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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

JESSE P. SAHAGUN, individually, and on behalf of all others similarly situated, Plaintiff, vs. ARCHER-DANIELS-MIDLAND COMPANY; and DOES 1 through 10, inclusive, Defendants.	Case No. CGC-24-617054 <u>CLASS AND REPRESENTATIVE ACTION</u> **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** [*Filed with the Declaration of Kane Moon, the Declaration of Plaintiff Jesse P. Sahagun, the Declaration of Sean Hartranft, and [Proposed] Preliminary Approval Order*] <u>PRELIMINARY APPROVAL HEARING</u>: Date: August 14, 2026 Time: 9:00 a.m. Dept.: 613 Judge: Hon. Jeffrey S. Ross Action Filed: August 8, 2024 Trial Date: Not set

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

PLEASE TAKE NOTICE that on August 14, 2026, at 9:00 a.m., in Department 613 of this Court located at 400 McAllister St. San Francisco, California 94102, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769 *et seq*., Plaintiff Jesse P. Sahagun ("Plaintiff") will, and hereby does, move the Court for an Order granting preliminary approval of the proposed class action settlement between Plaintiff and Defendant Archer-Daniels-Midland Company ("Defendant"). Plaintiff further moves the Court for an Order:

1. Granting preliminary approval of the Stipulation of Class and PAGA Representative Action Settlement ("Settlement");
2. Certifying the Settlement Class for settlement purposes;
3. Approving the Class Notice and plan for its 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 APEX Class Action Administration 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 declarations filed herewith, 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: July 17, 2026 MOON LAW GROUP, PC

By:____________________________________
Kane Moon
H. Scott Leviant
Sandy Pham

Attorneys for Plaintiff

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I. INTRODUCTION

Plaintiff Jesse P. Sahagun ("Plaintiff") seeks preliminary approval of a proposed $295,000.00 non-reversionary, wage and hour class action settlement with Defendant Archer-Daniels-Midland Company ("Defendant") (Plaintiff and Defendant, collectively, the "Parties"). The Settlement will provide substantial monetary payments to approximately 195 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, informal discovery, and negotiations. The negotiations were at arm's-length and were facilitated by experienced neutral mediator, Eve Wagner, 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 operates in the agricultural industry, offering crop transportation and processing services. (Declaration of Kane Moon in Support of Plaintiff's Motion for Preliminary Approval of Class and Representative Action Settlement ["Moon Decl."] ¶ 3.) Plaintiff worked for Defendant in a non-exempt, hourly-paid position from approximately 2009 to August 31, 2023, as a forklift operator. (Declaration of Plaintiff Jesse P. Sahagun in Support of Approval of Class and Representative Action Settlement ["Plaintiff Decl."], ¶ 2.) Plaintiff was classified as non-exempt during the entirety of his employment and was subjected to the same unlawful labor practices as his coworkers. (Moon Decl., ¶ 3.)

Plaintiff's claim for unpaid wages stems from Defendant's alleged practice of rounding Settlement Class Members' time to their detriment, Defendant's alleged failure to compensate Settlement Class members for off-the-clock work, and Defendant's alleged failure to incorporate all remuneration into the regular rate of pay for purposes of calculating correct overtime rate of pay, meal break premium rate of pay, and sick day rate of pay. (*Id.* at ¶ 4.) Plaintiff also 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 based on allegations that Settlement Class Members were required to use their personal cellphone for work purposes and maintain their uniforms, without reimbursement. (*Id.*) Plaintiff also brings derivative claims against Defendant for waiting time penalties, wage statement violations, unfair business practices, and civil penalties under California Private Attorneys General Act, Labor Code sections 2698, *et seq.* ("PAGA"). (*Id.*)

Because of Defendant's alleged violations of the Labor Code, Plaintiff commenced this Action on or around August 7, 2024, by filing a Complaint, alleging 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, and (8) engaged in unfair business practices. (*Id.* at ¶ 5.) On or around November 20, 2024, Plaintiff filed a First Amended Complaint against Defendant adding a cause of action for civil penalties under PAGA (the "Operative Complaint"). (*Id.*)

