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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF TUOLUMNE**

RODRIGO CRUZ GARCIA, individually, and  
on behalf of all others similarly situated,

Plaintiff,

v.

XL CONCRETE MASONRY, LLC, a limited  
liability company; and DOES 1 through 10,  
inclusive,

Defendants.

Case No.: CV66568

*Assigned for all purposes to Honorable  
Kevin M. Seibert, Department 1*

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

*[Filed with the Declaration of Kane Moon,  
Declaration of Plaintiff Rodrigo Cruz Garcia,  
Declaration of Lisa Mullins, and [Proposed]  
Order]*

**PRELIMINARY APPROVAL HEARING:**

Date: March 4, 2026

Time: 8:30 a.m.

Dept: 1

Judge: Hon. Kevin M. Seibert

Complaint Filed: October 21, 2024

FAC Filed: February 10, 2025

Trial Date: None Set



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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Plaintiff Rodrigo Cruz Garcia (“Plaintiff”) moves the Court for preliminary approval of the Joint Stipulation of Class and Representative Action Settlement Agreement (“Settlement”) between Plaintiff and Defendant XL Concrete Masonry, LLC (“Defendant”) (Plaintiff and Defendant, the “Parties”). The Settlement will provide substantial monetary payments to approximately 301 Class Members who collectively worked an estimated total of 4,902 Workweeks, and 260 Aggrieved Employees under the California Private Attorneys General Act (“PAGA) who worked an estimated total of 3,643 PAGA Pay Periods. As set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California Law. The Settlement was reached after extensive investigation, informal discovery, and negotiations between the Parties. The negotiations were at arm’s-length and were facilitated through mediation by an experienced neutral mediator. Accordingly, Plaintiff requests that the Court preliminarily approve the Settlement, certify the proposed Class, approve the proposed notice, and set a Final Approval Hearing not less than 120 days from preliminary approval.

### **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

#### **A. Case Background 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 Labor Code sections 2698, *et seq.* (PAGA). (*Declaration of Kane Moon in Support of Plaintiff Rodrigo Cruz Garcia’s Motion for Preliminary Approval of Class and Representative Action Settlement Agreement* [“Moon Decl.”], ¶ 2.) Plaintiff seeks to represent a class of persons employed by Defendant XL Concrete Masonry, LLC (“Defendant”) (together with Plaintiff, the “Parties”) in California and classified as hourly, non-exempt who worked for Defendant during the period from February 11, 2023, through December 21, 2025. (*Id.*)

Defendant is a company that offers concrete and masonry solutions services for industrial and commercial sectors. Its main office is in Las Vegas Nevada, but offers services in counties throughout California, including Tuolumne, County, where Plaintiff was employed. (*Moon Decl.*, ¶ 3.) Plaintiff worked for Defendant as a Carpenter from approximately January 2022 to November 2024, and

1 throughout his employment, he was classified as hourly and non-exempt. (*Declaration of Plaintiff*  
2 *Rodrigo Cruz Garcia* [“*Garcia Decl.*”], ¶¶ 4, 9.) Plaintiff contends that he and his coworkers were  
3 subjected to the same unlawful labor practices, including failure to pay wages for all hours worked.  
4 (*Id.* at ¶ 11.)

5 Plaintiff’s claim for unpaid minimum and overtime wages stem from allegations that  
6 Defendant required employees to work off-the-clock without compensation and failed to incorporate  
7 all remuneration into employees’ regular rate of pay for purposes of paying overtime and sick pay.  
8 (*Moon Decl.*, ¶ 4.) Plaintiff’s meal and rest period claims are based on allegations that Defendant  
9 failed to provide employees with compliant meal breaks and rest periods and Defendant did not  
10 compensate employees for these non-compliant breaks. (*Id.*) Plaintiff further brings a claim for  
11 unreimbursed necessary business expenses based on allegations that Class Members were required  
12 to use their personal cellphones and buy their own tools and safety protective equipment, without  
13 any reimbursement from Defendant. (*Id.*) Finally, Plaintiff also brings derivative claims for waiting  
14 time penalties, wage statement violations, unfair business practices, and civil penalties under PAGA.  
15 (*Id.*)

