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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

TRACY LOVELESS, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

v.

ESSENTIAL BEHAVIORAL SUPPORT, INC.,
a California corporation; and DOES 1 through
10, inclusive,

Defendants

Case No.: 24CV447769

Assigned to Hon. Theodore C. Zayner, Dept. 19

Complaint filed: September 20, 2024

FAC filed: December 6, 2024

Trial date: Not set

CLASS & REPRESENTATIVE ACTION

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

PRELIMINARY APPROVAL HEARING

Date: July 29, 2026

Time: 1:30 p.m.

Dept: 19

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

3 PLEASE TAKE NOTICE that on July 29, 2026 at 1:30 p.m., in Department 19 of the Santa
4 Clara County Superior Court, located at 191 North First Street San Jose, CA 95113, pursuant to
5 Code of Civil Procedure § 382 and California Rules of Court 3.769, *et seq.*, Plaintiff Tracy
6 Loveless (“Plaintiff” or “Class Representative”) will move the Court for an Order granting
7 preliminary approval of the proposed \$512,500.00 (the “Gross Settlement Amount”) Class Action
8 and PAGA Settlement Agreement (the “Settlement” or “Settlement Agreement”) between Plaintiff
9 and Defendant Essential Behavioral Support Inc. (“Defendant,” and together with Plaintiff, the
10 “Parties”) to resolve the wage and hour class action and Private Attorneys General Act (Cal. Lab.
11 Code §§ 2699, *et seq.*) (“PAGA”) representative action between Plaintiff, on behalf of the Class
12 (defined below), and Defendant (the “Action”). Plaintiff further moves the Court for an Order:

- 13 1. Granting preliminary approval of the Settlement Agreement;
- 14 2. Certifying the Class, defined as “all current and former hourly, non-exempt employees
15 employed by Defendant, in the State of California during the Class Period” for
16 settlement purposes. The Class Period is the period from September 20, 2020 through
17 the day the Court grants preliminary approval of the Settlement or the alternative end
18 date pursuant to the Settlement Agreement (the “Class Period”);
- 19 3. Approving the proposed class notice (the “Class Notice”) and the plan for distribution
20 of the Class Notice. A true and correct copy of the Class Notice is attached to the
21 Settlement Agreement as **Exhibit A**;
- 22 4. Appointing Plaintiff Tracy Loveless as “Class Representative” for settlement purposes;
- 23 5. Appointing Plaintiff’s Counsel, Tyler Woods, James Yoo, Heriberto Ponce, Ruby
24 Carrera, Alan Wilcox, and Conor J.D. Gomez of Wilshire Law Firm, PLC (“WLF”) as
25 “Class Counsel” for settlement purposes;
- 26 6. Appointing Apex Class Action, LLC. as the “Administrator”; and
- 27 7. Scheduling a final approval hearing.

28 The motion will be based upon this notice, the attached memorandum of points and

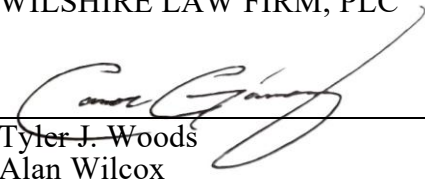
1 authorities, the Declarations of Conor J.D. Gomez (the “Class Counsel Declaration”) and Tracy
2 Loveless, filed concurrently herewith, the records and files in the Action, and any other further
3 evidence or argument that the Court may properly receive at or before the hearing (the “Motion”).
4

5
6 Dated: April 22, 2026

Respectfully submitted,

WILSHIRE LAW FIRM, PLC

7
8 By:


Tyler J. Woods
Alan Wilcox
James Yoo
Heriberto Ponce
Conor J.D. Gomez
Ruby Carrera

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff seeks preliminary approval of a proposed Settlement Agreement entered into between Plaintiff (on behalf of the Class) and Defendant. The Settlement Agreement will provide substantial monetary payments to approximately 407 Class Members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, discovery, and arm's-length negotiations between the Parties. The negotiations were at arms-length and after extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached the Settlement on July 8, 2025. Accordingly, Plaintiff requests that the Court preliminarily approve the proposed Settlement, certify the Class, approve the proposed Class Notice, and set a final approval hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims and Procedural History

Plaintiff alleges that Defendant's payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. (Class Counsel Decl., at ¶ 3.) Plaintiff alleges that Defendant failed to pay for all hours worked. (*Id.*) Specifically, Plaintiff alleges that Defendant failed to pay for all hours worked, failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages, failure to furnish accurate wage statements, and failure to indemnify employees for expenditures. (*Id.*)

Based on these allegations, on September 20, 2024, Plaintiff filed a putative wage and hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194 and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Labor Code § 226.7); (5) failure to timely pay final wages at termination (Labor Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Labor Code § 226); (7) failure to indemnify employees for expenditures (Labor Code § 2802); (8) failure to produce requested employment records (Labor Code §§ 226

1 and 1198.5); and (9) unfair business practices (Business and Professions Code §§ 17200, et
2 seq.). (Class Counsel Decl., at ¶ 4.) Plaintiff sent a notice to Defendant and the California Labor
3 & Workforce Development Agency (“LWDA”) alleging similar wage and hour violations
4 pursuant to the PAGA on September 20, 2024. (*Id.*) On December 6, 2024, Plaintiff filed a first
5 amended complaint against Defendant adding a cause of action for PAGA civil penalties (the
6 “Operative Complaint”). (*Id.*)

