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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

EMERY DIEGO MCCAIN, individually, and on behalf of all others similarly situated,

Plaintiff,

vs.

INFINITE ELECTRONICS INTERNATIONAL, INC.; and DOES 1 through 10, inclusive,

Defendants

Case No.: 30-2024-01423919-CU-OE-CXC

CLASS AND REPRESENTATIVE ACTION

Assigned for All Purposes to the Honorable David A. Hoffer, Department CX-103

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

[*Filed with Declaration of Kane Moon, Declaration of Plaintiff Emery Diego McCain, Declaration of Denise Islas and, [Proposed] Preliminary Approval Order*]

PRELIMINARY APPROVAL HEARING:
Date: June 22, 2026
Time: 1:30 p.m.
Dept.: CX-103

Reservation ID: **74812190**

Action Filed: September 9, 2024
FAC: November 12, 2024
Trial Date: None Set

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

PLEASE TAKE NOTICE that on [date] at [time] in Department CX-103 of this Court located at 751 West Santa Ana Blvd., Santa Ana, California 92701, pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 *et seq*., Plaintiff Emery Diego McCain ("Plaintiff") will move the Court for an order granting preliminary approval of the proposed class action settlement between Plaintiff and Defendant Infinite Electronics International, Inc.

Plaintiff will further move the Court for an order:

1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement;
2. Certifying a Class, for settlement purposes;
3. Approving the Class Notice and plan for its distribution;
4. Appointing Plaintiff as the Class Representative, for settlement purposes;
5. Appointing Plaintiff's Counsel, Moon Law Group, PC as Class Counsel, for settlement purposes;
6. Appointing Simpluris as the Administrator; and
7. Scheduling a Final Approval Hearing.

The motion will be based upon this notice, the attached memorandum of points and authorities, the supporting Declarations of Kane Moon (and exhibits attached thereto), Plaintiff, and Denise Islas (and exhibits attached thereto), the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: March 30, 2026

MOON LAW GROUP, PC

By:____________________________________

Kane Moon
Allen Feghali
S. Phillip Song
Morgan Simpson

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Emery Diego McCain ("Plaintiff") seeks preliminary approval of a proposed $500,000.00 non-reversionary, wage and hour class action settlement (the "Settlement") with Defendant Infinite Electronics International, Inc. ("Defendant") (together with Plaintiff, the "Parties"). The Settlement will provide substantial monetary payments to an estimated 185 Class Members who worked an estimated aggregate of 25,000 Workweeks, of which roughly 125 are Aggrieved Employees who worked an estimated aggregate of 4,387 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, formal and informal discovery, and negotiations between the Parties. The negotiations were at arm's-length and were facilitated through a mediation session by an experienced and neutral class action mediator, Steven J. Rottman, Esq. Accordingly, Plaintiff requests the Court preliminarily approve the Settlement, certify the proposed Settlement Class, approve the proposed Class Notice to Class Members, and set a final approval hearing no earlier than 130 days from the date of preliminary approval.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. 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 Action and PAGA Settlement ["Moon Decl."], ¶ 2.) Plaintiff seeks to represent a class of all persons who worked for any Defendant in California as an hourly, non-exempt employee at any time during the period from September 9, 2020 through the earlier of the date of preliminary approval of the Settlement or August 15, 2026 ("Class Period"), for various alleged violations of the California Labor Code. (*Id.*)

Defendant is a global electronics supplier doing business in the State of California. (*Id.*) Plaintiff worked for Defendant as a Project Coordinator from approximately February 2022 through July 2024. (*Id*.; Declaration of Plaintiff Emery Diego McCain in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement ["Plaintiff Decl."], ¶ 2.) Throughout his employment, Plaintiff was employed in an hourly paid, non-exempt position. (Plaintiff Decl., ¶ 2.) Plaintiff contends both he and his coworkers were subjected to the same unlawful labor practices, including failure to pay wages for all hours worked. (Moon Decl., ¶ 2; Plaintiff Decl., ¶¶ 3-5.)

