-compliant breaks. (*Id.*) Plaintiffs further bring a claim for unreimbursed necessary business expenses based on allegations that Class Members were required to use their personal cellphones and purchase face masks for business purposes, without reimbursement for the same. (*Id.*) Finally, Plaintiffs also bring derivative claims for waiting time penalties, wage statement violations, unfair business practices, and civil penalties under PAGA. (*Id.*)

On April 16, 2024, and pursuant to Labor Code section 2699.3, subd.(a), Plaintiff Roman gave timely written notice to Defendant and the LWDA by sending a PAGA notice letter. (*Id.* at ¶ 4, Exh. 1.) On August 21, 2024, Plaintiff Bulnes gave timely written notice to Defendant and the LWDA by sending a PAGA notice letter. (Declaration of Paul K. Haines in Support of Plaintiffs' Motion for Preliminary Approval of Class and Collective Action an PAGA Settlement ["Haines Decl."], ¶ 4, Exh. A.) On April 28, 2024, Plaintiff Marquez gave timely written notice to Defendant and the LWDA by sending a PAGA notice letter. (Declaration of Nazo Koulloukian in Support of Plaintiffs' Motion for Preliminary Approval, ["Koulloukian Decl."], ¶ 4, Exh. 1.) On September 4, 2025, Plaintiff Roman sent an amended PAGA notice to Defendant and the LWDA (collectively "PAGA Notices"). (Moon Decl., ¶ 4, Exh. 1.)

On April 17, 2024, Plaintiff Roman filed a complaint alleging causes of action against Defendant for violations under the Labor Code and Business and Professions Code for: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) meal period violations, (4) rest period violations, (5) failure to indemnify, (6) failure to pay final wages, (7) wage statement violations, and (8) unfair business practices. On July 8, 2024, Plaintiff Roman filed a First Amended Complaint adding (9) alleged violations of the PAGA. (*Id.* at ¶ 5.)

On May 11, 2023, Marquez filed a complaint alleging causes of action against Defendant and Changing Lives for violations under the Labor Code and Business and Professions Code for: (1) failure to pay for all hours worked, (2) failure to include nondiscretionary bonuses and shift differential pay in regular rate of pay, (3) failure to properly calculate and pay sick leave wages, (4) failure to pay all wages owned twice per month, (5) failure to pay wages upon termination, (6) failure to provide rest breaks, (7) failure to provide uninterrupted meal breaks, (8) failure to provide accurate itemized wage statements (9) unfair business practices. (*Id.* at ¶ 6.)

On August 22, 2024, Plaintiff Bulnes filed a complaint alleging causes of action against Defendant for violations under the Labor Code and Business and Professions Code for: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) meal period violations, (4) rest period violations, (5) failure to indemnify, (6) wage statement violations, (7) waiting time penalties, and (8) unfair business practices. On October 28, Plaintiff Bulnes filed the First Amended Complaint adding a violation of the PAGA. (*Id.* at ¶ 7.)

On September 10, 2025, the Parties filed a joint stipulation seeking leave to file the Second Amended Class and Representative Action Complaint (the "Operative Complaint"), asserting all causes of action alleged in all three lawsuits. (*Id.* at ¶ 8.)

In compliance with Labor Code section 2699(s)(1), Plaintiffs subsequently submitted to the LWDA a file-stamped copy of the complaints containing the Court-assigned case numbers. (*Id.* at ¶ 9.) To date, the LWDA has not sought to intervene in the actions. (*Id.*)

Defendant ardently opposes the merits of this case and denies Plaintiffs' factual allegations. (*Id.* at ¶ 10.) Defendant argues the putative Class was paid all minimum wages, overtime wages, and sick pay owed, and that the regular rate of pay was at all time calculated and paid correctly. Additionally, Defendant contended that its policies and practices strictly prohibited off-the-clock work, including prohibiting donning/doffing work clothing while not clocked in (when applicable). (*Id.*)

Defendant argued that it maintains compliance with all its meal and rest period obligations, and had meal and rest break policies compliant with California law. Defendant also argued that it always provided the class members with the opportunity to take meal and rest breaks and thus met the requirements imposed by California law. (*Id.*) Defendant's expert's review of the records indicates that Defendant's meal period violation rate was only 1.7% (without premium pay being taken in to account) and negative 0.2% (with premium pay taken into account) during the relevant time period. (*Id.* at ¶ 24.)