7 Defendant ardently opposes the merits of this case and denies Plaintiff’s factual allegations.
8 Defendant asserts it complied with all its compensation obligations, including compensating Class
9 Members for any and all off-the-clock work and overtime work, and therefore, Plaintiff and other
10 Class Members were paid all wages owed. Defendant argues it did not fail to incorporate any non-
11 discretionary bonuses into the regular rate of pay for purposes of paying overtime, meal break
12 premiums, or sick pay because all bonuses were discretionary. Defendant maintains compliance
13 with all its meal and rest period obligations. Defendant asserts it complied with all its reimbursement
14 obligations, and that Plaintiff and other employees were compensated for any and all business
15 expenses necessarily incurred. To the extent employees received wage statements that were
16 allegedly inaccurate, Defendant asserts employees suffered no actual damage or harm as a result.
17 With respect to Plaintiff’s claim for waiting time penalties, Defendant alleges its good-faith belief
18 that it paid all wages precludes the imposition of waiting time penalties since Plaintiff cannot prove
19 Defendant’s alleged failure to pay all final wages at the time of separation was “willful.” For these
20 reasons, among others, Defendant denies all of Plaintiff’s claims and allegations, and further claims
21 it did not engage in any unfair business practices and denies liability under PAGA. Defendant also
22 maintains the claims are improper for class treatment, in part, due to the individualized and
23 testimony-intensive nature of the wage claims that could bar class certification or significantly
24 reduce Defendant’s overall liability.

25 **B. Discovery and Investigation**

26 Following the filing of the Action, the Parties exchanged information, data, and
27 documents, and reviewed the same before going to mediation. (Class Counsel Decl., at ¶ 5.)
28 Defendant produced a sample of time and pay records for Class Members. (*Id.*) Defendant also

1 provided documents setting forth its wage and hour policies and practices during the Class
2 Period, information regarding the total number of current and former employees in its informal
3 discovery responses, and financial records. (*Id.*) The Parties have engaged in sufficient informal
4 discovery and investigation to assess the relative merits of the claims and contentions of the
5 Parties. (*Id.*)

6 After reviewing documents regarding Defendant's wage and hour policies and practices
7 and analyzing Defendant's timekeeping and payroll records, Class Counsel was able to evaluate
8 the probability of class certification, success on the merits, and Defendant's maximum monetary
9 exposure for all claims. (Class Counsel Decl., at ¶ 6.) Class Counsel also investigated the
10 applicable law regarding the claims and defenses asserted in the Action. (*Id.*) Class Counsel
11 reviewed these records and prepared a damage analysis prior to mediation. (*Id.*) This extensive
12 investigation and discovery allowed Class Counsel to act intelligently and effectively in
13 negotiating the Settlement. (*Id.*)

14 During informal discovery and at mediation, Defendant presented evidence that recent
15 budgetary restraints at both the federal and state level are expected to negatively impact the
16 funding sources available to Defendant going forward as cuts to the budgets of Regional Centers
17 and Medicare are expected. Defendant also presented evidence that California legislation,
18 specifically, Senate Bill 74, limits the percentage of Regional Center funds that can be spent on
19 administrative costs providing significant funding restrictions impacting Defendant's ability to
20 remain solvent and fund a class action settlement.

21 **C. Settlement Negotiations**

22 On July 8, 2025, the Parties participated in private mediation with experienced class
23 action mediator Jason Marsili. (Class Counsel Decl., at ¶ 7.) The settlement negotiations were
24 at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) After
25 extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's
26 claims and Defendant's defenses, the Parties reached the Settlement, the material terms of which
27 are encompassed within the Settlement Agreement. (*Id.* at ¶ 8, Ex. 1, Settlement Agreement.)

28 Class Counsel has conducted a thorough investigation into the facts of this case. (Class

Counsel Decl., at ¶ 14.) Based on the foregoing discovery and their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, just, reasonable, and adequate and is in the best interests of the Class Members in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk. (*Id.*)

Indeed, the Gross Settlement Amount represents approximately **32.5%** of the **realistic maximum recovery** of \$1,576,793.80. (Class Counsel Decl., at ¶ 23.) Although Class Counsel estimated that Defendant’s maximum potential liability for all claims was approximately \$8.7 million, when the risk of prevailing at certification and trial are factored into the equation, Class Counsel believes that Defendant’s realistic exposure was \$1,576,793.80, meaning the Settlement achieves a significant recovery. (*Id.* at ¶¶ 14-27.) Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class. (*Id.* at ¶ 27.) Indeed, because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id.* at ¶ 23.)

D. Key Terms of the Proposed Settlement

The Settlement’s key terms include:

1. Class Period: “means the period from September 20, 2020, through the day the Court grants preliminary approval of the Settlement or the Alternative End Date set forth in Section 7 [of the Settlement Agreement] (“Settlement Class Period”).” (Settlement, § 1.14.)

2. Class: “means all current and former hourly, non-exempt employees employed by Defendant, in the State of California during the Class Period.” (Settlement, § 1.5.)

3. Aggrieved Employee: “means all current and former hourly, non-exempt employees employed by Defendant in the State of California during the PAGA Period.” (Settlement, § 1.4.)

