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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

ELDER RAFAEL MORALES, individually, and
on behalf of all others similarly situated,

Plaintiff,

vs.

CLIMATEC, LLC, a limited liability company;
and DOES 1 through 10, inclusive,

Defendants

Case No.: 24STCV24702

CLASS AND REPRESENTATIVE ACTION

**PLAINTIFF’S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND PAGA
REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

*[Filed with the Declaration of Kane Moon,
the Declaration of Plaintiff, the Declaration
of Kelsey Stern, and [Proposed] Preliminary
Approval Order]*

PRELIMINARY APPROVAL HEARING:

Date: October 28, 2026

Time: 10:30 a.m.

Dept.: 12

Judge: Hon. Carolyn B. Kuhl

Action Filed: September 24, 2024

Trial Date: Not set

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

2 PLEASE TAKE NOTICE that on October 28, 2026 at 10:30 a.m. in Department 12 of this
3 Court located at 312 North Spring Street, Los Angeles, California, 90012 pursuant to Code of Civil
4 Procedure section 382 and California Rules of Court, rule 3.769 *et seq.*, Plaintiff Elder Rafael Morales
5 (“Plaintiff”) will, and hereby does, move the Court for an order granting preliminary approval of the
6 proposed class action settlement between Plaintiff and Defendant Climatec, LLC. Specifically,
7 Plaintiff moves the Court for an order:

- 8 1. Granting preliminary approval of the Joint Stipulation of Class and Representative Action
9 Settlement Agreement;
- 10 2. Certifying a Class, for settlement purposes only;
- 11 3. Approving the Class Notice and plan for its distribution;
- 12 4. Appointing Plaintiff as the Class Representative, for settlement purposes only;
- 13 5. Appointing Moon Law Group, PC as Class Counsel, for settlement purposes only;
- 14 6. Appointing ILYM Group, Inc. as the Administrator; and
- 15 7. Scheduling a Final Approval Hearing no earlier than 120 days from the date of
16 preliminary approval.

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

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

23 Respectfully submitted,

24 Dated: July 17, 2026

MOON LAW GROUP, PC

25 By: _____

26 Kane Moon
27 Lilit Ter-Astvatsatryan
28 Jamie C. Osganian
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Elder Rafael Morales (“Plaintiff”) seeks preliminary approval of a proposed \$600,000.00 non-reversionary, wage-and-hour class action settlement (the “Settlement”) with Climatec, LLC (“Defendant”) (together with Plaintiff, the “Parties”). The Settlement will provide substantial monetary payments to an estimated 180 Class Members who worked an estimated aggregate of 19,500 Workweeks, of which roughly 136 are Aggrieved Employees who worked an estimated aggregate of 7,399 PAGA Pay Periods. 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 through private mediation by an experienced and neutral class action mediator, Brandon McKelvey, Esq. Accordingly, Plaintiff requests the Court preliminarily approve the Settlement, certify the proposed Class, approve the proposed Class Notice to Class Members, and set a final approval hearing no earlier than 120 days from the date of preliminary approval.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff’s Claims and Procedural History

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 Plaintiff’s Motion for Preliminary Approval of Class and PAGA Representative Action Settlement [“Moon Decl.”], ¶ 2.) Plaintiff seeks to represent a class of all current and former non-exempt employees of Defendant in California employed during the Class Period, as set forth in the Joint Stipulation of Class and Representative Action Settlement Agreement (the “Settlement”). (*Id.*)

Defendant is a provider of building technologies and energy solutions. (*Id.* at ¶ 3.) Defendant employed Plaintiff and other non-exempt, hourly-paid employees during the Class Period. (*Id.*) Plaintiff worked for Defendant from approximately August 2023 through January 2024, in a non-exempt, hourly-paid position. (Declaration of Plaintiff Elder Rafael Morales in

1 Support of Class and PAGA Representative Action Settlement [“Plaintiff Decl.”], ¶ 2.) Plaintiff
2 contends he and his coworkers were subjected to the same unlawful labor practices, including
3 failure to pay wages for all hours worked. (*Id.* at ¶ 6; Moon Decl., ¶ 3.)

4 Plaintiff’s claim for unpaid minimum and overtime wages stems from allegations that
5 Defendant failed to compensate Plaintiff and others for off-the-clock work and failed to incorporate all
6 remuneration into employees’ regular rate of pay for purposes of paying overtime, or sick pay. (Moon
7 Decl., ¶ 4.) Plaintiff’s meal and rest period claims are based on allegations that due to the nature
8 of their work, Class Members’ breaks were often short, late, interrupted, and sometimes missed
9 altogether, and that Defendant did not pay all premium wages for non-compliant breaks. (*Id.*)
10 Plaintiff further brings a claim for unreimbursed necessary business expenses based on allegations
11 that Class Members were required to purchase steel toe boots, work shirts, tools and gloves, and
12 use their personal cellphone for work purposes without reimbursement from Defendant. (*Id.*)
13 Finally, Plaintiff also brings derivative claims for waiting time penalties, wage statement
14 violations, unfair business practices, and civil penalties under PAGA. (*Id.*)

15 Because of the foregoing alleged violations of various provisions of the Labor Code,
16 Plaintiff filed a class action on September 24, 2024, which alleges Defendant systematically: (1)
17 failed to pay minimum wages, (2) failed to pay overtime compensation, (3) failed to provide meal
18 periods, (4) failed to authorize and permit rest periods, (5) failed to indemnify necessary business
19 expenses, (6) failed to timely pay final wages at termination, (7) failed to provide accurate
20 itemized wage statements, and (8) engaged in unfair business practices. (*Id.* at ¶ 5.)