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

B. Discovery and Investigation

Following the filing of Plaintiffs' action, the Parties met and conferred regarding an agreement to mediate Plaintiffs' claims. (*Id.* at ¶ 11.) The Parties agreed to mediate the action with Eve Wagner, Esq., an experienced class and PAGA action mediator. (*Id.*) In preparation for mediation, the Parties agreed to a protocol for an informal exchange of documents and information before the mediation. (*Id.*) Prior to mediation, Plaintiffs obtained from Defendant, through informal discovery, information sufficient to meaningfully evaluate the claims at issue in the action, including a statistically significant sample of time and corresponding payroll records of the Class and information regarding the estimated number of current and former employees, Workweeks, Pay Periods, and average hourly pay. (*Id.*)

In preparation for mediation, Plaintiffs' Counsel reviewed and analyzed all the information Defendant provided, including the sample time/pay records and documents regarding Defendant's wage and hour policies. (*Id.* at ¶ 12.) Plaintiffs' 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 contained 197,909 shifts (representing approximately 84% of all shifts during 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, Plaintiffs' Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly, Plaintiffs' Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum and realistic monetary exposure for all claims. (*Id.*) Thus, Plaintiffs' and their Counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement. (*Id.*)

C. Settlement Negotiations

Mediation occurred on November 14, 2024. (*Id.* at ¶ 13.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses, the Parties reached a settlement, the material terms of which are encompassed within the Class and Collective Action and PAGA Settlement Agreement (the "Settlement Agreement" or "Settlement"). (*Id.* at ¶ 13, Exh. 2.)

The Parties and their Counsel represent they are not aware of any related case that would be extinguished or adversely affected by approval of this Settlement. (*Id.* at ¶ 14.)

Plaintiffs' Counsel has conducted a thorough investigation into the facts of this case. (*Id.* at ¶ 19.) Based on the foregoing document and information exchange and on their own independent investigation and evaluation, Plaintiffs' Counsel is of the opinion that the proposed Settlement is fair, reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, and the defenses that Defendant may assert both to certification and on the merits, the Settlement is in the best interests of the Class. (*Id.*; *see also id.* at ¶¶ 19–33.) **Indeed, the $470,000.00 gross settlement figure represents roughly 56.7% of the realistic (*risk-adjusted*) recovery estimated to be $828,381.98.** (*Id.* at ¶ 27.)

D. Key Terms of the Proposed Settlement

Under the Settlement Agreement, Defendant will pay a non-reversionary, all-inclusive amount of $470,000.00 to resolve this litigation, subject to an escalator clause. (Settlement, ¶ 3.1.) The Settlement's key terms include[1]:

1. Class Members or Class: The proposed Class for purposes of the Settlement contains approximately 991 members who worked approximately 47,000 Workweeks and is defined as: all persons who worked for Defendant as a non-exempt, hourly employee in California at any time from August 29, 2022, through January 14, 2025. (*Id.* at ¶ 1.6; Moon Decl., ¶ 20.) The Class will exclude

[1] A table listing the key financial terms of the Settlement, including the Gross Settlement Amount, each deduction from the gross amount (attorneys' fee, litigation costs, administrator costs, service payments, and the PAGA allocation), whether exact or in a "not to exceed" amount, the estimated Net Settlement Amount, and the estimated average of individual settlement payments is provided in the accompanying Moon Decl., ¶ 16.

any Class Member who submits a valid and timely Request for Exclusion from the Settlement ("Non-Participating Class Members"). (Settlement, ¶ 1.34.)

2. Class Period: means the period from August 29, 2022, through January 14, 2025. (*Id.* at ¶ 1.9.)

3. Participating Class Members: means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. (*Id.* at ¶ 1.37.)

4. PAGA Member: There are approximately 991 PAGA Members who worked approximately 26,080 PAGA Pay Periods, defined as all current and former non-exempt employees of Defendant who worked for Defendant in California during the PAGA Period. (*Id.* at ¶ 1.42; Moon Decl., ¶ 20.)

5. PAGA Period: means April 16, 2023, through January 14, 2025. (Settlement, ¶ 1.39.)

6. Gross Settlement Amount: This amount is $470,000.00, subject to a potential increase under the Escalator Clause. (*Id.* at ¶ 3.1) The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Covered Employees to submit any claim or form as a condition of payment. (*Id.*) None of the Gross Settlement Amount will revert to Defendant. (*Id.*)

7. Employer Payroll Taxes: The Gross Settlement Amount does not include any employer payroll taxes owed on the Wage Portion of the Individual Class Payments, which shall be paid separately by Defendant as calculated by the Administrator. (*Id.* at ¶ 3.1.1.)

8. Escalator Clause: Based on its records, Defendant represents that Class Members have worked approximately 47,000 Workweeks during the Class Period. (*Id.* at ¶ 8.) If the total number of Workweeks during the Class Period increases more than 10% (i.e., more than 51,700 Workweeks), Defendant shall increase the Gross Settlement Amount in proportion to the increase in Workweeks over the 10% threshold, or Defendant may, at its election, shorten the Class Period to end on an earlier date to avoid triggering the escalator. (*Id.*)

9. Net Settlement Amount: means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Service Payments, Attorneys' Fees, Litigation Expenses, Individual PAGA Payments, the LWDA PAGA Payment, and the Administrator's Expenses. (*Id.* at ¶ 1.32)

10. Individual Class Payments: means the Participating Class Member's pro rata share of the Net Settlement Amount, calculated according to the number of Class Workweeks, less any and all Employee Paid Taxes required by law as a result of the payment of the amount allocated to such Class Member. (*Id.* at ¶ 1.25.) Individual Class Payments will be calculated by (a) dividing the Net Settlement Amount by the total number of Class Workweeks worked by all Participating Class Members during the Class Period; and (b) multiplying the result by each Participating Class Member's Class Workweeks. (*Id.* at ¶ 3.2.4.) "Class Workweek" means any week during which a Class Member worked for Defendant for at least one day as a non-exempt employee during the Class Period. (*Id.* at ¶ 1.13.)