4. PAGA Period: “means the period from September 20, 2023, through the day the Court grants preliminary approval of the Settlement or the Alternative End Date set forth in Section 7 [of the Settlement Agreement].” (Settlement, § 1.34.)

5. Gross Settlement Amount or GSA: “means \$512,500.00, which is the total amount Defendant agrees to pay under the Settlement, except as provided in Paragraph 7 [of the Settlement

1 Agreement]. Except for employer-side taxes, the Gross Settlement Amount will be used to pay all
2 amounts contemplated in this Agreement, including the Net Settlement Amount, Individual Class
3 Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class
4 Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses. For
5 avoidance of doubt, Defendant shall have no other financial obligations apart from payment of the
6 GSA." (Settlement, § 1.24.)

7 6. Uncashed Checks: "For any Class Member whose Individual Class Payment check
8 or Individual PAGA Payment check is uncashed and canceled after the void date, the Administrator
9 shall transmit the funds represented by such checks to the California Controller's Unclaimed
10 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the
11 requirements of California Code of Civil Procedure Section 384, subd. (b)." (Settlement, § 3.4.3.)

12 7. Released Class Claims: "Upon Defendant's payment in full of the GSA and the
13 employer's taxes for the portion of the Settlement allocated to settlement of wage claims, the
14 claims waived, released, and discharged by Class Members (other than those who submit timely
15 and valid requests for exclusion) as to the Released Parties are all claims arising during the Class
16 Period which were asserted against Defendant in the Operative Complaint filed in the Action or
17 which reasonably could have been asserted against Defendant based on the factual allegations
18 stated the Operative Complaint filed in the Action. This includes all wage and hour, penalty,
19 Private Attorney General Act, and related claims that have been brought in the Action or that
20 reasonably could have been brought based on the facts and violations identified in Plaintiff's
21 Operative Complaint and in their pre-filing PAGA Notice filed with the LWDA at any point during
22 the Settlement Period, to include Defendant's failure to pay minimum, regular, and overtime
23 wages, provide compliant meal periods and associated premiums, provide compliant rest periods
24 and associated premiums, timely pay wages during employment, timely pay wages upon
25 termination, provide compliant and accurate wage statements, maintain complete and accurate
26 records, and failure to reimburse necessary business-related expenses and costs, in violation of
27 California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 551, 552, 558, 1174,
28 1194, 1197, 1197.1, 1198, 2800, and 2802, Business & Professions Code section 17200, et seq.,

1 among others, and applicable Industrial Welfare Commission Wage Orders, including inter alia
2 Wage Orders 4-2001 and 5-2001 (collectively the “Released Class Claims”). Plaintiff further
3 agrees to take all steps necessary to ensure the Court is empowered to approve release of all the
4 Released Claims, including, to the extent necessary, amending or supplementing the operative
5 Complaint(s) and/or PAGA Notice(s). Plaintiff will also request that the Court enter judgment
6 pursuant to California Rule of Court 3.769. Defendant’s obligations herein are entirely dependent
7 upon the Court’s approval of the Parties’ settlement agreement.” (Settlement, § 4.2.)

8 8. Released PAGA Claims: “Upon Defendant’s payment in full of the Gross Settlement
9 Amount and the employer’s share of payroll taxes attributable to the portion of the Settlement
10 allocated to settlement of wage claims, the claims waived, released, and discharged by Aggrieved
11 Employees—including Non-Participating Class Members who are Aggrieved Employees—and by
12 the State of California as to the Released Parties are all claims for civil penalties under the
13 California Private Attorneys General Act of 2004 (“PAGA”) arising during the PAGA Period that
14 (a) were asserted against Defendant in Plaintiff’s PAGA Notice preceding the Action and/or in the
15 Operative Complaint filed in the Action, or (b) reasonably could have been asserted against
16 Defendant based on the factual allegations stated in Plaintiff’s PAGA Notice preceding the Action
17 (and/or any amended notices) and/or the Operative Complaint filed in the Action (collectively, the
18 “Released PAGA Claims”).” (Settlement, § 4.3.)

19 9. No Reversion: “The Gross Settlement Amount is non-reversionary and does not
20 include employer payroll taxes owed on the wage portions of the Individual Class Payments, which
21 Defendant will pay separately.” (Settlement, § 2.7.)

22 10. PAGA Penalties: “means the total amount of PAGA civil penalties to be paid from
23 the Gross Settlement Amount (\$25,625.00), allocated 35% to the Aggrieved Employees
24 (\$8,968.75) and 65% to LWDA (\$16,656.25) in settlement of PAGA claims.” (Settlement, § 1.37.)
25 Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for
26 Preliminary Approval. (Class Counsel Decl., ¶ 9.)

27 11. Net Settlement Amount: “means the Gross Settlement Amount, less the following
28 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA

1 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
2 Litigation Expenses Payment, and the Administration Costs Payment. The remainder is to be paid
3 to Participating Class Members as Individual Class Payments.” (Settlement, § 1.30.)