16 Because of the foregoing alleged violations of various provisions of the Labor Code, Plaintiff  
17 filed a class action on October 21, 2024, which alleges Defendant systematically: (1) failed to pay  
18 minimum wages, (2) failed to pay overtime compensation, (3) failed to provide meal periods, (4)  
19 failed to authorize and permit rest periods, (5) failed to indemnify necessary business expenses, (6)  
20 failed to pay final wages at termination, (7) failed to provide accurate itemized wage statements, and  
21 (8) engaged in unfair business practices. (*Moon Decl.*, ¶ 5.)

22 On October 20, 2024, Plaintiff gave written notice to the California Labor and Workforce  
23 Development Agency (the “LWDA”) of the alleged Labor Code violations, with certified mail service  
24 to Defendant, and paid the required filing fee. (*Moon Decl.*, ¶ 6.; Ex. 2). On February 10, 2025,  
25 Plaintiff filed his first amended complaint to allege PAGA claims pursuant to Labor Code sections  
26 2698, *et seq.*, and subsequently submitted a copy to the LWDA in compliance with Labor Code  
27 section 2699, subd. (l)(1). (*Id.* at ¶ 6.) To date, the LWDA has not indicated its intent to investigate  
28 the alleged violations or intervene in this Action. (*Id.*)

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

24 **B. Discovery and Investigation**

25 The Parties agreed to mediate the instant action and participated in private mediation with  
26 Brandon McKelvey, Esq., an experienced class and PAGA action mediator. (*Id.* at ¶ 8.) In preparation  
27 for mediation, the Parties agreed to a protocol for an informal exchange of documents and  
28 information before mediation. (*Id.*) Prior to mediation, Plaintiff obtained from Defendant, through

1 informal discovery, documents and data that was necessary and helpful to evaluate the claims  
2 asserted in this action. (*Id.*) Defendant produced a statistically significant sample of time and pay  
3 records for the putative Class, Plaintiff’s personnel files, and Defendant’s written policies. (*Id.*) The  
4 exchange of documents included a 68.4% sample time and corresponding payroll records of the  
5 Class. (*Id.*) Defendant also provided information regarding the estimated number of current and  
6 formerly employed Class Members, Aggrieved Employees, and PAGA Pay Periods. (*Id.*)

7 In preparation for mediation, Plaintiff’s Counsel reviewed and analyzed all the information  
8 Defendant provided, including the sample records and documents regarding Defendant’s wage and  
9 hour policies. (*Id.* at ¶ 9.) Plaintiff’s Counsel retained a statistics expert to analyze the sample records  
10 and prepare a damage analysis prior to the mediation. (*Id.*) The sample time and pay records  
11 analyzed contained 16,535 actual shifts worked (representing roughly 84.66% of total shifts worked  
12 in the Class Period), which allowed Plaintiff’s expert to prepare an analysis ***with a high degree of***  
13 ***certainty***. (*Id.*) In conjunction with their extensive factual investigation, Plaintiff’s Counsel also  
14 investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*)  
15 Accordingly, Plaintiff’s Counsel was able to evaluate the probability of class certification, success  
16 on the merits, and Defendant’s maximum and realistic monetary exposure for all claims. (*Id.*) Thus,  
17 Plaintiff and his Counsel’s familiarity with the facts of the case and the legal issues raised by the  
18 pleadings allowed them to act intelligently in negotiating the Settlement. (*Id.*)

19 Plaintiff’s Counsel are not aware of any other individual, representative, or class action in this  
20 jurisdiction, or any other court or jurisdiction, asserting claims similar to those asserted in this action  
21 on behalf of a class or group of individuals who would also be members of the putative Class, as  
22 defined in this matter, other than a prior class action settlement in *Alejandra Gonzales Avalos v. XL*  
23 *Landscape Development, et. al.*, docketed as Case No. 34-2022-00315272 (Sacramento County  
24 Superior Court) (“*Avalos*”). (*Id.* at ¶ 11.) The release period in *Avalos* ran from August 15, 2017,  
25 through February 10, 2023, and resolved claims on behalf of 568 class members across 13,493  
26 workweeks. (*Id.*) Accordingly, the Class Period in this matter has been adjusted to begin on February  
27 11, 2023, the day after the release period in *Avalos* ended. (*Id.*) Plaintiff’s Counsel have come to this  
28 conclusion after a reasonable inquiry and review of the LWDA’s PAGA Case Search website, this