Defendant ardently opposes the merits of this case and denies Plaintiff's factual allegations. (*Id.* at ¶ 6.) Defendant contends, among other things, that its rounding policy was neutral on its face, and that it did not fail to incorporate any additional remuneration into the regular rate of pay. (*Id.*) Moreover, Defendant argues that it met its meal and rest period obligations, and that Plaintiff and the putative class members were provided with the opportunity to take all meal and rest periods to which they were entitled. (*Id.*) Defendant also contends that it reimbursed its employees for all necessary business expenses incurred and that cellphone use was not required for work. (*Id.*) Furthermore, to the extent that Plaintiff received wage statements that were allegedly inaccurate, Defendant assert 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 precluded the imposition of waiting time penalties since Plaintiff could not prove that Defendant's alleged failure to pay all final wages at the time of separation was "willful." (Moon Decl., ¶ 7; *see, e.g., Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012) No. ED CV 11–298 GHK (DTBx), 2012 WL 9506073, *5.) For these reasons, Defendant claims it did not engage in any unfair business practices and denies liability under PAGA. (Moon Decl., ¶ 7.) 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>

The Parties met and conferred regarding an agreement to mediate Plaintiff's claims. (*Id.* at ¶ 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 evaluate the claims at issue in the action, including applicable written policies of Defendant during the relevant period, Plaintiff's personnel file, a sample of time and corresponding payroll records of Settlement Class Members, and information regarding the estimated number of current and former Settlement Class Members, Workweeks, PAGA Members, PAGA Pay Periods, and average hourly pay. (*Id.*)

In preparation for mediation, Plaintiff's 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 ¶ 9.) Plaintiff's Counsel retained a statistics expert to analyze the sample records and prepare a damage analysis prior to mediation. (*Id.*) The sample of time and pay records contained the records of 43,512 shifts actually worked during the Class Period (representing approximately 93% of the Class), which allowed Plaintiff's expert to prepare an analysis with a high degree of certainty. (*Id.*) In conjunction with their extensive factual investigation, Plaintiff's Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly, Plaintiff's 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 his 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.*)

After a reasonable inquiry, Plaintiff's Counsel aver that they are not aware of any case, the nature of any claims asserted in such 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.)

C. Settlement Negotiations

On February 9, 2026, the Parties participated in a full day mediation with Eve Wagner, Esq., a professional and neutral class and PAGA action mediator. (*Id.* at ¶ 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 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 Settlement. (*Id.* at ¶ 11, Ex. A ["Settlement"].)

Plaintiff's Counsel have conducted a thorough investigation into the facts of this case. (*Id.* at ¶ 20.) Based on the foregoing discovery and their own independent investigation and evaluation, Plaintiff's 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 Settlement Class Members. (*Id.*) **Indeed, the 295,000.00 Gross Settlement Amount represents approximately 12% of the maximum exposure of $2,539,539.87 and 47% of the realistic recovery of $634,884.97.** (*Id.* at ¶¶ 28, 30.)

D. Key Terms of the Proposed Settlement

Under the Settlement, Defendant will pay a non-reversionary, Gross Settlement Amount of $295,000.00 and any employer payroll taxes owed, to resolve this litigation. (Settlement, ¶ 3.2.1.) The Settlement's key terms include:

1. Settlement Class and Class Settlement Period: The proposed Class for purposes of the Settlement contains approximately 195 members and is defined as: all current and former California

non-exempt employees of Defendant during the Class Settlement Period. (Settlement, ¶ 1.34.) "Class Settlement Period" means the period August 7, 2020, through April 30, 2026. (*Id.* at ¶ 1.4.)

2. Eligible Workweeks: means any week during which a Class Member worked for Defendant for three or more calendar days, during the Class Period. (*Id.* at ¶ 1.10.)