21 Pursuant to PAGA, on or around September 24, 2024, Plaintiff gave written notice to the
22 California Labor and Workforce Development Agency (the “LWDA”) of the alleged Labor Code
23 violations, with certified mail service on Defendant, and paid the required filing fee. (*Id.* at ¶ 6,
24 Ex. 2.) On November 27, 2024, Plaintiff timely filed a First Amended Class and Representative
25 Action Complaint to add a ninth cause of action for civil penalties under PAGA (the “Operative
26 Complaint”). (*Id.* at ¶ 6.) In compliance with Labor Code section 2699(s)(1), Plaintiff
27 subsequently submitted to the LWDA a file-stamped copy of the Operative Complaint containing the
28 Court-assigned case number. (*Id.*) To date, the LWDA has not indicated its intent to investigate the

1 alleged violations or intervene in this Action. (*Id.*)

2 Defendant ardently opposes the merits of this case and denies Plaintiff’s factual allegations.
3 (*Id.* at ¶ 7.) Defendant asserts it complied with all its compensation obligations, including
4 compensating Class Members for any and all off-the-clock work and overtime work, and therefore,
5 Plaintiff and other Class Members were paid all wages owed. (*Id.*) Defendant argues it did not fail
6 to incorporate any non-discretionary bonuses into the regular rate of pay for purposes of paying
7 overtime, or sick pay, and that all bonuses were discretionary. (*Id.*) Defendant maintains
8 compliance with all its meal and rest period obligations. (*Id.*) Defendant asserts it complied with
9 all its reimbursement obligations, and that Plaintiff and other employees were compensated for
10 any and all business expenses necessarily incurred. (*Id.*) To the extent employees received wage
11 statements that were allegedly inaccurate, Defendant asserts employees suffered no actual damage
12 or harm as a result. (*Id.*; *see, e.g., Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013, No. C
13 12–05860 CRB) 2013 WL 622032, at *10 [“A plaintiff must adequately plead an injury arising
14 from an employer’s failure to provide full and accurate wage statements, and the omission of the
15 required information alone is not sufficient.”].) With respect to Plaintiff’s claim for waiting time
16 penalties, Defendant alleges its good-faith belief that it paid all wages precludes the imposition of
17 waiting time penalties since Plaintiff cannot prove Defendant’s alleged failure to pay all final
18 wages at the time of separation was “willful.” (Moon Decl., ¶ 7; *see, e.g., Pedroza v. PetSmart,*
19 *Inc.* (C.D. Cal. June 14, 2012, No. ED CV 11–298 GHK (DTBx)) 2012 WL 9506073, *5.) For
20 these reasons, among others, Defendant denies all of Plaintiff’s claims and allegations, and further
21 claims it did not engage in any unfair business practices and denies liability under PAGA. (Moon
22 Decl., ¶ 7.) Defendant also maintains the claims are improper for class treatment, in part, due to
23 the individualized and testimony-intensive nature of the wage claims that could bar class
24 certification or significantly reduce Defendant’s overall liability. (*Id.*)

25 **B. Discovery and Investigation**

26 The Parties agreed to mediate this action with Brandon McKelvey, Esq., an experienced class
27 and PAGA action mediator. (*Id.* at ¶ 8.) In preparation for mediation, the Parties agreed to a protocol
28 for an informal production of documents and information before mediation. (*Id.*) Prior to mediation,

1 Plaintiff obtained from Defendant, through informal discovery, documents and data that were
2 necessary and helpful to evaluate the claims asserted in this action. (*Id.*) Defendant produced a
3 statistically sound sample of time and pay records for approximately 25% of the putative Class,
4 Plaintiff's personnel file and time and pay records, and Defendant's written employment policies in
5 effect during the Class Period. (*Id.*) Defendant also provided information regarding the estimated
6 number of current and formerly employed Class Members, Aggrieved Employees, and PAGA Pay
7 Periods. (*Id.*)

8 In preparation for mediation, Plaintiff's Counsel reviewed and analyzed all the information
9 Defendant provided, including the sample records and documents regarding Defendant's wage-and-
10 hour policies. (*Id.* at ¶ 9.) Plaintiff's Counsel retained a statistics expert to analyze the sample records
11 and prepare a damage analysis prior to the mediation. (*Id.*) The sample time and pay records analyzed
12 contained 19,463 actual shifts worked (representing roughly 22% of total shifts worked in the Class
13 Period), which allowed Plaintiff's expert to prepare an analysis with a reasonable degree of certainty.
14 (*Id.*) In conjunction with their extensive factual investigation, Plaintiff's Counsel also investigated
15 the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly,
16 Plaintiff's Counsel was able to evaluate the probability of class certification, success on the merits,
17 and Defendant's maximum and realistic monetary exposure for all claims. (*Id.*) Thus, Plaintiff's and
18 his Counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed
19 them to act intelligently in negotiating the Settlement. (*Id.*)

20 **C. Settlement Negotiations and Notice of Settlement to the LWDA**

21 On November 12, 2025, the Parties participated in a full day of private mediation with
22 Brandon McKelvey, Esq. (*Id.* at ¶ 10.) The negotiations were at arm's length and, although
23 conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation
24 willing to explore the potential for a settlement of the dispute, but each side was also prepared to
25 litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After a
26 full discussion regarding the strengths and weaknesses of Plaintiff's claims and Defendant's
27 defenses and with the assistance of the mediator, the Parties reached a resolution, the material
28 terms of which are set out in the Settlement. (*Id.*, Ex. 1.)