1 Court's case search website, and other information reasonably available online. (*Id.*) Additionally,  
2 Defendant has not indicated there is any other related case pending as of the date of this motion. (*Id.*)  
3 As such, Plaintiff's Counsel are unable to name any case, the nature of any claims asserted in such  
4 case, or the definition of a class of parties on whose behalf any action was brought that would overlap  
5 with the putative Class or would otherwise be adversely affected by approval of this Settlement. (*Id.*)

6 **C. Settlement Negotiations**

7 On October 15, 2025, the Parties participated in a full day of private mediation before  
8 Brandon McKelvey, Esq, an experienced, professional, and neutral class action mediator. (*Moon*  
9 *Decl.*, ¶ 10.) The negotiations were at arm's length and, although conducted in a professional  
10 manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential  
11 for a settlement of the dispute, but each side was also prepared to litigate their position through  
12 trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and  
13 discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses,  
14 a settlement was reached by the Parties. (*Id.*) The material terms of which are in the Joint  
15 Stipulation of Class and Representative Action Settlement Agreement (the "Settlement") (*Id.* Ex.  
16 1.) Additionally, the proposed class notice is attached to the Settlement as **Exhibit A**. (*Id.*)

17 In compliance with Labor Code section 2699, subdivision (l)(2), Plaintiff's Counsel  
18 submitted to the LWDA a notice of settlement and a copy of the proposed Settlement. (*Moon Decl.*,  
19 ¶ 12.; Ex. 3)

20 **D. Material Terms of the Settlement**

21 Under the Settlement, Defendant will pay \$269,000.00 to resolve this litigation. (Settlement, ¶  
22 3.0.) The amount is all-inclusive. The Settlement's key terms, include:

- 23 (a) "Administrator" means ILYM Group, Inc., the neutral entity the Parties have agreed  
24 to appoint to administer the Settlement. (*Settlement*, ¶ 1.1.)
- 25 (b) "Administration Expenses Payment" means the court-approved amount the  
26 Administrator will be paid from the Gross Settlement Amount to reimburse its  
27 reasonable fees and expenses in accordance with the Administrator's "not to exceed"  
28 bid submitted to the Court in connection with Preliminary Approval of the Settlement.

(*Id.* at ¶ 1.2.)

- (c) “Class” or “Class Members” means all current and former hourly-paid, non-exempt employees of Defendant in California employed during the Class Period. (*Id.* at ¶ 1.3.)
- (d) “Class Period” means the period from February 11, 2023, through December 21, 2025. (*Id.* at ¶ 1.10.)
- (e) “Class Certification or Representative Manageability for Other Purposes” The Parties agree to stipulate to class certification only for purposes of the Settlement. If, for any reason, the Settlement is not approved, the stipulation to certification will be void. If, for any reason the Court does not grant Preliminary Approval, Final Approval, or enter Judgment, Defendant reserves the right to contest certification of any class for any reason, Defendant reserves all available defenses to the claims in the Action, Plaintiff reserves the right to move for class certification on any grounds available, and Plaintiff reserves the right to contest Defendant’s defenses. (*Id.* at ¶ 11.2.)
- (f) “Class Counsel Fees Payment” means the court-approved amount allocated to Class Counsel for reimbursement of their reasonable fees incurred to prosecute the Action, not to exceed 33 1/3% of the Gross Settlement Amount, currently estimated to be \$89,666.67. (*Id.* at ¶¶ 1.5, 3.1.2.)
- (g) “Class Counsel Expenses Payment” means the court-approved amount allocated to Class Counsel for reimbursement of their reasonable expenses incurred to prosecute the Action, not to exceed \$25,000.00. (*Id.* at ¶ 1.6.) To date, Plaintiff’s Counsel have incurred \$22,820.98 in litigation costs. (*Moon Decl.*, ¶ 14, Ex. 4.)
- (h) “Class Notice” means the court-approved Notice of Class and Representative Action Settlement and Final Approval Hearing, to be mailed to Class Members in English and Spanish, in a form substantially similar to the draft attached as **Exhibit A** of the Settlement. The Parties, through counsel, may agree to modifications to the Class Notice required to correct errors or effectuate changes required by the Court without the need to amend the Agreement, and the revised Class Notice shall be incorporated herein in place of the original **Exhibit A**. (*Id.* at ¶ 1.8.)