3. Participating Class Member Release. As of the Effective Date and full funding of the Gross Settlement Amount, including the employer's share of payroll taxes, all Participating Class Members fully and finally release the Released Parties from the Released Class Claims that arose during the Class Settlement Period. (*Id.* at ¶ 3.6.2.)

4. The State of California, Plaintiff and the PAGA Member Release. As of the Effective Date and full funding of the Gross Settlement Amount, including the employer's share of payroll taxes, Plaintiff, as representative of the State of California and on behalf of the LWDA and as representative of the PAGA Members, fully and finally releases the Released Parties from the PAGA Released Claims for the PAGA Settlement Period. (*Id.* at ¶ 3.6.3.)

5. PAGA Payment: means the payment in settlement of all claims for PAGA penalties, 65% of which will be distributed as the LWDA PAGA Payment and 35% of which will be distributed as Individual PAGA Payments to the PAGA Members. (*Id.* at ¶ 1.23.) The 35% share in PAGA Payment or $10,500.00 shall be distributed to the PAGA Members on a pro rata basis based on their Eligible Pay Periods during the PAGA Settlement Period. (*Id.* at ¶ 3.3.5.) Plaintiff's Counsel submitted the proposed settlement to the LWDA. (Moon Decl., ¶ 12, Ex. B.)

6. Net Settlement Amount: means the portion of the Gross Settlement Amount available for distribution to the Participating Class Members, which shall equal the Gross Settlement Amount less PAGA Payment, Court-approved attorneys' fees and costs award to Class Counsel, Settlement Administration Costs, and the Enhancement Award. (Settlement, ¶ 1.20.) The remainder is to be paid to Participating Class Members as Individual Settlement Payments. (*Id.* at ¶ 3.3.4.)

7. Individual Settlement Payment: means the settlement amount due each Participating Class Member from the Net Settlement Amount. (*Id.* at ¶ 1.17.)

8. Uncashed Checks: After 180 calendar days of issuance, funds from undeposited Individual Settlement Payment and Individual PAGA Payment checks will be held by the Settlement

Administrator. (*Id.* at ¶ 4.10.) Even if a Participating Class Member or PAGA Member does not cash or deposit his or her settlement payment check(s) within 180 calendar days of issuance, the Settlement, including its release, will be binding on that Participating Class Member or PAGA Member. (*Id.*) After 180 days, any uncashed checks for the Settlement shall be tendered to the State Controller's Office, Unclaimed Property Division in the name of the recipient. (*Id.*)

9. Tax Treatment: 33% of each Participating Class Members' individual payment shall constitute payment in the form of wages and each Participating Class Member will be issued an IRS Form W-2 for such payment to him or her. (*Id.* at ¶ 3.4.1.) The remaining 67% of each Participating Class Members' individual payment shall constitute settlement for reimbursement of expenses, penalties and interest and each Participating Class Member will be issued an IRS Form 1099 for such payment to him or her, if required by law. (*Id.*) All Individual PAGA Payments shall be allocated as 100% penalties, for which a 1099 will be issued if required. (*Id.* at ¶ 3.4.2.)

10. Attorneys' Fees and Costs: The Settlement provides for a Class Counsel's Fees in the amount of 1/3 of the Gross Settlement Amount (currently estimated to be $98,333.33) for Class Counsel's attorneys' fees, plus a Class Counsel's Costs for reasonable costs and expenses incurred not to exceed $30,000.00. (*Id.* at ¶ 3.3.2.) In the event the amount of actual costs is less and/or the amount of fees and costs approved by the Court are less than the requested amounts, the difference will revert to the Net Settlement Amount and Class Counsel shall retain the right to appeal an award of fees that is less than 25% of the Gross Settlement Amount. (*Id.*) At this time, Plaintiff's Counsel has incurred $21,913.70 in costs. (Moon Decl., ¶ 15, Ex. D.)