11. Individual PAGA Payment: means the PAGA Members' pro rata share of the 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period. (*Id.* at ¶ 1.26.) Individual PAGA Payment will be calculated by (a) dividing the PAGA Payment ($6,250.00) by the total number of PAGA Pay Periods worked by all PAGA Members during the PAGA Period; and (b) multiplying the result by each PAGA Members' PAGA Pay Periods. (*Id.* at ¶ 3.2.7.) "PAGA Pay Period" means any pay period during which a PAGA Member worked for Defendant as a non-exempt employee for at least one day during the PAGA Period. (*Id.* at ¶ 1.44.)

12. Tax Treatment: 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). (*Id.* at ¶ 3.2.4.) The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. (*Id.*) The remaining 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). (*Id.*) The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. (*Id.*) The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. (*Id.* at ¶ 3.2.6.). (*Id.* at ¶ 3.2.5.2.)

13. Released Parties: means Defendant and each of its past, present and future agents, employees, servants, officers, directors, managing agents, members, owners (whether direct or indirect), partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, potential and alleged

joint employers, temporary staffing agencies (whether direct or indirect), contractors, affiliates, service providers, alter-egos, vendors, affiliated organizations, any person and/or entity with potential or alleged to have joint liability, and all of their respective past, present and future employees, directors, officers, members, owners, agents, representatives, payroll agencies, attorneys, stockholders, fiduciaries, parents, subsidiaries, other service providers, and assigns, and any and all persons and/or entities acting under, by, through or in concert with any of them. (*Id.* at ¶ 1.49.)

14. Released Class Claims: The Released Class Claims include all claims for unpaid wages, including, but not limited to, failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; missed/short/late/interrupted meal period, rest period, and/or recovery period wages/premiums; failure to provide meal periods; failure to authorize and permit rest periods and/or recovery periods; the calculation of meal period, rest period, and/or recovery period premiums; payment for all hours worked, including off-the-clock work; failure to reimburse business expenses; wage statements; failure to keep accurate records; failure to timely pay wages; failure to timely pay final wages; violations of California's paid sick leave laws; failure to provide supplemental paid sick leave; unfair business practices related to the Labor Code violations alleged in the Operative Complaint; penalties, including recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; non-compliant wage statements; attorneys' fees and costs associated with recovery of the alleged Labor Code violations alleged in the Operative Complaint; and generally all claims that could have been brought based on the facts alleged in the Operative Complaint arising under: the California Labor Code (including, but not limited to, sections 200, 201, 202, 203, 204, 206, 210, 216, 218, 218.5, 218.6, 223, 225.5, 234, 226, 226.3, 226.6, 226.7, 227.3, 233, 234, 245-248.7, 432, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, 2810.5); the Wage Orders of the California Industrial Welfare Commission; and the California Business and Professions Code section 17200, *et seq*. This release excludes the release of claims not permitted by law. (*Id.* at ¶ 5.2.)

15. Released PAGA Claims: The Released PAGA Claims are all claims for civil penalties under PAGA that were alleged, or could have been alleged, based on the facts asserted in the PAGA

Notices as amended, including but not limited to, claims relating to failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; missed/short/late/interrupted meal period, rest period, and/or recovery period wages/premiums; failure to provide meal periods; failure to authorize and permit rest periods and/or recovery periods; the calculation of meal period, rest period, and/or recovery period premiums; payment for all hours worked, including off-the-clock work; failure to reimburse business expenses; wage statements; failure to keep accurate records; failure to timely pay wages; failure to timely pay final wages; violations of California's paid sick leave laws; failure to provide supplemental paid sick leave; and alleged violations of Labor Code sections 200, 201, 202, 203, 204, 206, 210, 216, 218, 218.5, 218.6, 223, 225.5, 234, 226, 226.3, 226.6, 226.7, 227.3, 233, 234, 245-248.7, 432, 510, 512, 516, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2800, 2802, 2804, 2810.5, 2698, *et seq*. and 2699 *et seq* and IWC Wage Orders 1-2001 and 4-2001. (*Id.* at ¶ 5.3.) The Released PAGA Claims are limited to the PAGA Period. (*Id.*)

16. Uncashed Settlement Checks: For any Covered Employee whose Individual Settlement Payment check is uncashed and cancelled after the void date (180 days after the date of mailing), the Administrator shall transmit the funds, in the name of the Covered Employee, to the State of California's Unclaimed Property Division. (*Id.* at ¶¶ 4.3.1, 4.3.3.)