- (i) “Class Representative Service Payment” means the court-approved payment allocated to the Class Representative for his services in support of the Action, the benefits he helped bring about for the Class, and his General Release, not to exceed \$7,500.00. (*Id.* at ¶ 1.12.)
- (j) “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Final Approval Order; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Member(s) objects to the Settlement, the day after the deadline for filing a notice for appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur. (*Id.*, ¶ 1.16.)
- (k) “Escalator Clause” It is estimated that there are 4,902 Workweeks during the period from February 11, 2023, to October 15, 2025. Should the number of Workweeks increase by more than 10% greater than these figures during the Class Period (*i.e.*, exceeds 5,392), Defendant shall have the option to (a) pay the pro rata percentage increase in excess of 10% to the Gross Settlement Amount to include the additional workweeks (*e.g.*, an 11% increase in workweeks would result in a 1% increase in the Gross Settlement Amount), or (b) elect to end the Class Period on the date the total workweeks equals, but does not exceed, 5,392. Defendant agrees to be prepared to inform the Court of its selection at the Preliminary Approval Hearing. (*Id.* at ¶ 7.0.)
- (l) “Funding of Gross Settlement Amount” The Gross Settlement Amount and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments shall be fully funded by transmission of such funds to the Administrator within fourteen (14) calendar days of the Effective Date. (*Id.* at ¶ 4.0.)
- (m) “Gross Settlement Amount” means \$269,000.00, the total non-reversionary amount Defendant agrees to pay under the Settlement, except as provided in Sections 3.0 and 7.0 of the Settlement. The Gross Settlement Amount will pay Individual Class

1 Payments, Individual PAGA Payments, the LWDA PAGA Payment, the Class Counsel  
2 Fees Payment, the Class Counsel Expenses Payment, the Class Representative Service  
3 Payment, and the Administration Expenses Payment. (*Id.* at ¶ 1.19.)

4 (n) “Individual Class Payment” means a Participating Class Member’s *pro rata* share of  
5 the Net Settlement Amount calculated according to the number of Workweeks he or  
6 she worked during the Class Period, calculated solely and exclusively to effectuate  
7 Settlement of this Action. (*Id.* at ¶ 1.21.) The average Individual Class Payment is  
8 estimated to be \$411.57. (Moon Decl., ¶ 13.)

9 (o) “Individual PAGA Payment” means an Aggrieved Employee’s pro rata share of 35%  
10 of the PAGA Settlement Penalties calculated according to the number of PAGA Pay  
11 Periods he or she worked during the PAGA Period. (*Settlement*, ¶ 1.20.) The average  
12 Individual PAGA Payment is estimated to be \$20.19. (Moon Decl., ¶ 13.)

13 (p) “LWDA PAGA Payment” means 65% of the PAGA Settlement Penalties paid to the  
14 LWDA under Labor Code § 2699(m). (*Settlement*, ¶ 1.24.)

15 (q) “Net Settlement Amount” means the Gross Settlement Amount, less the following  
16 payments in the amounts approved by the Court: Individual PAGA Payments, the  
17 LWDA PAGA Payment, the Class Representative Service Payment, the Class Counsel  
18 Fees Payment, the Class Counsel Expenses Payment, and the Administration Expenses  
19 Payment. The remainder is to be paid to Participating Class Members as Individual  
20 Class Payments. (*Id.* at ¶ 1.25.) The Net Settlement Amount is currently estimated to  
21 be \$123,883.33.<sup>1</sup> (Moon Decl., ¶ 13.)