Plaintiff's claim for unpaid wages stems from Defendant's failure to incorporate all remunerations when calculating regular rate of pay, and Defendant's failure to capture all time worked, resulting in off-the-clock work. (Moon Decl., ¶ 3.) Moreover, Plaintiff's meal and rest break claims are based on Defendant's alleged systematic failure to provide California compliant meal and rest breaks. (*Id.*) Finally, Plaintiff brings derivative claims for waiting time penalties, wage statement violations, unfair business practices, and civil penalties under PAGA. (*Id.*)

Based on the foregoing alleged violations of various provisions of the Labor Code, Plaintiff filed a class action on September 9, 2024, which alleges Defendant systematically: (1) failed to pay minimum wages, (2) failed to pay overtime compensation, (3) failed to provide meal periods, (4) failed to authorize and permit rest periods, (5) failed to indemnify necessary business expenses, (6) failed to timely pay final wages at termination, (7) failed to provide accurate itemized wage statements, and (8) engaged in unfair business practices. (*Id.* at ¶ 4.) On September 7, 2024, Plaintiff gave written notice to the California Labor and Workforce Development Agency (the "LWDA") of the alleged Labor Code violations, with certified mail service on Defendant. (*Id.* at ¶ 5, Exh. 2.) On November 12, 2024, Plaintiff filed his First Amended Class Action Complaint to add an additional cause of action for civil penalties under PAGA. (*Id*.)

Defendant ardently opposes the merits of this case and denies Plaintiff's factual allegations. (*Id.* at ¶ 6.) Defendant contends it paid Class Members all minimum wages, overtime wages, and sick pay owed. (*Id.*) Defendant contends it did not permit or require Class Members to work off-the-clock, and that the time records accurately reflect the employees' time worked. (*Id.*) Defendant maintains it reimbursed Class Members for all necessary business expenses incurred, and that any alleged use of personal or outside equipment was not required for work purposes. (*Id*.) To the extent Class Members received wage statements that were allegedly inaccurate, Defendant asserts employees suffered no actual damage or harm as a result. (*Id.*; *see, e.g.*, *Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013, No. C 12–05860 CRB) 2013 WL 622032, at *10 ["A plaintiff must adequately plead an injury arising from an employer's failure to provide full and accurate wage statements, and the omission of the required information alone is not sufficient."].) With respect to Plaintiff's claim for waiting time penalties, Defendant alleges its good-faith belief that it paid all wages precludes the imposition of waiting time penalties, since Plaintiff cannot prove Defendant's alleged failure to pay all final wages at the time of separation was "willful." (Moon Decl., ¶ 6; *see, e.g.*, *Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012, No. ED CV 11–298 GHK (DTBx)) 2012 WL 9506073, *5.) For these reasons, among others, Defendant denies Plaintiff's claims and allegations, claims it did not engage in any unfair business practices, and further denies liability under PAGA. (Moon Decl., ¶ 6.) Defendant also maintains the claims are improper for class treatment, in part, due to the individualized and testimony-intensive nature of said claims. (*Id.*)

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

Following the filing of the complaint, the Parties met and conferred regarding an agreement to mediate the claims. (*Id.* at ¶ 7.) The Parties later agreed to mediate the claims with Steven Rottman, Esq., an experienced class and PAGA action mediator. (*Id.*) Ahead of mediation, the Parties agreed to a protocol for an informal yet extensive exchange of documents and information before mediation. (*Id.*) Prior to mediation, Defendant produced a sample of time and pay records for Class Members, Plaintiff's personnel file, and Defendant's company handbook and written policies relevant to the claims in the action. (*Id.*) Defendant also provided information regarding the estimated number of current and formerly employed Class Members, total workweeks and pay periods counts. (*Id.*)

In preparation for mediation, Plaintiff's Counsel reviewed and analyzed all the information Defendant provided. (*Id.* at ¶ 8.) Plaintiff's Counsel retained a statistics expert[1] to analyze the sample

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[1] A true and correct copy of the expert's curriculum vitae is attached to the Declaration of Kane Moon as **Exhibit 9**.

pay and time records and prepared a damage analysis prior to the mediation. (*Id.*) The sample time and pay records analyzed represented approximately 35% of the Class, which allowed Plaintiff's expert to prepare an analysis with certainty. (*Id.*) In conjunction with their extensive factual investigation, Plaintiff's Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly, Plaintiff's Counsel were able to evaluate the probability of class certification, success on the merits, and Defendant's maximum and realistic monetary exposure for all claims. (*Id.*) Thus, Plaintiff's and his Counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement. (*Id.*)

C. <u>Settlement Negotiations</u>

On October 13, 2025, the Parties participated in a full day of private mediation before Steven Rottman, Esq., an experienced, professional, and neutral class action mediator. (*Id.* at ¶ 9.) The negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached a settlement, the material terms of which are encompassed within the Parties' jointly prepared Class Action and PAGA Settlement (*Id.*, Exh. 1 [the "Settlement"].) Plaintiff's Counsel represent they are not aware of any related or overlapping case that would be extinguished or adversely affected by approval of this Settlement. (*Id.* at ¶ 10.)