17. PAGA Payment: means $25,000.00, which is the amount provided in exchange for the release of the PAGA claims addressed in this Settlement, and which shall be paid from the Gross Settlement Amount, with 75% of the PAGA Payment constituting the LWDA PAGA Payment, with the remaining 25% constituting the Net PAGA Payment to be allocated and paid to PAGA Members.[2] (*Id.* at ¶ 1.40.) Plaintiffs sent PAGA notices of their alleged Labor Code violations to Defendant and the LWDA, and Plaintiffs' respective PAGA administrative exhaustion period expired without the LWDA indicating any intent to investigate the alleged violations. (Moon Decl., ¶ 4, Exh. 1; Haines

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[2] On July 1, 2024, new legislation was enacted to amend PAGA in several respects, including as to the recovery split for civil penalties. (Stats. 2024, ch. 44 (Assem. Bill No. 2288), § 1, eff. Jul. 1, 2024).) As amended, PAGA now provides for a 65%-LWDA/45%-aggrieved employee split. (Lab. Code § 2699(m).) However, because Plaintiff's action was initiated prior to June 19, 2024, any civil penalties recovered in this action will be split 75% to the LWDA and 25% to Aggrieved Employees as the recent PAGA amendments do not apply retroactively. (Lab. Code § 2699(v)(1).)

Decl., ¶ 10, Exh. A; Koulloukian Decl., ¶ 4, Exh. 1.) File-stamped copies of Plaintiffs' complaints containing the Court-assigned case number was submitted to the LWDA. (Moon Decl., ¶ 9.) The LWDA has not sought to intervene. (*Id.*) Further, the proposed Settlement Agreement was submitted to the LWDA, and to date, the LWDA has not indicated any objection thereto. (*Id.* at ¶ 15, Exh. 3.)

18. Service Payments: The Settlement includes Service Payments of $7,500.00 to each Plaintiff, for a total of $22,500.00, in addition to any Individual Settlement Payments that they may be entitled to receive as a PAGA Member or a Class Member ("Covered Employees"). (*Id.* at ¶¶ 3.2.1, 1.16.) The service payments are for Plaintiffs initiating and providing services in support of the Action and for Plaintiffs' individual settlement and general release of all claims, as set forth in the Settlement. (*Id.* at ¶ 1.51.) If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. (*Id.* at ¶ 3.2.1.)

19. Attorneys' Fees and Litigation Costs: The Settlement provides for Attorneys' Fees of not more than one-third of the Gross Settlement Amount (currently estimated to be $156,666.66) for attorneys' fees to Plaintiffs' Counsel, and Litigation Costs of not more than $18,000.00. (*Id.* at ¶ 3.2.2.) If the Court approves Attorneys' Fees and/or Litigation Costs less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. (*Id.*) To date, Moon Law Group, PC ("MLG") has incurred $2,278.47 in litigation costs, and Haines Law Group, APC ("HLG") has incurred $2,160.38 in litigation costs. (Moon Decl., ¶ 16(c), Exh. 4; Haines Decl., ¶ 13.) Koul Law Firm ("KLF") Majarian Law Group, APC ("MAJ") are not requesting any litigation costs. (*See generally* Koulloukian Decl.; Declaration of Sahag Majarian II in Support of Motion for Preliminary Approval of Class and Representative Action Settlement ["Majarian Decl."].) Plaintiffs' Counsel base the proposed award of fees on the "common fund" method. (Moon Decl., ¶ 60.) Pursuant to a Joint Prosecution Agreement between Plaintiffs' Counsel (the "JPA"), which has been consented to in a signed writing by Plaintiffs, the attorneys' fees are to be divided between Plaintiffs' Counsel as follows: 50% to MLG; 12.5% to KLF; 12.5% to MAJ; and 25% to HLG. (*Id.* at ¶ 16.) As to costs, the JPA states that the firms will be reimbursed in full to the extent possible for their respective costs actually incurred. (*Id.*)

20. Administration Expenses: The Parties jointly appoint Phoenix Settlement Administrators ("Phoenix") as the neutral entity to administer this Settlement. (*Id.* at ¶ 1.3.) The Settlement Agreement provides the Administrator will be paid Administration Expenses from the Gross Settlement Amount, in an amount up to $17,000.00, for its fees and expenses in administering this Settlement. (*Id.* at ¶¶ 1.4, 3.2.3.) To the extent the Administration Expenses are less or the Court approves payment less than $17,000.00, the Administrator will retain the remainder in the Net Settlement Amount. (*Id.*). (*Id.* at ¶ 3.2.3.) Phoenix has submitted a not-to-exceed bid for $14,750.00 as costs. (Moon Decl., ¶ 16(d), Exh. 5.)