1 In compliance with Labor Code section 2699(s)(2), notice of settlement and a copy of the
2 proposed Settlement has been submitted to the LWDA along with a copy of Plaintiff’s preliminary
3 approval motion and the hearing date. (*Id.* at ¶ 11, Ex. 3.) To date, the LWDA has not indicated
4 any objection to the Settlement. (*Id.* at ¶ 11.)

5 **D. Key Terms of the Proposed Settlement**

6 Under the Settlement, Defendant will pay a non-reversionary amount of *no less than*
7 **\$600,000.00** (“GSA”), subject to potential increase under an Escalator Clause, to resolve this
8 action. (Settlement, ¶ 3.1.) Defendant will separately pay its employer-side payroll taxes owed on
9 the Wage Portion of Individual Class Payments. (*Id.*) The GSA includes a credit of \$52,750.00
10 (“Credited Settlement Amount”), which is the total amount previously paid by Defendant to
11 certain Class Members in resolution of their individual claims. (*Id.* at ¶ 3.1.1.) The Settlement
12 transparently accounts for those prior resolutions. Class Members who previously resolved
13 individual claims remain within the Class and/or Aggrieved Employee definitions to the extent
14 otherwise applicable and remain eligible to receive any Individual PAGA Payment to which they
15 are entitled as Aggrieved Employees. (Moon Decl., ¶ 12.) However, because those individuals
16 previously resolved their individual claims, they will not receive additional Individual Class
17 Payments under the Settlement, and the Workweeks attributable to those individuals are excluded
18 from the Individual Class Payment calculation. (Settlement, ¶ 3.2.3.1.) Accordingly, the Gross
19 Settlement Amount reflects the full value of the Parties’ resolution while preventing duplicative
20 recovery for claims that were previously resolved. (Moon Decl., ¶ 12.) Because of the Credited
21 Settlement Amount, Defendant shall fund the GSA with new money of \$547,250.00 (the
22 “Uncredited Settlement Payment”). (Settlement, ¶ 3.1.2.) If the Gross Settlement Amount
23 increases pursuant to the Escalator Clause, Defendant’s Uncredited Settlement Payment shall
24 increase by the same amount. (*Id.*) Other key terms of the Settlement are outlined in the counsel
25 declaration submitted concurrently herewith. (Moon Decl., ¶¶ 12–30.) The proposed Settlement
26 Administrator— ILYM Group, Inc. —was jointly selected by the Parties based on its bid of
27 \$6,250.00. (*Id.* at ¶ 16, Ex. 5; Settlement, ¶¶ 1.2, 7.1.)

28 The Class is defined as all current and former non-exempt employees of Defendant in California

1 employed from September 24, 2020, through January 11, 2026. (*Id.* at ¶¶ 1.5, 1.12.) “Aggrieved
2 Employees” is defined as all current and former non-exempt employees of Defendant in California
3 employed from September 24, 2023, through January 11, 2026. (*Id.* at ¶¶ 1.4, 1.32.) The Settlement
4 allocates \$30,000.00 from the GSA for settlement of the Released PAGA Claims, which will be
5 distributed 65% (\$19,500.00) to the LWDA and 35% (\$10,500.00) to Aggrieved Employees
6 pursuant to PAGA to Labor Code section 2699(m). (Settlement, ¶¶ 1.35, 3.2.4.) Each Aggrieved
7 Employee will be entitled to a pro rata share of the 35% share of the PAGA Penalties directly
8 proportional to their number of PAGA Pay Periods. (*Id.* at ¶ 3.2.4.1.) This results in an average
9 Individual PAGA Payment of roughly **\$77.21** for each of the estimated 136 Aggrieved Employees
10 (\$10,500 / 136), and a PAGA Pay Period value of roughly **\$1.42** for each of the 7,399 estimated
11 Pay Periods in the PAGA Period (\$10,500 / 7,399). (Moon Decl., ¶ 18.)

12 After deducting the Class Representative Service Payment, the Class Counsel Fees and
13 Expenses Payments, the PAGA Penalties allocation, and the Administration Expenses Payment
14 from the Uncredited Settlement Amount, in the amounts specifically approved by the Court, any
15 difference in the amounts requested and the amounts awarded will be allocated to the Net
16 Settlement Amount for distribution to Participating Class Members. (Settlement, ¶¶ 1.27, 3.2.)
17 Accordingly, the Net Settlement Amount will be *no less than* **\$273,500.00** for an estimated Class
18 of **180 individuals**.¹ (Moon Decl., ¶ 19.) Each Class Member (excluding those settled Class
19 Members who received the Credited Settlement Amount who shall not receive any additional
20 Individual Class Payment and the Workweeks attributable to those individuals shall be excluded
21 from the calculation for Individual Class Payments) who does not opt-out will be entitled to a pro
22 rata share of the Net Settlement Amount that is directly proportional to the number of Workweeks
23 worked during the Class Period. (Settlement, ¶ 3.2.3.1.) The estimated **\$273,500.00** Net Settlement
24 Amount results in an average Individual Class Payment of roughly **\$1,519.44** for each of the estimated

25
26 ¹ The Net Settlement Amount was calculated by deducting the following from the \$547,250
27 Uncredited Settlement Amount: \$7,500.00 for the Class Representative Service Payment, up to
28 \$6,250.00 for the Administration Expenses Payment, \$30,000.00 for the PAGA Penalties to the
LWDA and Aggrieved Employees, \$200,000.00 for the Class Counsel Fees Payment, and up to
\$30,000.00 for the Class Counsel Expenses Payment. (Moon Decl., ¶ 19, n.1; Settlement, ¶¶ 3.2–
3.2.4.)