Plaintiff's Counsel have conducted a thorough investigation into the facts of this case. (*Id.* at ¶¶ 17-30.) Based on the foregoing document and information exchange and on their own independent investigation and evaluation, Plaintiff's Counsel are of the opinion that the proposed Settlement is fair, reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, and the defenses that Defendant may assert both to certification and on the merits, the Settlement is in the best interests of the Class. (*Id.*) Indeed, the $500,000.00 gross settlement figure represents roughly 69.2% of the realistic, risk-adjusted recovery estimated to be $722,330.58. (*Id.* at ¶ 25.)

III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL

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

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

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

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

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

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

The proposed Settlement at issue was reached following extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses with an experienced and neutral class action mediator. (Moon Decl., ¶ 9.) Prior to the mediation, the Parties agreed to a protocol for an informal exchange of documents and information, by which Defendant produced a sample of time and pay data for Class Members, Plaintiff's personnel file, and Defendant's written policies relevant to the claims in the action. (*Id.* at ¶ 7.) Plaintiff's Counsel performed an extensive investigation into the facts, claims, and defenses at issue, including by reviewing the governing law, analyzing Defendant's written policies and the sample time/pay data, and retaining a statistics expert to prepare a damage analysis regarding Defendant's potential liability. (*Id.* at ¶¶ 7–8.) The Parties then went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their or its position through trial and appeal if a settlement had not been reached. (*Id.* at ¶ 9.) Thus, Plaintiff and his counsel were able to act intelligently and effectively in negotiating the proposed settlement. (*Id*. at ¶ 8.)

Plaintiff's Counsel also have considerable experience and has demonstrated competence with litigating wage and hour class actions. (*Id.* at ¶¶ 36-56.) Again, this supports that the terms of the Settlement are based on objective evidence that has been considered and weighed against the risks, expenses, and time consumption to both sides of continued litigation of this action.

2. The Settlement Is Fair and Reasonable Considering the Parties' Respective Positions

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

Here, based on the information provided at mediation, Defendant's *realistic* exposure (adjusted for risks at certification and proof on the merits) for the alleged claims, including penalties, is estimated to be $722,330.58. (Moon Decl., ¶¶ 18-25.) This amount was calculated as follows: $21,581.50 (50% discount) for the regular rate claim; $103,167.20 (90% discount) for the off-the-clock claim; $222,148.61 (75% discount) for the meal period claim; $279,328.22 (90% discount) for the rest period claim; $31,250.00 (90% discount) for the unreimbursed business expenses claim; $21,297.55 (95% discount) for the waiting time penalties claim; $21,622.50 (95% discount) for the inaccurate wage statement claim; and $21,935.00 (95% discount) for the PAGA penalties claim. (*Id.*) The foregoing discounts were based on the evidence presented and arguments made during arm's-length settlement negotiations. (*Id.*) Significantly, the $500,000.00 gross settlement figure represents roughly 69.2% of the total realistic recovery. (*Id.* at ¶ 25.) This is an excellent result for the Class, particularly because, under the Settlement, Class Members will receive timely and guaranteed relief, avoiding the risk of not being able to recover anything. (*Id.*)

With regards to the PAGA claims, Plaintiff and his Counsel believe the Settlement is a fair and reasonable resolution that satisfies PAGA's dual statutory purposes of deterrence and punishment, on the one hand, and providing PAGA Members with genuine and meaningful relief, on the other. (*Id.* at ¶ 26; *see* Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendant has had to hire legal counsel, engage in both formal and informal discovery, and participate in mediation.