21. Class Data and Notice: Not later than 20 days after the Court grants Preliminary Approval, Defendant will deliver the Employee Data to the Administrator. (Settlement, ¶ 4.1.) No later than 14 calendar days after receiving the Employee Data, the Administrator will send to all Class Members identified in the Employee Data, via first-class United States Postal Service mail, the Class Notice. (*Id.* at ¶ 7.4.2.) The proposed Class Notice has been approved by the Parties and sets forth, in plain terms, a statement of case, the terms of the Settlement Agreement, the approximate amounts of attorneys' fees, costs, PAGA penalties, and service payments being sought, an explanation of how the individual payments are calculated, and the Final Approval Hearing date. (*Id.* at Exh. A.) The Administrator will undertake its best efforts to ensure the Class Notice is provided to the current addresses of Class Members, including conducting a national change of address search and re-mailing the notice to updated addresses. (*Id.* at ¶ 7.4.2.) If a Class Notice is "undeliverable" and no forwarding address is provided, the Administrator shall employ standard skip-tracing to obtain updated address information and then shall re-mail the Notice to those Class Members. (*Id.* at ¶¶ 1.2, 7.4.3.) The Class Notice will be translated and mailed in English and Spanish to each Class Member. (Moon Decl., ¶ 13, n.1.)

22. Response Deadline and Procedure for Disputing Workweeks and/or Pay Periods, Opting Out, or Objecting: Class Members will have 45 calendar days after the Administrator mails the Class Notice to fax, e-mail, or postmark any (a) Requests for Exclusion from the Settlement, (b) written Objections to the Settlement, or (c) challenges to the calculation of Workweeks and/or PAGA Pay Periods. (Settlement, ¶¶ 7.5.1, 7.6, 7.7.2.) The Class Notice explains the procedure under which a

Class Member and/or PAGA Member can dispute the number of his or her individual Workweeks and/or PAGA Pay Periods stated in their Class Notice. (*See id.* at ¶ 7.6, Exh. 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. (*See id.* at ¶¶ 7.5, 7.7, Exh. 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. (*See id.* at ¶ 7.7.2, Exh. A.)

23. Funding of the Gross Settlement Amount: Defendant shall fully fund the Gross Settlement Amount and fund the amounts necessary to fully pay its share of payroll taxes by transmitting the funds to the Administrator no later than 30 days after the Effective Date. (*Id.* at ¶ 4.2.)

III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL

The law favors the settlement of lawsuits, particularly in class actions and other complex cases. (*See, e.g.*, *Neary v. Regents of Univ. of Cal.* (1992) 3 Cal.4th 272, 277–81.) To prevent fraud, collusion, or unfairness to the class, the settlement of a class action requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800–01 [citing authority omitted].) To approve a settlement, the Court must find "the settlement is fair, adequate, and reasonable." (*Id.*) This Court has wide discretion in making this determination. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness, adequacy, and reasonableness are presumed, as here, when: "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Dunk,* 48 Cal.App.4th at p. 1802 [citing Newberg, Newberg on Class Actions (3rd ed. 1992) § 11.41].)

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

As discussed below, Plaintiffs' Counsel has provided information exceeding the threshold required to provide this Court with materials and information necessary to determine that the proposed Settlement is fair, adequate, and reasonable.

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

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

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

Mediation occurred on November 14, 2024. (Moon Decl., ¶ 13.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses, the Parties reached a settlement. (*Id.*)

Prior to mediation, Plaintiffs obtained from Defendant, through informal discovery, information sufficient to meaningfully evaluate the claims at issue in the action, including a statistically significant sample of time and corresponding payroll records of the Class and information regarding the estimated number of current and former employees, Workweeks, Pay Periods, and average hourly pay. (*Id.* at ¶ 11.) All of this information was reviewed and analyzed in preparation for mediation. (*Id.* at ¶ 12.) With the assistance of a statistics expert who reviewed the sampling records, Plaintiffs' Counsel prepared a damage analysis for mediation. (*Id.*) Based on the foregoing and their investigation of the applicable law regarding the claims and defenses at issue, Plaintiffs' Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum and realistic monetary exposure for all claims. (*Id.*) Accordingly, Plaintiffs and their Counsel acted intelligently in negotiating the Settlement. (*Id.*)

Furthermore, Plaintiffs' Counsel has considerable experience and demonstrated competence with litigating wage and hour class actions. (*Id.* at ¶¶ 38–57; Haines Decl., ¶¶ 3-7; Koulloukian Decl., ¶¶ 10-16; Majarian Decl., ¶¶ 2-3.) The experience of Plaintiffs' Counsel was helpful in assessing the reasonableness of the Settlement at issue here, and from this experience Plaintiff's Counsel concluded that this litigation could not have been settled on better terms than provided under the proposed Settlement. (Moon Decl., ¶ 58.) 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 Considering the Parties' Respective Legal Positions

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

Here, the Settlement obviates the significant risk that this Court may deny certification of all or some of Plaintiff's claims. (Moon Decl., ¶ 30.) Furthermore, even if Plaintiffs were able to pursue their claims on a class-wide basis and obtain certification of all or some of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the Class. (*Id.*) While Plaintiffs are confident in the merits of their claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 28.) Plaintiffs also recognize that proving the amounts of wages owed to each Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id.*)

Plaintiffs' Counsel is also of the opinion that because the issues here are fairly contested, there is a possibility of the Court not awarding the PAGA penalties even if Plaintiffs prevailed on the merits due to the largely discretionary nature of awarding PAGA penalties. (*Id.* at ¶ 29.) Indeed, under Labor Code section 2699, subdivision (e)(2), a Court can reduce PAGA penalties "if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (Lab. Code § 2699(e)(2).) In other words, were this matter to go to trial, any award granted would be at the discretion of the Court and subject to a substantial reduction. (Moon Decl., ¶ 29.)