1 180 Class Members (\$273,500 / 180),² and a Workweek value of roughly **\$14.03** for each of the 19,500
2 estimated Workweeks in the Class Period (\$273,500 / 19,500). (Moon Decl., ¶ 21.)

3 To the best of Plaintiff’s knowledge, there is no other pending litigation involving similar
4 claims against Defendant that may be impacted by approval of the Settlement at issue, nor has
5 Defendant pointed to any. (*Id.* at ¶ 30.)

6 **III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL**

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

18 In evaluating a settlement, the trial court considers the following factors: (1) the strength of
19 plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk
20 of maintaining class action status through trial; (4) the settlement amount offered; (5) the extent of
21 discovery completed and the stage of the proceedings; (6) counsel’s experience and views; (7) the
22 presence of a governmental participant; and (8) the class members’ reaction to the proposed
23 settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) To approve a class
24 action settlement, “the court must satisfy itself that the class settlement is within the ‘ballpark’ of
25

26
27 ² At this time, the actual amounts to Class Members and/or Aggrieved Employees are unknown
28 and will be calculated by the Administrator following preliminary approval and receipt and processing
of the Class Data. (Settlement, ¶ 7.2.) The high and low range of payments will be provided to the
Court in a motion for final approval. (Moon Decl., ¶ 21, n.2.)

1 reasonableness.” (*Id.* at p. 133.) The record need not contain an explicit statement of the maximum
2 theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App.4th 399,
3 408–09 [holding that *Kullar* does not require “an explicit statement of the maximum amount the
4 plaintiff class could recover if it prevailed on all its claims,” but instead, only an “understanding
5 of the amount that is in controversy and the realistic range of outcomes of the litigation”].)

6 As discussed below, Plaintiff’s Counsel have provided materials and information exceeding
7 the threshold required for this Court to conclude the Settlement is fair, reasonable, and adequate.

8 ///

9 ///

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

12 **1. The Settlement Is the Product of Discovery, Investigation, Informed and Non-**
13 **Collusive Arm’s-Length Negotiations, and Realistic Claims Analysis**

14 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
15 evidence to the contrary is offered. (Newberg, *Newberg on Class Actions* (3rd ed. 1992) § 11.51.)
16 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super. Ct.*
17 (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The fact that
18 the plaintiff might have received more if the case had been fully litigated is no reason not to approve
19 the settlement.”].) Thus, there is a presumption here that negotiations were conducted in good faith.

20 Here, Plaintiff’s Counsel have conducted a thorough investigation into the facts of this case.
21 (Moon Decl., ¶ 31.) As previously noted, the Settlement at issue was reached through arm’s-length
22 negotiations, private mediation, and the assistance of a statistics expert. (*Id.*) Based on Defendant’s
23 informal class-wide discovery production, on Plaintiff’s Counsel’s independent investigation and
24 evaluation, and on counsel’s extensive experience in wage-and-hour litigation, Plaintiff’s Counsel are
25 of the opinion that the proposed Settlement is fair, reasonable, and adequate. (*Id.*)

26 Based on Plaintiff’s Counsel’s review of the time, payroll, and additional data provided by
27 Defendant, on Plaintiff’s expert’s analysis of the sample records provided by Defendant, and on
28 information from Plaintiff, Plaintiff’s Counsel evaluated the estimated maximum and risk-adjusted

1 exposure that Defendant faced. (*Id.* at ¶ 32.) Specifically, based on the information provided for
2 mediation, the total estimated **realistic recovery** (adjusted for risks at certification and proof on the
3 merits) for the alleged claims, including penalties, is estimated to be **\$1,129,278.87**. (Moon Decl., ¶¶
4 32, 39.) This amount was calculated as follows: **\$21,784.75** (75% discount) for the regular rate claim;
5 **\$91,283.12** (90% discount) for the off-the-clock work claim; **\$708,699.86** (75% discount) for the
6 meal period claim; **\$184,875.09** (90% discount) for the rest period claim; **\$6,877.50** (90% discount)
7 for the unreimbursed business expenses claim; **\$51,563.55** (95% discount) for the waiting time
8 penalties claim; **\$27,200.00** (95% discount) for the wage statement claim; and **\$36,995.00** (95%
9 discount) for the PAGA penalties claim. (*Id.* at ¶¶ 32–38.) The foregoing discounts were based on
10 the evidence presented for mediation and arguments made during arm’s-length settlement
11 negotiations. (*Id.*)

12 **The \$600,000.00 gross settlement figure represents roughly 53.1% of the total realistic**
13 **recovery.** (*Id.* at ¶ 39.) This is an excellent result for the Class, particularly because, under the
14 Settlement, Class Members will receive timely and guaranteed relief, avoiding the risk of not being
15 able to recover anything. (*Id.*)

16 **2. The Class Settlement Is Fair Considering the Parties’ Respective Positions**
17 **and Significant Risks to Certification and Proof on the Merits**

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

26 Here, considering all known facts and circumstances, the risk of significant delay, trial risk,
27 appellate risk, and the defenses Defendant may assert both to certification and on the merits, the
28 Settlement is in the best interest of the Class and LWDA. (Moon Decl., ¶ 31.) While Plaintiff is

1 confident in the merits of his claims, a legitimate controversy exists as to each cause of action. (*Id.*
2 at ¶ 42.) Plaintiff also recognizes that proving the amount owed to each Class Member would be an
3 expensive, time-consuming, and uncertain proposition. (*Id.*)