(Moon Decl., ¶ 26.) Defendant is also now having to pay civil penalties to the LWDA under the Settlement, assuming final settlement approval is granted. (*Id.*) Not including its own attorneys' fees and costs as well as the employer's share of payroll taxes, Defendant will pay no less than $500,000.00 to resolve this matter—of which $20,000.00 is allocated toward the PAGA claims and will be distributed, in compliance with Labor Code section 2699 as 65% ($13,000.00) to the LWDA and 35% ($7,000.00) to Aggrieved Employees—and the release obtained under the Settlement does not preclude Aggrieved Employees from seeking remedies based on any underlying individual claims they may have against Defendant or the other Released Parties. (*Id.*; Lab. Code § 2699(i).) Further, the $20,000.00 total amount allocated for the released PAGA Claims represents roughly 91% of the total realistic recovery estimated for the alleged PAGA claims ($21,935.00). (Moon Decl., ¶ 26.) Moreover, Plaintiff's Counsel are of the opinion that because the issues here are fairly contested, there is a possibility of the Court not awarding the PAGA penalties even if Plaintiff prevailed on the merits due to the largely discretionary nature of awarding PAGA penalties. (*Id.*) Indeed, under Labor Code section 2699, subdivision (e)(2), a Court can reduce PAGA penalties "if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (Lab. Code § 2699(e)(2).) In other words, were this matter to go to trial, any award granted would be at the discretion of the Court and subject to a substantial reduction. (Moon Decl., ¶ 26.)

The Net Settlement Amount available for settlement payments is estimated to be no less than $272,176.33 for an estimated Class of 185 individuals.[2] (Id. at ¶ 27.) As a result, it is estimated each Participating Class Member will receive an average gross benefit of approximately $1,471.22 prior to tax withholdings on the wage portion of payments. (*Id.*) Considering Class Members' average hourly rate is $24.99, the average benefit is roughly 58.9 hours of work. (*Id.*) Additionally, there are

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[2] The Net Settlement Amount is at least $500,000.00 less the following: $7,500.00 for the Service Award to Plaintiff, $8,657.00 for Settlement Administration Costs, $13,000.00 for the PAGA Penalties to the LWDA, $7,000.00 for the Individual PAGA Payments, $166,666.67 for the Class Counsel Award of attorneys' fees, and up to $25,000.00 for the Class Counsel Award of litigation costs. (Settlement, ¶ 3.)

an estimated 125 Aggrieved Employees who are each expected to receive an average of $56.00 from the $7,000.00, or 35% of the $20,000.00 allocated to the Individual PAGA Payments. (*Id.*) The actual amounts to Participating Class Members and Aggrieved Employees will vary based on each individual's duration of work during the Class Period and PAGA Period, respectively; thus, those who worked longer will receive a gross benefit greater than the average estimated amount. (*Id.*) At this time, the high and low range of payments to Class Members and Aggrieved is unknown. (*Id.*) These ranges will be calculated by the Administrator following preliminary approval and receipt and processing of the Class Data and will be provided to the Court in a motion for final approval. (*Id.*)

While Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 28.) Plaintiff also recognizes that proving the amounts of wages owed to each Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id.*) The Settlement obviates the significant risk that this Court may deny certification of all or some of Plaintiff's claims. (*Id.* at ¶ 29.) Furthermore, even if Plaintiff was able to pursue his claims on a class-wide basis and obtain certification of all or some of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the Class. (*Id.*) This Settlement avoids the risks, burdens, and the accompanying expense of further litigation. (*Id.* at ¶ 30.) Moreover, preparation for class certification and a trial would remain for the Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or any summary judgment ruling. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through trial. (*Id.*)

Accordingly, the proposed Settlement of $500,000.00 therefore represents a substantial recovery when compared to Plaintiff's reasonably forecasted recovery. (*Id.* at ¶ 31.) When considering the risks of litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to establish liability, and the probability of appeal, it is clear the Settlement amount of $500,000.00 is within the "ballpark" of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*)

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3. 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. (*Id*. at ¶¶ 36-56.) 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.*) The experience of Plaintiff's Counsel 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 ¶ 57.) 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 ¶¶ 9, 17, 26-31.)