Because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of not being able to recover anything. (*Id.* at ¶ 27.) Moreover, the Settlement includes an escalator clause, and if triggered, Defendant could be liable to make a *pro rata* increase to the Gross Settlement Amount for each additional Workweek above the 10% escalator threshold. (Settlement, ¶ 8.) This Settlement avoids the risks, burdens, and accompanying expense of further litigation. (Moon Decl., ¶ 31.) Although the Parties have engaged in a significant amount of investigation, informal discovery, and class-wide data analysis, they have not conducted expert discovery or taken depositions. (*Id.*) Moreover, preparation for class certification and a trial would remain for the Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiffs and/or any summary judgment ruling. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through trial. (*Id.*)

The proposed settlement of $470,000.00 therefore represents a substantial recovery when compared to the reasonably forecasted recovery of the Class. (*Id.* at ¶ 33.) When considering the risks of litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to establish liability, and the probability of appeal, it is clear the Settlement amount of $470,000.00 is within the "ballpark" of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*)

Indeed, the Net Settlement Amount available for settlement payments is no less than **$230,833.34** for an estimated Class size of **991 individuals**.[3] (*Id.* at ¶ 32.) Accordingly, it is estimated each Participating Class Member is eligible to receive an average benefit of approximately **$232.93** prior to tax withholdings on the wage portion of payments, which results in an estimated **Workweek value of $4.91**. (*Id.*) Considering Class Members' average hourly rate is $19.39, the average benefit is approximately **12 hours of work**. (*Id.*) Additionally, it is estimated there are **991 PAGA Members** who are each receive an estimated average of **$6.31** from the total Individual PAGA Payments of $6,250.00, which results in an estimated **Pay Period value of $0.24** based on the estimated **26,080 Pay Periods** during the PAGA Period. (*Id.*) The actual amounts to Participating Class Members and PAGA Members 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.*) The high and low range of payments to Class Members will be calculated by the Administrator following preliminary approval and receipt and processing of the Class Data and will be provided to the Court in a motion for final approval. (*Id.*)

3. Plaintiffs' Counsel Has Extensive Experience in Class Action and PAGA Litigation

The Settlement negotiations were conducted by highly capable and experienced counsel. (*Id.*

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[3] The Net Settlement Amount is at least $470,000.00 less the following: $7,500 for the Service Payment to each Plaintiff ($22,500 total), $17,000.00 for the Administration Expenses, $25,000.00 for the PAGA Payment to the LWDA and to PAGA Members, $156,666.66 for Class Counsel's attorneys' fees, and up to $18,000.00 for Class Counsel's litigation costs. (Settlement, ¶¶ 1.32, 3.2.)

at ¶¶ 38–57; Haines Decl., ¶¶ 3-8; Koulloukian Decl., ¶¶ 10-16; Majarian Decl., ¶¶ 2-3.) Plaintiffs' Counsel has a strong record of vigorous and effective advocacy for their clients and are experienced in handling complex wage and hour class action litigation. (Moon Decl., ¶¶ 38–57; Haines Decl., ¶¶ 3-8; Koulloukian Decl., ¶¶ 10-16; Majarian Decl., ¶¶ 2-3.) Although Plaintiffs and their counsel were prepared to try the claims alleged in the litigation, they support the proposed Settlement as being in the best interest of the Class. (Moon Decl., ¶¶ 13, 19.)

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

The proposed Class Notice, in the form attached to the Settlement as Exhibit A, should be approved for dissemination to the Class. The Class Notice informs the Class of the terms of the Settlement and of their rights to be excluded from or object to the Settlement. (Settlement, Exh. A.) Accordingly, the proposed Class Notice meets all the requirements of rule 3.769(f) of the California Rules of Court. (Cal. Rules of Court, rule 3.769(f).)

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

Subject to Court approval, the Settlement Agreement provides for attorneys' fees payable to Class Counsel in an amount up to one-third of the Gross Settlement Amount (currently estimated to be $156,666.66) for Plaintiffs' Counsel's attorneys' fees, plus reimbursement for out-of-pocket litigation costs not to exceed $15,000.00. (Settlement, ¶ 3.2.2.) These amounts are disclosed to Class Members in the proposed Class Notice and are reasonable. (*Id.* at Exh. A.)

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

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

Plaintiffs' Counsel will seek an award of attorneys' fees on the "percentage of recovery/common fund" theory. (Moon Decl., ¶ 60.) The purpose of this approach is to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1975) 15 Cal.3d 162, the California Supreme Court stated, "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons[ ] are entitled to share." (*Id.* at pp. 110–11 [pincite omitted].)