4 The Settlement obviates the significant risk that this Court may deny certification of all or
5 some of Plaintiff's claims. (*Id.* at ¶ 43.) Plaintiff's Counsel took into account the risk of not prevailing
6 at trial due to low or no participation by Class Members. (*Id.*) Indeed, the individualized and testimony-
7 intensive nature of the claims could bar manageability of the representative claims or otherwise
8 significantly reduce any recovery whatsoever. (*Id.*) For example, the rest period and unreimbursed
9 expense claims are testimony-driven claims and assume a 50% and 100% violation rate, respectively,
10 which would not likely be demonstrated at trial, as it assumes either the participation of a majority
11 or all employees, or alternatively, the use of surveys or statistical data as a surrogate, which would
12 still require the participation of a majority of employees to establish a sound representation of all
13 non-exempts. (*Id.*) Many employees may be unwilling to participate in litigation or provide
14 testimony, creating practical obstacles to proving liability and damages on a representative basis.
15 (*Id.*) Even assuming employees would be willing to participate, obtaining declarations would potentially
16 reveal that each individual employee had a different experience. (*Id.*)

17 Furthermore, even if Plaintiff was able to pursue his claims on a class-wide basis and obtain
18 certification of all or some of the claims, continued litigation would be expensive, involving a trial
19 and possible appeals, and would substantially delay and reduce any recovery by the Class. (*Id.* at ¶
20 44.) Although the Parties have engaged in a significant amount of investigation, informal discovery,
21 and class-wide data analysis, they have not conducted extensive formal discovery. (*Id.*) Moreover,
22 preparation for class certification and a trial would remain for the Parties as well as the prospect of
23 appeals in the wake of a disputed class certification ruling for Plaintiff and/or any summary judgment
24 ruling. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through
25 trial. (*Id.*) In sum, this Settlement avoids the risks, burdens, and the accompanying expense of further
26 litigation. (*Id.*)

27 The proposed \$600,000.00 Settlement therefore represents a substantial recovery when
28 compared to the reasonably forecasted recovery for the Class. (*Id.* at ¶ 45.) When considering the

1 risks of litigation, the uncertainties involved in continued litigation, the burdens of proof necessary
2 to establish liability, and the probability of appeal, it is clear the Settlement amount is within the
3 “ballpark” of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*; (*Kullar*,
4 *supra*, 168 Cal.App.4th at p. 133; *see Munoz, supra*, 186 Cal.App.4th at pp. 408–09.)

5 **3. The PAGA Settlement Is Fair Considering the Parties’ Respective Positions**
6 **and Significant Risks**

7 With regards to the PAGA claims, the Settlement is a fair and reasonable resolution that
8 satisfies PAGA’s dual statutory purposes of deterrence and punishment, on the one hand, and
9 providing Aggrieved Employees with genuine and meaningful relief, on the other. (Moon Decl., ¶ 40;
10 Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendant has had to hire legal counsel, engage
11 in informal class-wide discovery, and participate in mediation. (Moon Decl., ¶ 40.) Defendant will also
12 have to pay civil penalties to the LWDA under the Settlement, assuming final settlement approval is
13 granted. (*Id.*; Settlement, ¶ 3.2.4.) Not including its own attorneys’ fees and costs as well as the
14 employer’s share of payroll taxes, Defendant will pay no less than \$600,000.00 to resolve this matter—
15 of which \$30,000.00 is allocated toward the PAGA claims and will be distributed, in compliance with
16 Labor Code section 2699(m) as 65% (\$19,500.00) to the LWDA and 35% (\$10,500.00) to Aggrieved
17 Employees—and the release obtained under the Settlement does not preclude Aggrieved Employees
18 from pursuing any individual claims they may have against Defendant or the other Released Parties.
19 (Moon Decl., ¶ 40.)

20 Moreover, Plaintiff’s Counsel are of the opinion that because the issues here are fairly
21 contested, there is a possibility of the Court not awarding the PAGA penalties even if Plaintiff
22 prevailed on the merits due to the largely discretionary nature of awarding PAGA penalties. (*Id.*)
23 Indeed, under PAGA, a Court can reduce penalties “if, based on the facts and circumstances of the
24 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
25 confiscatory.” (Lab. Code § 2699(e)(2).) In other words, were this matter to go to trial, any award
26 granted would be at the discretion of the Court and subject to a substantial reduction. (Moon Decl., ¶
27 40.) Further, Plaintiff’s Counsel took into account the risk of not being able to proceed on a representative
28 basis due to the potential manageability issues and that even if Plaintiff prevailed at trial, penalties would

likely be limited due to the largely discretionary nature of awarding PAGA penalties and in light of other defenses available to Defendant. (*Id.* at ¶ 41.) Thus, it is entirely possible that even if Plaintiff would be successful at trial, assuming he is first able to certify the claims and defeat the manageability issues presented at litigation, Plaintiff could be awarded substantially less than what was obtained through the Settlement. (*Id.*)

In sum, the \$30,000 PAGA Penalties allocation under the Settlement constitutes “genuine and meaningful” relief that is “consistent with the underlying purpose of the statute to benefit the public.” (*See O’Connor v. Uber Tech., Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133–35 [denying settlement approval where allocation for PAGA claims was 0.1% of the estimated full worth].)

4. Plaintiff’s Counsel Have Extensive Experience in Class and PAGA Action Litigation, Which Was Integral to Negotiating the Settlement

The Settlement negotiations were conducted by highly capable counsel with considerable experience and demonstrated competence with litigating wage-and-hour class actions. (Moon Decl., ¶¶ 50–67.) 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.*) Their experience was helpful in assessing the reasonableness of the Settlement at issue here, and from this experience they concluded that this litigation could not have been settled on better terms than provided under the Settlement. (*Id.* at ¶ 68.) Although Plaintiff and his 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 based on objective evidence that has been considered and weighed against the risks, expenses, and time consumption to both sides of continued litigation. (*Id.* at ¶¶ 10, 31.)