B. The Proposed Class Notice of Settlement Should Be Approved

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

C. The Proposed Attorneys' Fees and Costs Are Reasonable

Subject to the Court's approval, the Settlement provides a fee application of up to one-third (1/3) for Class Counsel's attorneys' fees, plus reimbursement for out-of-pocket litigation costs not to exceed $25,000.00. (Settlement, ¶ 3.2(b).) These amounts are disclosed to Class Members in the proposed Class Notice and are reasonable. (*Id.* at Exh. A.)

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

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

Plaintiff's Counsel will seek an award of attorneys' fees on the "percentage of recovery/common fund" theory. (Moon Decl., ¶ 59.) The purpose of this approach is to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1975) 15 Cal.3d 162, the California Supreme Court stated, "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons[ ] are entitled to share." (*Id.* at pp. 110–11 [pincite omitted].)

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

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

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

Here, Plaintiff's Counsel will request fees up to one-third of the Gross Settlement Amount, amounting to approximately $166,666.67, which is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. (*Compare* Settlement, ¶ 3.2(b), *with Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].) Accordingly, Plaintiff requests the Court preliminarily approve his counsel's ability to request attorneys' fees as negotiated by the Parties.

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

Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(k)(1), 2802(d).) Under these sections, Plaintiff would be permitted to recover his actual attorneys' fees, even if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) This Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Plaintiff's Counsel for their decision to assume risk by taking on this matter. (*See* Moon Decl., ¶¶ 30, 60.) In fact, prosecution of this action involved significant financial risk for Plaintiff's Counsel. (*Id.* at ¶¶ 60-64.) Plaintiff's Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.* at ¶¶ 60, 62.) Once Plaintiff's Counsel undertook this litigation on behalf of the Class, they committed to pursue it to its conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶¶ 62, 64.)

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

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Plaintiff's Counsel possess considerable expertise in litigating class actions. (*Id*. at ¶¶ 36-56.) Plaintiff's Counsel have been involved as lead counsel or co-counsel in numerous class actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class counsel commensurate with their skill, reputation, and experience, Plaintiff's Counsel's requested fee award is supported here.

Plaintiff's Counsel's experience in wage and hour litigation was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. (*Id.*) Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal) as well as the procedural law of class action litigation. (*Id*.) Based on these and other factors, Plaintiff's Counsel have frequently received fee awards of this percentage from the gross recovery for the class. (*See e.g.*, *id*. at ¶¶ 40, 45, 50, 54.) Accordingly, the requested fee award is reasonable and fair.

D. <u>The Service Award to Plaintiff Is Reasonable</u>

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

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

Under the Settlement here, subject to the Court's approval, Defendant agrees to pay a Class Representative Service Payment of $7,500.00 to Plaintiff, which will be in addition to his portion of the Individual Class Payment and any Individual PAGA Payment as a Class Member and Aggrieved Employee. (Settlement, ¶ 3.2(a).) This award is in recognition of Plaintiff's time and effort, as well as his exposure to substantial risk, in bringing and presenting the action, and for his general release of claims, both known and unknown, and waiver of section 1542 rights. (*Id.* at ¶¶ 1.18, 6.1; Moon Decl., ¶ 14; Plaintiff Decl., ¶ 22.) Plaintiff has devoted considerable time and work assisting counsel in the case and communicated with counsel frequently for litigation and to prepare for the mediation session. (Moon Decl., ¶¶ 32–35; Plaintiff Decl., ¶¶ 9–15.) The requested award is fair and reasonable, particularly considering the substantial benefits Plaintiff generated for all Class Members. (Moon Decl., ¶¶ 32–35; Plaintiff Decl., ¶¶ 16-22.)

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

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IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

A. Legal Standard

The proposed Settlement Class is well suited for class certification. The claims all derive from a core set of alleged violations of California's wage and hour laws and regulations. (Moon Decl., ¶¶ 2–4.) For the reasons set forth more fully below, the Class, for purposes of Settlement, satisfies the prerequisites for certification under Code of Civil Procedure section 382. (Code Civ. Proc. § 382.) Section 382 provides that "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all." (*Id.*) There are two requirements to section 382: "(1) there must be an ascertainable class[ ]; and (2) there must be a well defined community of interest in the questions of law and fact involved affecting the parties to be represented." (*Daar v. Yellow Cab Co*. (1967) 67 Cal. 2d 695, 704 [internal citations omitted].) To clarify these requirements, the California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the community-of-interest requirement itself embodies three factors: "(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Richmond v. Dart Indus., Inc*. (1981) 29 Cal. 3d 462, 470.)