The California Supreme Court recently affirmed in *Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480 that, "when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." (*Id.* at p. 503.) The court explained: "The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation[ ]—convince us the percentage method is a valuable tool that should not be denied our trial courts." (*Id.* [internal citations omitted].) This line of legal authority supports a request for attorneys' fees based on the percentage of recovery/common fund method.

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

According to a leading treatise on class actions: "No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (Newberg, Newberg on Class Actions (3rd ed. 1992) § 14.03.) Attorneys' fees that are fifty percent of the fund are typically considered the upper limit, with thirty to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also Van*

Vranken v. Atlantic Richfield Co. (N.D. Cal. 1995) 901 F.Supp. 294, 297 [stating that most cases where 30–50% was awarded involved "smaller" settlement funds of under $10 million].)

Here, Plaintiffs' Counsel requests 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, ¶ 3.2.2, *with Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].) Accordingly, Plaintiffs request the Court preliminarily approve their counsel's ability to request attorneys' fees as negotiated by the Parties.

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

Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(k)(1), 2802(d).) Under these sections, Plaintiffs would be permitted to recover their actual attorneys' fees, even if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) This Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Plaintiffs' Counsel for their decision to assume risk by taking on this matter. (*See* Moon Decl., ¶ 30.) In fact, prosecution of this action involved significant financial risk for Plaintiffs' Counsel as they undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.* at ¶¶ 61–66.) Once Counsel undertook this litigation on behalf of the Class, they committed to pursue it to its conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶ 63.)

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

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Plaintiff's Counsel possess considerable expertise in litigating class actions. (*Id.* at ¶¶ 38–57; Haines Decl., ¶¶ 3-8; Koulloukian Decl., ¶¶ 10-16; Majarian Decl., ¶¶ 2-3.) Plaintiff's Counsel have been involved as lead counsel or co-counsel in numerous class actions that resulted in millions in recovery. (Moon Decl., ¶¶ 38-57; Haines Decl., ¶¶ 3-8; Koulloukian Decl., ¶ 15; Majarian

Decl., ¶¶ 2-3.) Because it is reasonable to compensate Plaintiffs' Counsel commensurate with their skill, reputation, and experience, the requested fee award is supported here.

Plaintiffs' 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. (Moon Decl., ¶ 58.) 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 ¶ 56.) Based on these and other factors, Plaintiffs' Counsel have frequently received fee awards of this percentage from the gross recovery for the class. (*See id.* at ¶¶ 42, 47, 52; Haines Decl., ¶ 7; Koulloukian Decl., ¶ 15; Majarian Decl., ¶ 2.) Therefore, the requested fee award is fair, reasonable, and adequate.

D. <u>The Service Payments to the Class Representatives Are Reasonable</u>

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

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

Under the Settlement here, subject to the Court's approval, Service Payments will be paid to Plaintiffs in an amount up to $7,500.00. (Settlement, ¶ 3.2.1.) This award is in recognition of Plaintiffs' time and effort, as well as their exposure to substantial risk, in bringing and presenting the action, and for their general release of claims, both known and unknown, and waiver of Section 1542 rights. (*Id.* at ¶¶ 1.51, 5.1.) Plaintiffs have devoted a great deal of time and work assisting counsel in the case and communicated with counsel frequently for litigation and to prepare for the mediation session. (Moon Decl., ¶¶ 34-37; Roman Decl., ¶¶ 12–23; Bulnes Decl., ¶ 4; Marquez Decl., ¶ 13.) The requested awards are fair and reasonable, particularly considering the substantial benefits Plaintiffs generated for all Class Members. (Moon Decl., ¶¶ 27–37.)

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

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

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

B. <u>Plaintiffs Maintain that the Criteria for Class Certification Are Satisfied</u>

1. The Class Is Ascertainable and Numerous

When determining whether a class is ascertainable, California courts focus on the following three factors: "(1) the class definition, (2) the size of the class and (3) the means of identifying class members." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, the proposed Class that Plaintiffs seek to represent is ascertainable because (1) the Class definition is sufficiently precise, (2) the Class consists of 991 individuals, and (3) Class Members can be readily identified by looking at Defendant's records. (Settlement, ¶¶ 1.6, 1.9, 1.19, 4.1; Moon Decl., ¶ 20.) Plaintiffs maintain there is an easily ascertainable Class, defined by objective and precise criteria. (Settlement, ¶¶ 1.6, 1.9.) Because Class Members are identified using specific criteria in the regular business records of Defendant—their employment by Defendant in California, non-exempt classification, and actual work during the Class Period—the Class is ascertainable. (*See Wilner v. Sunset Life Ins. Co*. (2000)

78 Cal.App.4th 952, 959–60 [class membership defined by ownership of product that is the subject of the lawsuit is sufficient to make the class ascertainable].)