11. Class Representative Enhancement Award: The Settlement includes a Class Representative Enhancement Award to Plaintiff in an amount up to $5,000.00 from the Gross Settlement Amount, subject to the Court's approval, in addition to the amount he is eligible to receive as a Settlement Class Member. (Settlement, ¶ 3.3.1.) The award is in recognition of his efforts in coming forward as Class Representative and as consideration for a full, general, and comprehensive release of the Class Representative's Released Claims. (*Id.* at ¶ 1.12.)

12. Settlement Administration Costs: The Settlement provides the Administrator will be paid Settlement Administration Costs not to exceed $5,900.00, for its fees and expenses in administering

this Settlement. (*Id.* at ¶ 3.3.3.) The Parties jointly appoint APEX Class Action Administration ("APEX") who shall be responsible for the administration of the Settlement, distribution of any amounts owed under this Settlement, and matters necessarily related thereto, based on its bid of $5,900.00. (*Id.* at 1.33; Moon Decl., ¶ 18, Ex. E.)

13. <u>Notice of Proposed Settlement</u>: The Notice of Settlement sets forth in plain terms, a statement of case, the terms of the Settlement Agreement, the approximate amounts of attorneys' fees, costs, and service awards being sought, and an explanation of how the settlement allocations are calculated. (Settlement, Ex. 1.) Within 21 calendar days after receipt of the Class Data, the Administrator will send the Notice of Settlement to all Settlement Class Members identified in the Class Data, via first-class USPS mail. (*Id.* at ¶ 4.2.2.) Upon receipt of the Class Data, the Settlement Administrator shall check with the U.S. Postal Service National Change of Address Database and update any addresses for the Settlement Class Members. (*Id.* at ¶ 4.2.1.) If any Notice of Settlement is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall run a skip-trace using that Settlement Class Member's social security number in an effort to attempt to ascertain the current address of the Settlement Class Member. (*Id.* at ¶ 4.2.2.) If such an address(es) is ascertained, the Settlement Administrator shall re-mail the Notice of Settlement within ten calendar days. (*Id.*) If alternative addresses are obtained for a Settlement Class Member, the Settlement Administrator shall send the Notice of Settlement to up to 2 alternative addresses. (*Id.*)

14. <u>Response Deadline and Procedure for Challenging Workweeks and/or Pay Periods, Opting Out, or Objecting</u>: "Response Deadline" means 45 days after the Settlement Administrator mails the Notice of Settlement to Settlement Class Members. (*Id.* at ¶ 1.31.) It shall be the last date on which Settlement Class Members may: (a) postmark any Opt-Out Request from the class portion of the Settlement, (b) postmark any written objection to the Settlement, and (c) postmark any Eligible Workweek or Eligible Pay Period Dispute. (*Id.*) The Response Deadline for Settlement Class Members to whom the Notice of Settlement is remailed after having been returned as undeliverable to the Settlement Administrator shall be 55 calendar days after the Settlement Administrator's initial mailing of the Notice of Settlement to Settlement Class Members, or 14 days after the re-mailing, whichever is later. (*Id.*) Settlement Class Members, except for the Class Representative, will have until the Response

Deadline within which to opt out of the class portion of the Settlement; however, exercising this option has no effect on the PAGA portion of this settlement. (*Id.* at ¶ 4.3.1.) PAGA Members will be mailed an Individual PAGA Payment and be bound by the release of the Released PAGA Claims regardless of whether they opt out of the class settlement. (*Id.*) Also, Settlement Class Members shall have until the Response Deadline to submit a written objection or request exclusion from the Settlement (*Id.* at ¶ 4.4.) Lastly, Participating Class Members and PAGA Members may dispute their Eligible Workweeks and Eligible Pay Periods if they believe they worked for more Eligible Workweeks or Eligible Pay Periods in the Class Settlement Period or PAGA Settlement Period than stated on their Notice of Settlement. (*Id.* at ¶ 4.5.)

15. <u>Funding</u>: The Settlement provides that within 21 calendar days after the Effective Date or within 14 days of the Settlement Administrator providing all information necessary for Defendant to transfer funds to the Qualified Settlement Fund, whichever is later, Defendant shall pay the Gross Settlement Amount and the employer's share of payroll taxes into the Qualified Settlement Fund set up, held, and controlled by the Settlement Administrator. (*Id.* at ¶ 4.9.1.)