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

B. Plaintiff Maintains that the Criteria for Class Certification Are Satisfied

1. The Class Is Ascertainable and Numerous

When determining whether a class is ascertainable, California courts focus on the following three factors: "(1) the class definition, (2) the size of the class and (3) the means of identifying class members." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.)

Here, Plaintiff maintains there is an easily ascertainable Class, defined by objective and precise criteria. (Settlement, ¶¶ 1.8, 1.16.) The proposed Class that Plaintiff seeks to represent is ascertainable because (1) the Class definition is sufficiently precise, (2) the Class consists of about 185 individuals, and (3) Class Members can be readily identified by looking at Defendant's records of Class Data. (*Id.* at ¶¶ 1.8, 1.10, 1.16, 4.1.) Because Class Members are identified using specific criteria in the regular business records of Defendant, the Class is ascertainable. (*See Wilner v. Sunset Life Ins. Co*. (2000) 78 Cal.App.4th 952, 959–60 [class membership defined by ownership of product that is the subject of the lawsuit is sufficient to make the class ascertainable].) "The requirement of Code of Civil Procedure section 382 that there be 'many' parties to a class action suit is indefinite and has been construed liberally." (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934.) "Where a question is of common interest to 'many' persons, an action may be maintained as a class action even where the parties are numerous and it is in fact practicable to join them all." (*Id.*) "No set number is required as a matter of law for the maintenance of a class action." (*Id.*) "Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a trust in an action for removal of the trustees." (*Id.* [citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574]; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a class of 9 plaintiffs and 35 members].) Therefore, numerosity is plainly satisfied.

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

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

Here, Plaintiff's claims satisfy all three requirements. The employment practices at issue include whether Defendant: had legally compliant policies and practices to pay employees all minimum, overtime wages owed; had legally compliant policies and practices to provide employees with and authorize meal and rest periods; paid all final wages to employees at the time of termination;

intentionally failed to pay all final wages; provided inaccurate itemized wage statements; engaged in unfair business practices; and violated civil penalty provisions recoverable under PAGA. (Moon Decl., ¶ 3–4.) 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., ¶¶ 4–6.) 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; as such, he alleges he was subject to the same policies and practices as other similarly situated employees. (Plaintiff Decl., ¶¶ 4-6.)

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., ¶¶ 36-56.) With 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.) In addition, Plaintiff and his Counsel have no conflicts with one another, other Class Members, and the proposed Administrator. (Plaintiff Decl., ¶¶ 7–8; Moon Decl., ¶ 58.) Further, Plaintiff has, with counsel, litigated this case and diligently reviewed the settlement terms, showing his dedication. (Plaintiff Decl., ¶¶ 9-21.) Plaintiff, with full knowledge and willing acceptance of duties as Class Representative, has demonstrated his serious commitment to bringing about the best result possible for the class. (*Id.*; *McGhee*, *supra,* 60 Cal.App.3d at p. 451.)

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

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

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

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

Class Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court, rule 3.766(e)–(f).) California law vests the Court with broad discretion in fashioning an appropriate notice program. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 970, 973–74.) There is no statutory or due process requirement that all class members receive actual notice, but in this matter, the Class Members will receive direct mailed notice. (Settlement, ¶ 8.4.) As the Court of Appeals has explained, "[t]he notice given should have a reasonable chance of reaching a substantial percentage of the Class Members . . ." (*Cartt*, 50 Cal.App.3d at p. 974.) In this case, notice of the proposed

Settlement will be provided by direct mailing, the best possible form of notice under the circumstances. (Settlement, ¶ 8.4.)

B. The Notice Is Accurate and Informative

The proposed Class Notice should be approved. It will be disseminated through direct U.S. first-class mail to the current address for each Class Member. (*Id.*) It informs the Class of the terms of the Settlement and the right to be excluded. (*Id.* at ¶¶ 8.4-8.5, Exh. A.) Further, if there are Class Members who wish to object to the proposed Settlement, they are informed of their right to submit written objections and/or be heard at the Final Approval Hearing. (*Id.*)

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

VI. CONCLUSION

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

Respectfully submitted,

Dated: March 30, 2026 **MOON LAW GROUP, PC**

By: ______________________________

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