4 12. Distribution Formula: As to Class: “An Individual Class Payment is calculated by (a)
5 dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating
6 Class Members during the Class Period, and (b) multiplying the result by each individual
7 Participating Class Member’s Workweeks.” (Settlement, § 2.8.4.) As to PAGA: “The
8 Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the
9 Aggrieved Employees’ 35% share of PAGA Penalties (\$8,969.75) by the total number of PAGA
10 Period Pay Periods worked by all Aggrieved Employees during the PAGA Period, and (b)
11 multiplying the result by each individual Aggrieved Employee’s PAGA Pay Periods. Aggrieved
12 Employees assume full responsibility and liability for any taxes owed on their Individual PAGA
13 Payment.” (Settlement, § 2.8.5.1.)

14 13. Tax Allocation of Individual Class Payments: “Forty Percent (40%) of each
15 Participating Class Member’s Individual Class Payment will be allocated to the Settlement of wage
16 claims (the “Wage Portion”). The Wage Portion is subject to tax withholding and will be reported
17 on an IRS W-2 Form. The remaining 60% of each Participating Class Member’s Individual Class
18 Payment will be allocated to the settlement of claims for interest and penalties (the “Non-Wage
19 Portion”). The Non-Wage Portions are not subject to wage withholdings and will be reported on
20 IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any
21 employee taxes owed on their Individual Class Payment.” (Settlement, § 2.8.4.1.)

22 14. Class Representative Service Award: a “Class Representative Service Payment to
23 Plaintiff of not more than ten thousand dollars (\$10,000.00) (in addition to any Individual Class
24 Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a
25 Participating Class Member). Defendant will not oppose Plaintiff’s request for an(*sic*) Class
26 Representative Service Payment that does not exceed this amount.” (Settlement, § 2.8.1.)

27 15. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment: “A
28 Class Counsel Fees Payment of not more than one-third (1/3) of the GSA, which is currently

estimated to be \$170,833.33 and a Class Counsel Litigation Expenses Payment, which is currently estimated to be \$25,000.00, for actual litigation costs incurred. Defendant will not oppose requests for these payments provided that they do not exceed these amounts.” (Settlement, § 2.8.2.)

16. Administrator: “means Apex Class Action LLC, the neutral entity the Parties have agreed to appoint to administer the Settlement.” (Settlement, § 1.2.)

17. Administration Costs: “means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.” The Administrator’s bid is not to exceed \$8,990.00 for 450 Class Members (the “Administration Costs”). (Settlement, § 2.8.3; Class Counsel Decl., ¶ 10, Ex. 2 [Settlement Administrator Bid].)

18. Notice of Proposed Class Action Settlement: The Class Notice sets forth in plain terms, a statement of the Action, the terms of the Settlement Agreement, the approximate amount of the Class Counsel Fees, Class Counsel Costs, and Class Representative Service Award being sought, and an explanation of how the Settlement allocations are calculated. (Settlement, Ex. A, Class Notice.) Class Members will be notified by first-class mail of the Settlement. (Settlement, § 3.4.1.) The Settlement Administrator will undertake its best efforts to ensure that the Class Notice is provided to the current addresses of Class Members, including conducting a national change of address search and re-mailing the Class Notice to updated addresses. (*Id.*; Class Counsel Decl., ¶ 10, Ex. 2 [Settlement Administrator Bid].)

III. DISCUSSION

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.)

A. A Presumption of Fairness Exists Over The Settlement

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

1 experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk* at p. 1800.)

2 **1. The Settlement Is the Product of Arm's-Length Negotiations**

3 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
4 evidence to the contrary is offered. No evidence to the contrary has been offered here; thus, there
5 is a presumption that the negotiations were conducted in good faith. (Conte & Newberg, *Newberg*
6 *on Class Actions* (3rd Ed.) § 11.51.)

7 On July 8, 2025, the Parties participated in private mediation with experienced class action
8 mediator Jason Marsili. (Class Counsel Decl., at ¶ 7.) The Parties' settlement discussions were
9 conducted at arms' length and although the Parties were professional, the settlement negotiations
10 were adversarial with each of the Parties prepared to litigate their position through trial and appeal
11 if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding
12 the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached
13 the Settlement. (*Id.*)

14 **2. The Parties Conducted Sufficient Investigation**

15 Prior to reaching this Settlement, Class Counsel conducted informal discovery concerning
16 the claims set forth in the Action, such as exchanging a sample of Class Member timekeeping and
17 payroll records, Defendant's policies and procedures concerning the payment of wages, the
18 provision of meal and rest breaks, issuance of wage statements, and providing all wages at
19 separation, as well as information regarding the number of putative Class Members and the mix of
20 current versus former employees, the wage rates in effect, and the amount of meal and rest period
21 premium wages paid to Class Members. (Class Counsel Decl., at ¶¶ 5-6.) In conjunction with their
22 extensive factual investigation, Class Counsel investigated the applicable law regarding the claims
23 and defenses asserted in the Action. (*Id.*) Thus, Plaintiff and Class Counsel were able to act
24 intelligently and effectively in negotiating the proposed Settlement. (*Id.*)

25 **3. Class Counsel Has Extensive Experience in Class Action Litigation**

26 The settlement negotiations were conducted by highly capable and experienced counsel.
27 Class Counsel have a strong record of vigorous and effective advocacy for their clients and are
28 experienced in handling complex wage and hour class action litigation. (*Id.* at ¶¶ 37-57.) Although

1 Plaintiff and Class Counsel were prepared to litigate the claims alleged in the Action, they believe
2 the proposed Settlement is in the best interests of the Class.