III. <u>THE COURT SHOULD GRANT PRELIMINARY APPROVAL</u>

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, Plaintiff's 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 Eve Wagner, Esq. (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, Plaintiff's Counsel conducted informal discovery and investigation into the claims alleged by Plaintiff, including, among other things, reviewing and analyzing sample time and payroll records of Defendant, written policies of Defendant, and preparing a damage analysis. (Moon Decl., ¶¶ 8-9, 20-21.) Significantly, Plaintiff's Counsel's calculations are based on the analysis of a statistics expert retained by Plaintiff's Counsel to analyze the records produced by Defendant. (*Id*. at ¶¶ 9, 21.) In conjunction with their extensive factual investigation, Plaintiff's Counsel investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id*. at ¶¶ 9, 21.) Thus, Plaintiff and his counsel were able to act intelligently and effectively in negotiating the proposed settlement. (*Id*. at ¶ 9.)

Plaintiff's Counsel also have considerable experience and have demonstrated competence with litigating wage and hour class actions. (Moon Decl., ¶¶ 48-71.) Again, this supports 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., ¶ 33.) While Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each cause of action. (*Id*. at ¶ 31.) Plaintiff also recognizes that proving the amount of wages due to each Settlement Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id*.) Furthermore, even if Plaintiff was able to pursue his 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 Settlement Class Members. (*Id*. at ¶ 33.)

The proposed settlement of $295,000.00 therefore represents a substantial recovery when compared to Plaintiff's reasonably forecasted recovery. (*Id*. at ¶ 36.) Because of the proposed Settlement, Settlement Class Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id.* at ¶ 30.) When considering the risks of litigation, 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 is within the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id*. at ¶ 36.)

The Net Settlement Amount available for settlement payments is no less than **$125,766.67** for an estimated Class size of **195 individuals**.[1] (*Id.* at ¶ 35.) As a result, it is estimated each Participating Class Member is eligible to receive an average benefit of approximately **$644.96** prior to tax withholdings on the wage portion of payments. Considering Settlement Class Members' average hourly rate is $24.24, the average benefit is approximately **26.61 hours of work**. (*Id.*) Additionally, there are an estimated **174 PAGA Members** who are each expected to receive an average of **$60.34** from the $10,500.00 Individual PAGA Payments, or 35% of the $30,000.00 allocated to PAGA Payments, or a **PAGA Pay Period value of $1.47** based on the **7,165 PAGA Pay Periods**. (*Id.*) The actual amounts to Participating Class Members and PAGA Members will vary based on each individual's duration of work during the Class Settlement Period or PAGA Settlement Period, respectively; thus, those who worked longer for Defendants 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.*)

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[1] The Net Settlement Amount is at least $295,000.00 less the following: $5,000.00 for the Class Representative Enhancement Award, up to $5,900.00 for the Settlement Administration Cost, $30,000.00 for PAGA Payment, $98,333.33 for the Class Counsel's Fees, and approximately $30,000.00 for Class Counsel's Costs. (Settlement, ¶¶ 3.3, *et seq*.)

3. Plaintiff's Counsel Have Extensive Experience in Class Action Litigation

The settlement negotiations were conducted by highly capable and experienced counsel. Plaintiff's 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 ¶¶ 48-71.) Although Plaintiff and his 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. (Moon Decl., ¶ 20.)

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

The proposed Notice of Settlement, in the form attached to the Settlement as Exhibit 1, should be approved for dissemination to the class. The Notice of Settlement informs the class of the terms of the Settlement and of their rights to be excluded from the Settlement. Additionally, if there are Settlement 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 Notice of Settlement 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 for attorneys' fees payable to Class Counsel in an amount up to 1/3 of the Gross Settlement Amount, currently estimated to be $98,333.33, plus reimbursement for reasonable costs and expenses incurred not to exceed $30,000.00. (Settlement, 3.3.2.) These amounts are subject to Court approval. (*Id.*) These amounts will be disclosed to all class members in the proposed 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.)