B. The Proposed Attorneys’ Fees and Costs Are Reasonable

Subject to the Court’s approval, the Settlement provides a fee application of 1/3 of the GSA for Class Counsel’s attorneys’ fees plus reimbursement for out-of-pocket litigation costs not to

1 exceed \$30,000.00.³ (Settlement, ¶ 3.2.2.) These amounts are disclosed to Class Members in the
2 proposed Class Notice and are reasonable. (*Id.* at Ex. A.)

3 **1. Counsel Request a Fees Award Based On the “Common Fund” Method**

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

10 Plaintiff’s Counsel seek an award of attorneys’ fees on the “percentage of recovery/common
11 fund” theory. (Moon Decl., ¶ 70.) The purpose of this approach is to “spread litigation costs
12 proportionately among all the beneficiaries so that the active beneficiary does not bear the entire
13 burden alone.” (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State*
14 *of California* (1975) 15 Cal.3d 162, the California Supreme Court stated, “one who expends
15 attorneys’ fees in winning a suit which creates a fund from which others derive benefits, may require
16 those passive beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in
17 *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court
18 recognized that the common fund doctrine has been applied “consistently in California when an
19 action brought by one party creates a fund in which other persons[] are entitled to share.” (*Id.* at pp.
20 110–11 [pincite omitted].)

21 The California Supreme Court affirmed in *Laffitte v. Robert Half International Inc.* (2016) 1
22 Cal.5th 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
23 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
24 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
25 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
26

27
28 ³ Plaintiff’s Counsel’s current litigation costs are \$27,211.95, and they anticipate incurring
additional costs up to final approval. (Moon Decl., ¶¶ 15, 76, Ex. 4.)

1 method—including relative ease of calculation, alignment of incentives between counsel and the
2 class, a better approximation of market conditions in a contingency case, and the encouragement it
3 provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation[]—
4 convince us the percentage method is a valuable tool that should not be denied our trial courts.” (*Id.*
5 [internal citations omitted].) This line of legal authority supports a request for attorneys’ fees based
6 on the percentage of recovery/common fund method.

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

8 According to a leading treatise on class actions: “No general rule can be articulated on what
9 is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a
10 reasonable fee award from a common fund in order to assure that the fees do not consume a
11 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
12 are not unprecedented.” (Newberg, *Newberg on Class Actions* (3rd ed. 1992) § 14.03.) Attorneys’
13 fees that are fifty percent of the fund are typically considered the upper limit, with thirty to forty
14 percent commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also Van*
15 *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 297 [stating that most cases
16 where 30–50% was awarded involved “smaller” settlement funds of under \$10 million].)

17 Here, Plaintiff’s Counsel’s fees request for 1/3 of the GSA, is in line with the prevailing
18 guidelines established in California case law and academic literature and is consistent with awards in
19 California. (*Compare* Settlement, ¶ 3.2.2, *with Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66,
20 n.11 [“Empirical studies show that, regardless whether the percentage method or the lodestar method
21 is used, fee awards in class actions average around one-third of the recovery.”].) Accordingly,
22 Plaintiff requests the Court preliminarily approve the attorneys’ fees as negotiated by the Parties.

23 **3. This Matter Involves a “Fee-Shifting” Provision of the Labor Code**

24 Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable
25 fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(k)(1),
26 2802(d).) Under these sections, Plaintiff would be permitted to recover his actual attorneys’ fees,
27 even if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) This
28 Settlement is beneficial in that it limits the risk of continued expenses and consumption of time,

1 energy, and resources facing Defendant while at the same time rewarding Plaintiff’s Counsel for their
2 decision to assume risk by taking on this matter on a contingent basis with no guarantee of recovery.
3 (Moon Decl., ¶¶ 71–74.) In fact, prosecution of this action involved significant financial risk for
4 Plaintiff’s Counsel. (*Id.*) Once Plaintiff’s Counsel undertook this litigation, they committed to pursue
5 it to its conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶ 75.)

6 **4. The Requested Fee Award Is Consistent with Common-Fund and Catalyst** 7 **Principles**

8 Under California’s catalyst doctrine, attorney’s fees are warranted where litigation is a
9 substantial factor in motivating the defendant to provide the relief obtained. (*See Graham v.*
10 *DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 560; *Tipton-Whittingham v. City of Los Angeles* (2004)
11 34 Cal.4th 604.) Here, the Gross Settlement Amount includes a credit of \$52,750.00 (“Credited
12 Settlement Amount”), which is the total amount previously paid by Defendant to certain Class Members
13 in resolution of their individual disputes. (Settlement, ¶ 3.1.1.) Those payments are accounted for as
14 part of the overall settlement value presented for Court approval. (Moon Decl., ¶ 72.) Plaintiff contends
15 that inclusion of those amounts in the Gross Settlement Amount supports use of the common-fund
16 methodology in evaluating the requested fee award. (*Id.*) Defendant does not admit liability,
17 wrongdoing, or that any payment was legally required. (*Id.*) The inclusion of the Credited Settlement
18 Amount merely reflects the structure of the Parties’ negotiated resolution. (*See* Settlement, ¶¶ 3.1.1–
19 3.1.2.) The Gross Settlement Amount reflects the total value negotiated to resolve the Class claims
20 as a whole. (*Id.*) Plaintiff contends that the Gross Settlement Amount is therefore the appropriate
21 benchmark for evaluating the requested 1/3 fee. (*Id.*) Class Counsel’s request for 1/3 of the Gross
22 Settlement Amount is fair, reasonable, and consistent with California authority governing common
23 fund and catalyst-based recoveries. (*Id.*)