3 **4. The Percentage of Objectors Is Small**

4 This factor cannot yet be determined unless and until the Court preliminarily approves the
5 Motion and the Class Notice. This factor will be properly addressed in Class Counsel's Motion
6 for Final Approval of Class Action Settlement, should this Court grant the instant Motion.

7 **B. The Settlement Is Fair, Just, Reasonable, and Adequate**

8 In considering whether a settlement is fair, just, reasonable, and adequate the trial court
9 should consider relevant factors, which may include the strength of plaintiff's case, the risk,
10 expense, complexity and likely duration of further litigation, the risk of maintaining class action
11 status through trial, the amount offered in settlement, the extent of discovery completed and the
12 stage of the proceedings, the experience and views of counsel, ... and the reaction of the class
13 members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
14 116, 128.) Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh*
15 *v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236.)

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

19 **1. Plaintiff's Strengths and Risks of Continued Litigation**

20 Based on Plaintiff's discovery and investigation, Class Counsel reached the conclusion that
21 Defendant had a policy and practice of: requiring its employees to work "off-the-clock" prior to
22 clocking in for the workday, during meal periods, and after clocking out for the workday, time
23 which it did not pay for; not providing its employees with California compliant meal and rest
24 periods, which it did not pay appropriate premiums for; and failing to reimburse its employees for
25 business-related expenses. (Class Counsel Decl., ¶ 16.) Defendant denies these claims.

26 While Plaintiff is confident in the merits of their claims, a legitimate controversy exists as
27 to each cause of action. (Class Counsel Decl., ¶ 24.) Plaintiff recognizes that proving the amount
28 of wages due to each class member would be an expensive, time-consuming, and uncertain

1 proposition. (*Id.*) Although the Parties had engaged in significant amount of investigation, informal
2 discovery and Class-wide data analysis, the Parties had not yet completed formal written discovery.
3 (*Id.* at ¶ 25.) Plaintiff intended to depose corporate officers and managers of Defendant. (*Id.*)
4 Moreover, preparation for a class certification and a trial remained for the Parties as well as the
5 prospect of appeals in the wake of a disputed class certification ruling for Plaintiffs and/or adverse
6 summary judgment ruling. (*Id.*) Had the Court certified any claims, Defendant could move to
7 decertify the claims. (*Id.*) As a result, the Parties would incur considerably more attorneys’ fees
8 and costs through trial. (*Id.*) This Settlement avoids the risks and the accompanying expense of
9 further litigation. (*Id.*)

10 Balancing the strengths of Plaintiff’s claims against the risks of continued litigation of the
11 Action, Plaintiff and Class Counsel determined that the proposed Settlement was in the best
12 interests of the Class.

13 2. The Gross Settlement Amount Is Reasonable

14 In order to approve a class action settlement, the Court must satisfy itself that the class
15 settlement is within the “ballpark” of reasonableness. (*Kullar*, at 133.) The fact that a plaintiff
16 might have received more if the case had been fully litigated is no reason not to approve the
17 settlement. (*Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447.) The record need not contain an
18 explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of*
19 *Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not require “an explicit
20 statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims”,
21 but instead, only an “understanding of the amount that is in controversy and the realistic range of
22 outcomes of the litigation.”].)

23 A settlement is not judged against what might plaintiff recover had he prevailed at trial, nor
24 does the settlement have to provide 100% of the damages sought to be fair and reasonable.
25 (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 [“Compromise is inherent
26 and necessary in the settlement process . . . even if the relief afforded by the proposed settlement
27 is substantially narrower than it would be if the suits were to be successfully litigated, this is no
28

1 bar to a class settlement because the public interest may indeed be served by a voluntary settlement
2 in which each side gives ground in the interest of avoiding litigation.”].)

3 The proposed Gross Settlement Amount represents a substantial recovery when compared
4 to Plaintiff’s reasonably forecasted recovery. (Class Counsel Decl. at ¶¶ 14-27.) Because of the
5 proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk
6 of an unfavorable judgment. (*Id.*) When considering the risks of litigation, the uncertainties
7 involved in achieving class certification, the burdens of proof necessary to establish liability, the
8 probability of appeal of a favorable judgment, it is clear that the Settlement is within the “ballpark”
9 of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) ***Indeed, each Class***
10 ***Member is eligible to receive an average net benefit of approximately \$668.43.*** (*Id.* at ¶ 27.)

11 **C. The Proposed Attorneys’ Fees and Costs Are Reasonable**

12 Under the Settlement, subject to the Court’s approval, Defendant agrees to pay Class
13 Counsel Fees Payment and Class Counsel Litigation Expenses Payment. These amounts are
14 disclosed to all Class Members in the proposed Class Notice and are reasonable. (Class Counsel
15 Decl., at Ex. 1, Ex. A.)

16 **1. Class Counsel Request an Award of the Attorneys’ Fees and Costs Based**
17 **on the “Common Fund” Method**

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

24 Class Counsel seeks approval of the Class Counsel Fees based on the “percentage of
25 recovery/common fund” theory. The purpose of this approach is to “spread litigation costs
26 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
27 burden alone.” (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v.*
28 *State of California* (1995) 15 Cal.3d 162, the California Supreme Court stated: “[O]ne who expends

1 attorneys' fees in winning a suit which creates a fund from which others derive benefits may require
2 those passive beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly,
3 in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court
4 recognized that the common fund doctrine has been applied “consistently in California when an
5 action brought by one party creates a fund in which other persons are entitled to share.” (*Id.* at p.
6 110.)