22 (r) “No Claim form and Non-reversionary” The Administrator will disburse the entire  
23 Gross Settlement Amount without asking or requiring Participating Class Members or  
24 Aggrieved Employees to submit a claim as a condition of payment. (*Settlement*, ¶ 3.0.)

---

25  
26 <sup>1</sup> The estimated Net Settlement Amount was calculated by deducting the following from  
27 the \$269,000.00 Gross Settlement Amount: Class Representative Service Payment of \$7,500, Class  
28 Counsel Fees Payment of \$89,666.67, maximum Class Counsel Expenses Payment of \$25,000, the  
Administration Expenses Payment of \$7,950.00, and PAGA Penalties of \$15,000. (Moon Decl., ¶  
13, n.1.)

None of the Gross Settlement Amount will revert to Defendant. (*Id.*)

- (s) “PAGA Group” means all current and former hourly-paid, non-exempt employees of Defendant in California employed during the PAGA Period (“Aggrieved Employee(s)”). (*Id.* at ¶ 1.31.)
- (t) “PAGA Period” means the period from October 20, 2023, December 21, 2025. (*Id.* at ¶ 1.29.)
- (u) “PAGA Penalties” means the total amount of civil penalties to be paid from the Gross Settlement Amount in settlement of the Released PAGA Claims, not to exceed \$15,000.00, allocated 35% to the Aggrieved Employees (\$5,250.00) and 65% to LWDA (\$9,750.00), calculated solely and exclusively to effectuate Settlement of this Action, and for no other reason or purpose. (*Id.* at ¶ 1.33.)
- (v) “Release by Participating Class Members” All Participating Class Members fully and finally release and discharge the Released Parties from any and all claims, debts, liabilities, demands, obligations, penalties, costs, expenses, attorney’s fees, damages, and causes of action that were alleged or that reasonably could have been alleged based on the facts alleged in the Operative Complaint. This release includes, without limitation, a release of all claims alleged in the Operative Complaint for alleged failure to pay minimum wages, failure to pay overtime compensation, failure to provide meal periods, failure to authorize and permit rest breaks, failure to indemnify necessary business expenses, failure to pay all unpaid wages at termination, failure to provide accurate itemized wage statements, violation of California Business and Professions Code §§ 17200, *et seq.*, and statutory waiting time penalties based on the foregoing (collectively, the “Released Class Claims”). (*Id.* at ¶ 5.1.) The Released Class Claims exclude claims not permitted by law and are limited to claims arising during the Class Period. (*Id.* at ¶ 5.1.1)
- (w) “Release by Aggrieved Employees” All Aggrieved Employees fully and finally release and discharge the Released Parties from any and all claims for civil penalties, and attorneys’ fees and costs, under PAGA that were alleged or that reasonably could have

1           been alleged based on the facts alleged in the Operative Complaint or PAGA Notice,  
2           including, but not limited to, failure to pay minimum wages, failure to pay overtime  
3           compensation, failure to provide meal periods, failure to authorize and permit rest  
4           breaks, failure to indemnify necessary business expenses, failure to pay all unpaid  
5           wages at termination, and failure to provide accurate itemized wage statements  
6           (collectively, the “Released PAGA Claims”). (*Id.* at ¶ 5.2.) The Released PAGA Claims  
7           are limited to claims arising during the PAGA Period and do not release any Aggrieved  
8           Employees’ claims for wages or statutory penalties. In light of the binding nature of a  
9           PAGA judgment on non-party employees under *Arias v. Sup. Ct. (Angelo Dairy)* (2009)  
10          46 Cal.4th 969 and *Cardenas v. McLane Foodservice, Inc.* (2011) 796 F.Supp.2d 1246,  
11          individuals otherwise meeting the definition of an Aggrieved Employee who are  
12          eligible to receive an Individual PAGA Payment shall be deemed to have released the  
13          Released PAGA Claims, regardless of whether his or her check for the Individual  
14          PAGA Payment is cashed or not, and regardless of whether he or she is a Non-  
15          Participating Class Member. (*Id.* at ¶ 5.2.1.)