24 **5. Counsel’s Experience, Reputation, and Ability Support the Fees Request**

25 As demonstrated by their past experience in pursuing class actions on behalf of consumers
26 and employees, Plaintiff’s Counsel possess considerable expertise in litigating class actions. (*Id.* at
27 ¶¶ 50–67.) Plaintiff’s Counsel have been involved as lead counsel or co-counsel in numerous class
28 actions that resulted in millions in recovery. (*Id.*) As noted above, their experience in wage-and-hour

1 litigation was integral in evaluating the strengths and weaknesses of the case against Defendant and
2 the reasonableness of the Settlement. (*Id.* at ¶ 68.) Practice in the narrow field of wage-and-hour
3 litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and
4 federal) as well as the procedural law of class action litigation. (*Id.* at ¶ 66.) Based on these and other
5 factors, Plaintiff’s Counsel have frequently received fee awards of this percentage from the gross
6 recovery for the class. (*See id.* at ¶¶ 54, 59, 60.) Because it is reasonable to compensate counsel
7 commensurate with their skill, reputation, and experience, the requested fee award is supported here.

8 **C. The Service Payment to Plaintiff Is Reasonable**

9 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
10 compensate them for the expense or risk they have incurred in conferring a benefit on other members
11 of the class.” (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Courts routinely grant approval of class
12 action settlement agreements containing enhancements for the class representatives, which are
13 necessary to provide incentive to represent the class and are appropriate given the benefit the class
14 representatives help to bring about for the class. (*See Rodriguez v. W. Publ’g Corp.* (9th Cir. 2009)
15 563 F.3d 948, 958–59.) Service awards are particularly important to plaintiffs in wage-and-hour cases
16 because they promote the important public policies underlying the wage-and-hour laws. This strong
17 policy is codified in California Labor Code section 90.5, which provides, “[i]t is the policy of this
18 state to vigorously enforce minimum labor standards in order to ensure employees are not required
19 or permitted to work under substandard unlawful conditions . . .” (Lab. Code § 90.5.) Nonetheless,
20 the California Supreme Court has noted that “retaliation against employees for asserting statutory
21 rights under the Labor Code is widespread,” despite anti-retaliation statutes designed to protect
22 employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61.) In this context, class
23 representatives should be rewarded for assuming the risk of retaliation for the sake of class members.
24 (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

25 Under the Settlement here, subject to the Court’s approval, a Class Representative Service
26 Payment of \$7,500.00 will go to Plaintiff, in addition to his amount as a Class Member. (Settlement,
27 ¶¶ 1.14, 3.2.1.) This award is for his services in support of the Action and General Release. (*Id.* at ¶
28 1.14.) Plaintiff has devoted a great deal of time and work assisting counsel in the case and

1 communicated with counsel frequently for litigation and to prepare for mediation. (Moon Decl., ¶¶
2 46–49; Plaintiff Decl., ¶¶ 11–21.) The requested award is fair and reasonable, particularly considering
3 the substantial benefits Plaintiff generated for all Class Members. (Moon Decl., ¶ 46–49.)

4 When compared with the amounts awarded in typical class action cases, the amount requested
5 here is particularly reasonable. A 2006 study examining the average incentive award given to class
6 action plaintiffs from 1993 to 2002 found that the “average award per class representative was
7 \$15,992 and the median award per class representative was \$4357.” (Eisenberg & Miller, *Incentive*
8 *Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L. Rev. 1303, 1307–08.)
9 The same study found that named plaintiffs in employment discrimination class actions received an
10 average award of \$69,850 and a median award of \$31,081, while named plaintiffs in other
11 employment class actions received an average award of \$12,121 and a median award of \$13,059. (*Id.*
12 at p. 1333.) The authors of the study found that higher awards in employment cases reflected the
13 “courts’ wish to make representative plaintiffs whole by compensating them for the high costs of
14 their service to the class, including risks of stigmatization or retaliation on the job.” (*Id.* at p. 1308.)

15 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

16 **A. Legal Standard**

17 The proposed Settlement Class is well suited for class certification. The claims all derive from
18 a core set of alleged violations of California’s wage and hour laws and regulations. (Moon Decl., ¶¶
19 4–5.) For the reasons set forth more fully below, the Class, for purposes of Settlement, satisfies the
20 prerequisites for certification under Code of Civil Procedure section 382. (Code Civ. Proc. § 382.)
21 Section 382 provides that “when the question is one of a common or general interest, of many
22 persons, or when the parties are numerous, and it is impracticable to bring them all before the court,
23 one or more may sue or defend for the benefit of all.” (*Id.*) There are two requirements to section
24 382: “(1) there must be an ascertainable class[]; and (2) there must be a well defined community of
25 interest in the questions of law and fact involved affecting the parties to be represented.” (*Daar v.*
26 *Yellow Cab Co.* (1967) 67 Cal. 2d 695, 704 [internal citations omitted].) To clarify these
27 requirements, the California Supreme Court has looked to Federal Rule of Civil Procedure 23 to
28 explain that the community-of-interest requirement itself embodies three factors: “(1) predominant

1 common questions of law or fact; (2) class representatives with claims or defenses typical of the
2 class; and (3) class representatives who can adequately represent the class.” (*Richmond v. Dart*
3 *Indus., Inc.* (1981) 29 Cal. 3d 462, 470.)