7 The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th
8 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
9 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
10 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
11 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
12 method—including relative ease of calculation, alignment of incentives between counsel and the
13 class, a better approximation of market conditions in a contingency case, and the encouragement
14 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—
15 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
16 (*Id.* [internal citations omitted].)

17 **2. The Requested Attorneys’ Fees and Costs Are in Line with Typical** 18 **Cases**

19 According to a leading treatise on class actions, “[n]o general rule can be articulated on
20 what is a reasonable percentage of a common fund. Usually, 50% of the fund is the upper limit on
21 a reasonable fee award from a common fund in order to assure that the fees do not consume a
22 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
23 are not unprecedented.” (*See* Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 14.03.)
24 Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with thirty
25 to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also*
26 *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most
27 cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10
28 million].)

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

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

9 Labor Code § 1194 (a) provides for the recovery of “minimum wage or overtime
10 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Under this
11 section, Plaintiff would be permitted to recover their actual attorneys’ fees, even if those fees were
12 larger than the total Class recovery at the conclusion of this Action should it proceed. The
13 Settlement is beneficial in that it limits the risk of continued expenses and consumption of time,
14 energy, and resources facing Defendant while at the same time rewarding Class Counsel for their
15 decision to assume risk by taking on this Action. In fact, prosecution of this Action involved
16 significant financial risk for Class Counsel. (Class Counsel Decl., ¶¶ 35-36.) Class Counsel
17 undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once Class
18 Counsel undertook this Action on behalf of the Class, Class Counsel committed to pursue it to its
19 conclusion, placing its fiduciary duty to the Class ahead of all other concerns. (*Id.*)

20 **4. The Experience, Reputation and Ability of Class Counsel Support the** 21 **Requested Attorneys’ Fees and Costs**

22 As demonstrated by their past experience in pursuing class actions on behalf of consumers
23 and employees, Class Counsel possess considerable expertise in litigating class actions. (Class
24 Counsel Decl., ¶¶ 37-57.) Class Counsel has been involved as lead counsel or co-counsel in several
25 class actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate
26 class counsel commensurate with their skill, reputation and experience, Class Counsel’s requested
27 fee award is supported here.

1 Class Counsel's experience in wage and hour class actions was integral in evaluating the
2 strengths and weaknesses of the case against Defendant and the reasonableness of the Settlement.
3 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning
4 the rapidly evolving substantive law (state and federal), as well as the procedural law of class
5 action litigation. Based on these and other factors, Class Counsel has frequently received fee
6 awards of this percentage from the gross recovery for the class. Therefore, the requested Class
7 Counsel Fees are reasonable and fair.

8 **D. The PAGA Allocation is Reasonable**

9 Where settlements negotiate a good faith amount for PAGA penalties and there is no
10 indication that this amount was the result of self-interest at the expense of other class members,
11 such amounts are generally considered reasonable. Courts have approved amounts for PAGA
12 penalties in the range of zero to two percent of the total maximum amount of the Settlement. (*See*
13 *Jack v. Hartford Fire Ins. Co.* (S.D. Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a
14 PAGA payment of 0.25%]; *McKenzie v. Fed. Express Corp.* (C.D. Cal. Jan. 23, 2012) 2012 WL
15 12882124 at *5 [acknowledging that courts approve PAGA claim settlements in the range of zero
16 to two percent of the total settlement].)

17 Here, the PAGA Amount is larger than many other PAGA settlement amounts approved by
18 the courts where seemingly nominal amounts were allocated for such claims. (*See, e.g., Zubia v.*
19 *Shamrock Foods Co.* (C.D. Cal. Dec. 21, 2017) No. CV1603128ABAGRX, 2017 WL 10541431,
20 at *14 [approving a PAGA settlement of 0.1%]; *Hopson, supra*, 2008 WL 3385452, at *1
21 [approving a PAGA settlement of 0.3% or \$1,500]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal.
22 Oct. 31, 2012) No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 [approving a PAGA
23 settlement of 0.27%].) The Parties negotiated the PAGA Penalties, 35% to the Aggrieved
24 Employees (\$8,968.75) and 65% to LWDA (\$16,656.25) in settlement of PAGA claims.
25 (Settlement, § 1.37.) The PAGA Amount equates to approximately 5% of the Gross Settlement
26 Amount, which far exceeds amounts that are routinely approved. The Parties negotiated to allocate
27 5% of the Gross Settlement Amount to PAGA Penalties in good faith and this amount is reasonable.
28 (Class Counsel Decl., ¶ 22.)

1 **E. The Class Representative Service Payment Is Reasonable**

2 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
3 compensate them for the expense or risk they have incurred in conferring a benefit on other
4 members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval
5 of class action settlement agreements containing enhancements for the class representatives, which
6 are necessary to provide incentive to represent the class, and are appropriate given the benefit the
7 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir.
8 2009) 563 F.3d 948, 958-59.)