16          (x)     “Released Parties” means Defendant XL Concrete Masonry, LLC, and all of its present  
17                  and former owners, members, parent companies, subsidiaries, joint venturers, and  
18                  licensees, and all of their shareholders, officers, directors, employees, agents, insurers,  
19                  successors, and assigns. (*Id.* at ¶ 1.40.)

20          (y)     "Response Deadline" means forty-five (45) calendar days after the Administrator mails  
21                  the Class Notice to Class Members and Aggrieved Employees and the last date on  
22                  which Class Members may: (a) fax, email, or mail a Request for Exclusion from the  
23                  Class portion of the Settlement, or (b) fax, email, or mail a written Objection to the  
24                  Settlement. The Response Deadline for Class Members to whom Class Notices are  
25                  resent after having been returned undeliverable to the Administrator shall be extended  
26                  by ten (10) calendar days beyond the original Response Deadline. (*Id.* at ¶ 1.41.)

27          (z)     “Tax Allocation of Individual Class Payments” 15% of each Participating Class  
28                  Member’s Individual Class Payment will be allocated to settlement of wage claims (the

“Wage Portion”). (*Id.*, ¶ 3.1.4.1.) The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. Eighty-five percent 85% of each Participating Class Member’s Individual Class Payment will be allocated to settlement of claims for interest and penalties (the “Non-Wage Portion”). (*Id.*) Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (*Id.*, ¶ 3.1.5.1.)

(aa) “Unpaid Residue” For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date (180 days after the date of mailing), or for any Class Member whose envelope is returned and no forwarding address can be located for the Class Member after reasonable efforts have been made, the Administrator shall transmit the funds represented by such checks to the California Controller’s Unclaimed Property Fund in the name of the Class Member thereby leaving no “unpaid residue” in accordance with the requirements of California Code of Civil Procedure section 384(b). (*Id.* at ¶¶ 4.1.1, 4.1.3.)

### **III. THE SETTLEMENT MERITS PRELIMINARY APPROVAL**

#### **A. The Circumstances of the Settlement Support Preliminary Approval**

The circumstances of the Settlement support preliminary approval for the following reasons: First, the law favors the settlement of lawsuits, particularly in class actions and other complex cases. Here, the Settlement resolves a putative class and representative action. (*See e.g., Neary v. Regents of Univ. of California* (1992) 3 Cal.4th 272, 277-81.)

Second, the law favors a discretionary finding that a settlement is fair and reasonable when the settlement terms indicate fairness and reasonableness on balance of the following factors: (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. (*See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-1801; *see also Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) The law also favors a discretionary finding

1 that a settlement is fair and reasonable when the settlement is within the ballpark of fairness and  
2 reasonableness. (*Kullar*, 168 Cal.App.4th at 133; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*  
3 (2010) 186 Cal.App.4th 399, 408-409 [holding that *Kullar* requires only an “understanding of the  
4 amount that is in controversy and the realistic range of outcomes of the litigation.”].)

5 Here, the Settlement terms indicate fairness and reasonableness on balance of the above factors.  
6 The consideration that putative Class Members and Aggrieved Employees will receive for their releases  
7 is reasonable in light of the strengths and weaknesses of their claims (*Moon Decl.*, ¶¶ 19-25); the amount  
8 of discovery completed was exhaustive (*Id.* at ¶¶ 8-9); Plaintiff’s Counsel are highly experienced in  
9 wage-and-hour class action litigation (*See, e.g., id.* at ¶¶ 32-55); and the Parties reached the Settlement  
10 with the mutual understanding that it is within the ballpark of fairness and reasonableness.