Plaintiff's Counsel seek an award of attorneys' fees on the "percentage of recovery/common fund" theory. (Moon Decl., ¶ 41.) 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 recently 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 1/3 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, ¶ 3.3.2 *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 his 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 Plaintiff's Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action involved significant financial risk for Plaintiff's Counsel. (Moon Decl., ¶¶ 44-47.) Plaintiff's Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id*.) Once Plaintiff's Counsel undertook this litigation on behalf of the Class, Plaintiff's Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Settlement Class ahead of all other concerns. (*Id.* at ¶ 45.)

4. The Experience, Reputation and Ability of Plaintiff's Counsel Support the Requested Fee Award

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

¶¶ 48-71.) Plaintiff's Counsel has been involved as lead counsel or co-counsel in several class actions that resulted in millions in recovery. (Moon Decl., ¶¶ 52, 57.) Because it is reasonable to compensate class counsel commensurate with their skill, reputation and experience, Plaintiff's Counsel's requested fee award is supported here.

Plaintiff's Counsel's experience in wage and hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendants and the reasonableness of the settlement. (Moon Decl., ¶ 72.) 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. (*See id*. at ¶ 70.) Based on these and other factors, Plaintiff's Counsel have frequently received fee awards of this percentage from the gross recovery for the class. (*See e.g., id*. at ¶ 52.) Therefore, the requested fee award is reasonable and fair.

D. <u>The Class Representative Enhancement Award 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.)

Enhancement 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 includes a Class Representative Enhancement Award to Plaintiff in an amount up to $5,000.00 from the Gross Settlement Amount, subject to the Court's approval, in addition to the amount he is eligible to receive as a Settlement Class Member. (Settlement, ¶ 3.3.1.) Plaintiff's Counsel represents 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., ¶¶ 37-40.) 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 <u>**2006**</u> study examining the average incentive award given to class action plaintiffs from <u>**1993 to 2002**</u> 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. Plaintiff Maintains That the Criteria for Class Certification Are Satisfied

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 195 settlement class members, and (3) Settlement 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 Settlement Class Members are identified using specific criteria in the regular business records of Defendant, 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 reimbursed employees of necessary 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 settlement class members, including Plaintiff. Further, all settlement class members suffered from and seek redress for the same alleged injuries. Considering that Settlement 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 non-exempt employee of Defendant who worked during the Settlement Class Period; as such, he alleges that he was subject to the same policies and practices as other similarly situated employees. (Plaintiff Decl., ¶ 6.)

4. Plaintiff and His 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., ¶¶ 48-71.) With their combined experience, Plaintiff's 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 his dedication. (Plaintiff Decl., ¶¶ 7-12.) Plaintiff's willingness to serve as representatives demonstrates his serious commitment to bringing about the best results possible for the class. (*Id.* at ¶¶ 9-12; *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*, *supra,* 42 Cal.4th at 57-62; *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. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND

A. The Proposed Notice Plan Satisfies Due Process

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 Settlement Class Members will receive direct mailed notice. (Settlement, ¶ 4.2.2.) As the Court of Appeals has explained, "[t]he notice given should have a reasonable chance of reaching a substantial percentage of the Class Members . . . ." (*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. The Notice Is Accurate and Informative

The proposed Notice of Settlement should be approved. It will be disseminated through direct U.S. first class mail to the last known address for each Settlement Class Member. (Settlement, ¶ 4.2.2.) It informs the Settlement Class Members of the terms of the settlement and their right to be excluded from the Settlement. (*Id.* at Ex. 1.) If there are Settlement 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 Notice of Settlement 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. 1.) It makes clear that the Settlement 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 Notice of Settlement complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

VI. CONCLUSION

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 130 days from preliminary approval.

Respectfully submitted,

Dated: July 17, 2026 MOON LAW GROUP, PC

By: ______________________________

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