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

10 **B. The Criteria for Class Certification Are Satisfied**

11 **1. The Class Is Ascertainable and Numerous**

12 When determining whether a class is ascertainable, California courts focus on the following
13 three factors: “(1) the class definition, (2) the size of the class and (3) the means of identifying class
14 members.” (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, Plaintiff maintains there is an
15 easily ascertainable Class, defined by objective and precise criteria. (Settlement, ¶¶ 1.5, 1.12.) The
16 proposed Class that Plaintiff seeks to represent is ascertainable because (1) the Class definition is
17 sufficiently precise, (2) the Class consists of about 180 individuals, and (3) Class Members can be
18 readily identified by Defendant’s records. (*Id.*) Because Class Members are identified using specific
19 criteria in the regular business records of Defendant—their employment by Defendant in California,
20 non-exempt classification, hourly wage, and actual work during the Class Period—the Class is
21 ascertainable. (*See Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 959–60 [class
22 membership defined by ownership of product that is the subject of the lawsuit is sufficient to make
23 the class ascertainable].) “The requirement of Code of Civil Procedure section 382 that there be
24 ‘many’ parties to a class action suit is indefinite and has been construed liberally.” (*Rose v. City of*
25 *Hayward* (1981) 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’
26 persons, an action may be maintained as a class action even where the parties are numerous and it is
27 in fact practicable to join them all.” (*Id.*) “No set number is required as a matter of law for the
28 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, a proponent 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, Plaintiff’s claims satisfy all three requirements. The employment practices at issue include whether Defendant: paid employees all minimum, overtime, double time, meal premium, and sick pay wages owed; reimbursed employees for necessary business expenses; provided employees with and authorized and permitted meal and rest periods or paid premiums for non-compliant breaks; paid all final wages to employees at the time of termination; intentionally failed to pay all final wages; provided inaccurate itemized wage statements and whether Class Members were harmed; engaged in unfair business practices; and violated civil penalty provisions under PAGA. (Moon Decl., ¶¶ 4–5.) Plaintiff contends the factual and legal issues are the same for all Class Members, and further that all Class Members suffered from and seek redress for the same alleged injuries. (Plaintiff 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 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. 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 [“The only requirements are [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. Plaintiff is a former employee of Defendant and alleges he was subject to the same policies and practices as other similarly situated employees. (Plaintiff Decl., ¶¶ 2–6.)

4. Plaintiff and His 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. Plaintiff retained counsel with extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Moon Decl., ¶¶ 50–67.) Based on their experience, Plaintiff’s Counsel unquestionably are “qualified, experienced and generally able to conduct the proposed litigation.” (*Miller, supra*, 148 Cal.App.3d at p. 874.) Plaintiff has, with counsel, litigated this case and diligently reviewed the settlement terms, showing dedication, and with full knowledge and acceptance of duties, he has committed to his role as Class Representative. (Plaintiff Decl., ¶¶ 11–21.) In addition, Plaintiff and his Counsel have no conflicts with one another, other Class Members, or the proposed Administrator. (*Id.* at ¶¶ 8–10; Moon Decl., ¶ 69.)

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

1 small, but nevertheless meritorious, claims for damages would, as a practical matter, have no means
2 of redress because of the time, effort, and expense required to prosecute individual actions. (*Id.* at p.
3 515; *Gentry, supra*, 42 Cal.4th at pp. 457–62.) Moreover, in the context of settlement, the superiority
4 concerns are essentially non-existent. (*See generally, e.g., Stamburgh, supra*, 62 Cal.App.3d.)

5 **V. THE PROPOSED CLASS NOTICE IS CONSTITUTIONALLY SOUND AND**
6 **SATISFIES RULES OF COURT**

7 Class Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,
8 rule 3.766(e)–(f), rule 3.769(f).) Here, the proposed Class Notice, in the form attached to the
9 Settlement as **Exhibit A**, meets all the requirements of California Rules of Court. The Class Notice
10 summarizes the proceedings to date and the terms and conditions of the proposed Settlement in an
11 informative and coherent manner. (Settlement, ¶ 7.4, Ex. A.) It also states that the final approval
12 decision has yet to be made, and provides the date, time, and location of the Final Approval Hearing.
13 (*Id.*) It explains the right and procedures to opt-out or submit any written objections and/or arrange
14 to appear at the Final Approval Hearing and verbally state any objections. (*Id.* at ¶¶ 7.4–7.8.) It makes
15 clear the Settlement does not constitute an admission of liability by Defendant, who denies all
16 liability, and it recognizes that this Court has not ruled on the merits of the action. (Settlement, Exh.
17 A.) Thus, the proposed Notice meets all the requirements of California Rule of Court 3.769(f). (Cal.
18 Rules of Court, rule 3.769(f).)

19 The Class Notice also fulfills the requirement of neutrality in class notices. (Newberg,
20 Newberg on Class Actions (3rd ed. 1992) § 8.39.) Accordingly, the Notice complies with the
21 standards of fairness, completeness, and neutrality required of a combined settlement-certification
22 class notice.

23 California law vests the Court with broad discretion in fashioning an appropriate notice
24 program. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 970, 973–74.) There is no statutory or due
25 process requirement that all class members receive actual notice, but in this matter, Class Members
26 will receive direct mailed notice, which is the best possible form of notice under the circumstances.
27 (Settlement, ¶ 7.4.) As the Court of Appeals has explained, “[t]he notice given should have a
28

1 reasonable chance of reaching a substantial percentage of the Class Members . . .” (*Cartt*, 50
2 Cal.App.3d at p. 974.)

3 **VI. CONCLUSION**

4 For the foregoing reasons, Plaintiff respectfully requests the Court grant this motion, enter the
5 proposed order submitted herewith regarding preliminary approval, and set a final approval hearing
6 no earlier than 120 days from the preliminary approval order.

7 Respectfully submitted,

8 Dated: July 17, 2026

MOON LAW GROUP, PC

9
10 By: _____

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