11 Last, a presumption of fairness and reasonableness is triggered when the following factors are  
12 present: (1) the investigation was sufficient to allow class counsel and the court to act intelligently; (2)  
13 the settlement was reached through arm’s-length bargaining; (3) class counsel is experienced in similar  
14 litigation; and (4) the percentage of objectors is small. (*Dunk, supra*, 48 Cal.App.4th at p. 1800.) Here,  
15 the above factors are present, and therefore, this presumption is triggered:

16 **1. The Investigation was Sufficient to Allow Class Counsel and the Court to**  
17 **Act Intelligently**

18 Plaintiff’s Counsel conducted a thorough investigation into the facts of this case. (*Moon*  
19 *Decl.*, ¶ 18.) Based on the foregoing document and information exchange and on their own  
20 independent investigation and evaluation, Plaintiff’s Counsel is of the opinion that the proposed  
21 Settlement is fair, reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and  
22 circumstances, the risk of significant delay, trial risk, appellate risk, and the defenses that Defendant  
23 may assert both to certification and on the merits, the Settlement is in the best interest of the Class.  
24 (*Id.*)

25 Based on Plaintiff’s Counsel’s review of the time, payroll, and additional data provided by  
26 Defendant, on Plaintiff’s expert’s analysis of the sample records provided by Defendant, and on  
27 information from Plaintiff, Plaintiff’s Counsel evaluated the estimated maximum and risk-adjusted  
28 exposure that Defendant faced. (*Id.* at ¶ 19.) Based on records and Defendant’s estimate, there are

1 301 Class Members who worked 4,902 Workweeks as of October 15, 2025, and an average hourly  
2 rate of \$33.42. (*Id.*) Additionally, there were an estimated: 251 former employees falling within the  
3 three-year statute of limitations (“SOL”) period for waiting time penalties, 260 employees falling  
4 within the one-year SOL period for inaccurate wage statement penalties and PAGA penalties, and  
5 3,643 PAGA Pay Periods. (*Id.*)

6 As such, Defendant’s potential exposure was calculated upon evaluation of all factors reasonably  
7 affecting full recovery of Defendant’s maximum monetary exposure, or Defendant’s maximum potential  
8 liability, including, but not limited to, the evidence supporting Plaintiff’s claims; the evidence supporting  
9 Defendant’s defenses; the risks, expenses, and length of further litigation, including the class  
10 certification and appeal processes; the present state of the law as it applies to wage-and-hour class  
11 actions; the present value of the Settlement versus the long wait necessitated by any potential judgment  
12 in the Class’s favor; and the burdens of proof necessary to establish liability against Defendant. This  
13 evaluation resulted in Plaintiff’s Counsel reasonably reducing Defendant’s maximum monetary  
14 exposure, such that each claim was lowered in proportion to the presumed effect of any applicable  
15 mitigating factors. For example, the estimated risk-inclusive exposure for the regular rate claim is  
16 **\$20,520.75**, which reflects a 75% discount; off-the-clock claim is **\$7,984.34**, which reflects an 90%  
17 discount; meal period claim is **\$318,425.76**, which reflects an 50% discount; for the rest period claim  
18 is **\$32,464.19**, which reflects an 90% discount; for the unreimbursed expenses claim is **\$4,663.00**, which  
19 reflects an 90% discount; and for all derivative statutory and civil penalty claims is **\$147,021.50**, which  
20 reflects a 95% discount. The total projected reasonable recovery was therefore **\$531,079.54**. (*Moon*  
21 *Decl.*, ¶¶ 19-26.) In the Settlement, the Parties stipulate to a Gross Settlement Amount of \$269,000.00,  
22 which is **51%** of the total projected reasonable recovery. (*Id.* at ¶ 26.)

23 These facts support the assertion that the investigation was sufficient to allow Plaintiff’s Counsel  
24 and the Court to act intelligently, as they demonstrate the Gross Settlement Amount (1) was reached in  
25 view of an upper limit, which was calculated by Plaintiff’s Counsel and their expert according to the  
26 data and documents produced by Defendant; and (2) reflects a comprehensive comprise, which accounts  
27 for all conceivable, relevant risks and uncertainties. (*See, e.g., Vicerol v. Mistras Grp., Inc.* (N.D. Cal.  
28 2016) No. 15-cv-02198-EMC, 2016 WL 5907869 [approving wage-and-hour class action settlement

amounting to 8.1% of potential damages]; *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 [approving settlement which represented “roughly one-sixth of the potential recovery.”].)