9 Service awards are particularly important to plaintiffs in wage and hour cases because they
10 promote the important public policies underlying the wage and hour laws. This strong policy is
11 codified in California Labor Code § 90.5, which provides, “it is the policy of this state to vigorously
12 enforce minimum labor standards in order to ensure employees are not required or permitted to
13 work under substandard unlawful conditions” Nonetheless, the California Supreme Court has
14 noted that “retaliation against employees for asserting statutory rights under the Labor Code is
15 widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.*
16 (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should be rewarded for
17 assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.*
18 (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

19 Under the Settlement Agreement, subject to the Court’s approval, Defendant agreed to pay
20 the Class Representative Service Payment in the amount of \$10,000.00 to Plaintiff. Courts
21 routinely approve service awards of \$10,000.00 for plaintiffs represented by counsel. (*See, e.g.,*
22 *Moreno v. Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) 2021 WL 3673845, *3 [“The Court
23 concludes a \$10,000 incentive award is appropriate.”]; *Suarez v. Bank of America, National*
24 *Association* (N.D. Cal., Jan. 11, 2024, No. 18-CV-01202-LB) 2024 WL 150721, at *4 [“The court
25 approves awards of \$10,000 for each class representative.”].)

26 A **2006** study examining the average incentive award given to class action plaintiffs from
27 **1993 to 2002** found that the “average award per class representative was \$15,992 and the median
28 award per class representative was \$4,357.” (Eisenberg & Miller, *Incentive Awards to Class Action*

1 *Plaintiffs: An Empirical Study* (2006) 53 UCLA L.Rev. 1303, 1308.) That same study found that
2 named plaintiffs in employment discrimination class actions received an average award of \$69,850
3 and a median award of \$31,081, while named plaintiffs in other employment class actions received
4 an average award of \$12,121 and a median award of \$13,059. (*Id.* at p. 1334.) The authors of the
5 study found that higher awards in employment cases reflected the “courts’ wish to make
6 representative plaintiffs whole by compensating them for the high costs of their service to the class,
7 including risks of stigmatization or retaliation on the job.” (*Id.* at p. 1308.)

8 Class Counsel represents that Plaintiff devoted a great deal of time and work assisting Class
9 Counsel litigate the Action, and Plaintiff communicated with Class Counsel during the mediation
10 and the preparation leading up to mediation. (*See generally* Plaintiff’s declaration; Class Counsel
11 Decl., ¶¶ 28-32.) The Class Representative Service Award is reasonable particularly in light of the
12 substantial benefits Plaintiff generated for all Class Members and as compared to similarly situated
13 plaintiffs in other employment class and representative actions. (*Id.*)

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

15 **A. Legal Standard**

16 The proposed Class is well suited for class certification. All of the claims derive from a
17 core set of alleged violations of California’s wage and hour laws and regulations. For the reasons
18 set forth more fully below, for purposes of settlement only, the Class satisfies the prerequisites for
19 certification under Code of Civil Procedure § 382. Section 382 provides: “when the question is one
20 of a common or general interest, of many persons, or when the parties are numerous, and it is
21 impracticable to bring them all before the court, one or more may sue or defend for the benefit of
22 all.” (Code Civ. Proc., § 382). There are three requirements to section 382: Class certification
23 requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community
24 of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e.,
25 that proceeding as a class is *superior* to other methods. (*In re Tobacco II Cases*, (2009) 46
26 Cal.App.4th 298, 313.)

27 The California Supreme Court has looked to Federal Rule of Civil Procedure 23 to further
28 explain that the community-of-interest requirement itself embodies three factors: “(1) predominant

1 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
2 (3) class representatives who can adequately represent the class.” (*Richmond v. Dart Indus., Inc.*
3 (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.” (*Linder v. Thrifty Oil Co.* (2000) 23
7 Cal. 4th 429, 434.) Any doubt as to the appropriateness of class treatment should be resolved in
8 favor of certification. (*Richmond, supra*, 29 Cal.3d at pp. 473-75.)

9 **B. Plaintiff Maintains That the Criteria for Class Certification Are Satisfied for**
10 **Settlement Purposes.**

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

12 A class is ascertainable if a plaintiff supplies a reasonable means of identifying potential
13 class members and the class is defined in terms of objective characteristics and common facts
14 sufficient to allow a class member to identify himself or herself as having a right to recover based
15 on that description. (*ABM Industries Overtime Cases*, (2017) 19 Cal.App.5th 277, 303.) Courts
16 also consider the size or numerosity of the class when determining whether or not it is
17 ascertainable. (*Id.* at 302).

18 **a) *Class Definition***

19 When defining a class, the terminology used must convey “sufficient meaning to enables
20 persons hearing to determine whether they are members of the class” and if the proposed class
21 definition offers an objective way to identify those who will be bound by the results of the
22 litigation. (*Id.* at 302-303.) Courts have routinely certified classes defined using language to that
23 here. (*Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 227; *see also Brinker*
24 at 1017-1018, 1019, defining several subclasses such as employees “who worked one or more work
25 periods in excess of three and a half hours without receiving a paid 10 minute break” and those
26 “who worked ‘off-the-clock’ or without pay.”)