"The requirement of Code of Civil Procedure section 382 that there be 'many' parties to a class action suit is indefinite and has been construed liberally." (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934.) "Where a question is of common interest to 'many' persons, an action may be maintained as a class action even where the parties are numerous and it is in fact practicable to join them all." (*Id.*) "No set number is required as a matter of law for the maintenance of a class action." (*Id.*) "Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a trust in an action for removal of the trustees." (*Id.* [citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574]; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a class of 9 plaintiffs and 35 members].) Therefore, numerosity is plainly satisfied.

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

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

Here, Plaintiffs' claims satisfy all three requirements. The employment practices at issue include whether Defendant: had legally compliant policies and practices to pay employees all minimum and overtime wages owed; had legally compliant policies and practices to provide employees with and authorize meal and rest periods; had legally compliant policies to reimburse employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge of their duties; paid all wages to employees during employment and at the time of termination; intentionally failed to pay all final wages; provided inaccurate itemized wage statements; engaged in unfair business practices; and violated civil penalty provisions recoverable under PAGA. (Moon Decl., ¶¶ 3, 5-8.) Plaintiffs contend the factual and legal issues are the same for all Class Members, including Plaintiffs, and further, that all Class Members suffered from and seek redress for the same alleged injuries. (Roman Decl., ¶¶ 3–7; Bulnes Decl., ¶ 5; Marquez Decl., ¶¶ 5-6.) Considering Class Members would need to prove the same issues of law and fact to prevail, and their legal remedies are identical, it would be preferable to resolve all claims through a settlement agreement than to force each Class Member to litigate their own individual claims. Thus, the Court should grant conditional class certification for settlement purposes because common questions of law and fact predominate over any individual questions within the Class.

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

The typicality requirement does not focus on the individual characteristics or circumstances of the representative plaintiff compared to those of the remainder of the class, but rather, upon the typicality of the proposed representative's claims as they relate to the defendant's conduct and activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["The only requirements a re [sic] that common questions of law and fact *predominate* and that the class representative be *similarly* situated" vis-à-vis the class.] [emphasis in original].) A representative plaintiff's claims are typical of the class if they arise from the same event, practice, or course of conduct, and if the claims rest on the same legal theories. (*Id.*) That is precisely the case here. Plaintiffs are former employees of Defendant; as such, they allege they were subject to the same policies and practices as other similarly situated employees. (Roman Decl., ¶¶ 2, 5; Bulnes Decl., ¶¶ 3, 5; Marquez Decl., ¶¶ 5-6.)

4. Plaintiffs and Their Counsel Meet the Adequacy Requirement

The adequacy of representation requirements is met by fulfilling two conditions: (1) a named plaintiff must be represented by counsel qualified to conduct the pending litigation, and (2) a named plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450.) Here, all requirements are met. Plaintiffs retained counsel with extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Moon Decl., ¶¶ 38–57; Haines Decl., ¶¶ 3-8; Koulloukian Decl., ¶¶ 10-16; Majarian Decl., ¶¶ 2-3.) With their experience, Plaintiffs' Counsel unquestionably are "qualified, experienced and generally able to conduct the proposed litigation." (*Miller*, *supra*, 148 Cal.App.3d at p. 874.) In addition, Plaintiffs have no known conflicts, and Plaintiffs have, with counsel, litigated this case and diligently reviewed the settlement terms, showing dedication. (Roman Decl., ¶¶ 9–23; Bulnes Decl.,

¶ 4; Marquez Decl., ¶¶ 10-16.) Plaintiffs' willingness to serve as the representatives demonstrates their serious commitment to bringing about the best results possible for the Class. (Roman Decl., ¶¶ 9–23; Bulnes Decl., ¶ 4; Marquez Decl., ¶¶ 10-16.)

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

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

V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND

A. The Proposed Notice Plan Satisfies Due Process

Class Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court, rule 3.766(e)–(f).) California law vests the Court with broad discretion in fashioning an appropriate notice program. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 970, 973–74.) There is no statutory or due process requirement that all class members receive actual notice, but in this matter, the Class Members will receive direct mailed notice. (Settlement, ¶ 7.4.) As the Court of Appeals has explained, "[t]he notice given should have a reasonable chance of reaching a substantial percentage of the Class Members . . ." (*Cartt*, 50 Cal.App.3d at p. 974.) In this case, notice of the proposed Settlement will be provided by direct mailing in both English and Spanish, the best possible form of notice under the circumstances. (Settlement, ¶ 1.11.)

B. The Notice Is Accurate and Informative

The proposed Class Notice should be approved. It will be disseminated through direct U.S. first-class mail to the current address for each Class Member. (*Id.* at ¶ 7.4.2.) It informs the Class

Members of the terms of the Settlement and their right to be excluded from the Settlement. (*Id.* at ¶¶ 7.5–7.7, Exh. A.) And if there are Class Members who wish to object to the proposed Settlement, they will have the opportunity to submit written objections and/or be heard at the Final Approval Hearing. (*Id.* at ¶ 7.7.)

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

VI. CONCLUSION

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

Respectfully submitted,

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