27 Here, the Class definition (as stated above) is objective as it is limited in scope to a specific
28 time frame (during the Class Period) and is limited to the potential class members’ employment

1 classification (hourly, non-exempt employees). Further, there are common facts that exist here
2 (such as those employees who worked without pay, were not given proper meal or rest periods,
3 etc.) that are encapsulated by the causes of action alleged in the Action. This definition therefore
4 provides sufficiently clear information to allow current and former employees to readily and
5 reasonably determine whether or not they are a putative Class Member in this Action based upon
6 this definition. (*ABM* at 304, stating “As long as the potential class members may be identified
7 without unreasonable expense or time and given notice of the litigation, and the proposed class
8 definition offers an objective means of identifying the persons who will be bound by the results of
9 the litigation, the ascertainability requirement is met.”) Thus, the proposed Class that Plaintiff
10 seeks to represent is easily ascertainable and includes approximately former and current 407
11 employees of Defendant.

12 **b) Numerosity**

13 “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a
14 class action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981)
15 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action
16 may be maintained as a class action even where the parties are numerous and it is in fact practicable
17 to join them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a
18 class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries
19 of a trust in an action for removal of the trustees.” (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d
20 574; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.]) If even as
21 little as 10 persons can constitute a class, then certainly the 407 Class Members here satisfy the
22 numerosity requirement.

23 **2. There is a Well-Defined Community of Interest in the Questions of**
24 **Law and Fact**

25 The community-of-interest requirement itself embodies three factors: “(1) predominant
26 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
27 (3) class representatives who can adequately represent the class.” (*Richmond* at 470.)
28

1 situated employees. Thus, Plaintiff's claims arise out of the same practices of Defendant and rest
2 on the same legal theories as those of the Class. Therefore, Plaintiff can easily meet the typicality
3 requirement in favor of certification.

4 **c) Plaintiff and Class Counsel Meet the Adequacy Requirement**

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

9 All of these requirements are met here for settlement purposes. Plaintiff retained Class
10 Counsel, whom have extensive experience in prosecuting complex class actions, including similar
11 class actions that previously settled. (Class Counsel Decl., ¶¶ 37-57.) Class Counsel
12 unquestionably is "qualified, experienced and generally able to conduct the proposed litigation."
13 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 875.) In addition, Plaintiff has no conflicts, and
14 Plaintiff has, with Class Counsel, litigated this Action and diligently reviewed the Settlement
15 terms, showing their dedication. Plaintiff's willingness to serve as Class Representative and to
16 sacrifice the value of their own individual claims by executing a general release broader than that
17 of the other Class Members so that the Class may benefit from this Settlement demonstrates
18 Plaintiff's serious commitment to bringing about the best results possible for the Class, thereby
19 also demonstrating that Plaintiff's interests are aligned with those of the Class and no conflict
20 exists. (*McGhee, supra*, 60 Cal.App.3d at p. 451.)

21 **3. A Class Action is Superior to a Multiplicity of Litigation**

22 Finally, in making its Class certification decision, the Court must determine that a class
23 action would be superior to alternative means for the fair and efficient adjudication of the litigation.
24 By consolidating many potential individual actions into a single proceeding, this Court's use of the
25 class action device enables it to manage this litigation in a manner that serves the economics of
26 time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly-
27 situated employees with small but nevertheless meritorious claims for damages would, as a
28 practical matter, have no means of redress because of the time, effort and expense required to

1 prosecute individual actions. (*Gentry, supra*, 42 Cal.4th at pp. 457-62; *Leyva v. Medline Ind.* (9th
2 Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the superiority concerns
3 are essentially non-existent.

4 **V. THE PROPOSED CLASS NOTICE IS CONSTITUTIONALLY SOUND**

5 **A. The Proposed Class Notice Plan Satisfies Due Process**

6 Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,
7 Rule 3.766 (e), (f).) California law vests the Court with broad discretion in fashioning an
8 appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no
9 statutory or due process requirement that all class members receive actual notice, but in this Action,
10 the Class Notice will be disseminated through direct U.S. first class mail to the last known address
11 for each Class Member. As the Court of Appeals has explained, “[t]he notice given should have a
12 reasonable chance of reaching a substantial percentage of the class members” (*Id.* at p. 974.)
13 In this Action the Class Notice will be provided by direct mailing, which is the best possible form
14 of notice as it provides the most reasonable chance of reaching a substantial percentage of the
15 Class.

16 **B. The Class Notice is Accurate and Informative**

17 The proposed Class Notice is informative. It informs the Class Members of the terms of the
18 Settlement and their right to be excluded from the Settlement. If there are Class Members who
19 wish to object to this proposed Settlement, they will have the opportunity to file their objections
20 and be heard at the Final Approval Hearing.

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

1 **C. The Proposed Class Notice of Settlement Should Be Approved**

2 The proposed Class Notice, in the form attached as **Exhibit A** to the Settlement Agreement,
3 should be approved for dissemination to the Class. The Class Notice informs the Class of the terms
4 of the Settlement and of their rights to be excluded from the Settlement. And if there are Class
5 Members who wish to object to the Settlement, they will have the opportunity to file their
6 objections and be heard at the final approval hearing. Accordingly, the proposed Class Notice
7 meets all the requirements of Rule 3.769(f) of the California Rules of Court and should be
8 approved.

9 **VI. CONCLUSION**

10 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
11 approval of the proposed Settlement and set a final approval hearing on or after January 8,
12 2027.

13
14 Dated: April 22, 2026

Respectfully submitted,

WILSHIRE LAW FIRM, PLC

15 By: _____

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