**2. The Settlement was Reached Through Arm’s-Length Negotiations**

The Settlement was reached through arm’s-length negotiations between the Parties at private mediation, which was presided over by experienced wage-and-hour class and representative action mediator Brandon McKelvey, Esq. (*Moon Decl.*, ¶¶ 2, 10.) The Parties’ use of a neutral to intermediate their disparate factual assertions, legal arguments, and valuations supports this fact. (*Kullar, supra*, 168 Cal.App.4th at p. 129 [“The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm’s length transaction...”].) The Parties’ comprehensive exchange of informal discovery ahead of mediation supports the same because it shows the Settlement was based on evidence, rather than an arbitrary or collusive procedure. (*See Moon Decl.*, ¶¶ 8, 10.)

**3. Class Counsel Have Substantial Experience in Class Action Litigation**

Plaintiff’s Counsel have substantial experience, in both state and federal court, and in all facets of class action litigation, including discovery, law and motion practice, trial, appeals, arbitration, and mediation. (*Moon Decl.* ¶¶ 32-55.) For example, Plaintiff’s Counsel have litigated numerous wage-and-hour class actions on behalf of plaintiffs and have been lead counsel, or otherwise exercised significant case handling responsibilities in numerous cases, resulting in millions of dollars in class action settlements. (*Id.*) Plaintiff’s Counsel are, therefore, qualified to evaluate the strength of Plaintiff’s claims, the strength of Defendant’s defenses against certification and on the merits, and the fairness of the Settlement. (*See id.*)

**4. The Percentage of Objections Is Likely to Be Small**

The percentage of objections to the Settlement is likely to be small, as the average recovery for each Class Member is considerable and reliable, given the arm’s-length negotiations and experience of Plaintiff’s Counsel. (*Moon Decl.*, ¶ 28; *see In re Lifelock, Inc. Marketing and Sales Practices Litigation* (D. Ariz. 2010) 2010 WL 3715138, \*6 (relatively few objections and requests for exclusion support approval); *Kullar, supra*, 168 Cal.App.4th at p. 128 (among the factors to be considered in evaluating a class action settlement include “the reaction of the class members to the proposed settlement.”))

1 The foregoing indicates that the Settlement is comprised of all factors which trigger a  
2 presumption of fairness and reasonableness. In addition, it indicates that other discretionary factors the  
3 court considers in making a finding of fairness and reasonableness are also present. On these bases, the  
4 Settlement merits preliminary approval.

5 **B. The Terms of the Settlement Are Fair and Reasonable**

6 The terms of the Settlement, including the Class Counsel Fees Payment, Class Counsel Expenses  
7 Payment, Administration Expenses Payment, and Class Representative Service Payment, are fair and  
8 reasonable for the reasons outlined below. (*See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th  
9 224, 234-235 ["In general, questions of whether a settlement [is] fair and reasonable, whether  
10 certification of the class [is] proper, and whether the attorneys' fee award [is] proper are matters  
11 addressed to the trial court's broad discretion."].) The Class Counsel Fees Payment is not to exceed one-  
12 third of the Gross Settlement Amount, which is estimated at \$89,666.67; the Class Counsel Expenses  
13 Payment is not to exceed \$25,000.00; Administration Expenses Payment is not to exceed \$7,950.00; and  
14 the Class Representative Service Payment is not to exceed \$7,500.00. (*See Settlement*, ¶¶ 3.0, *et seq.*)

15 **1. The Class Counsel Fees Payment is Fair and Reasonable**

16 The Class Counsel Fees Payment is fair and reasonable because it (1) was calculated using the  
17 common fund doctrine and aligns with leading treatises on awards calculated using the common fund  
18 doctrine, (2) comports with Labor Code section 2699(g); and (3) is commensurate with Class Counsel's  
19 significant experience, reputation, and ability in class action settlements.

20 **a) The Class Counsel Fees Payment was Calculated Using the**  
21 **Common Fund Doctrine and Aligns with Leading Treatises on**  
22 **Awards Calculated Using the Common Fund Doctrine**

23 **(i) *The Common Fund Doctrine is Applicable.***

24 The common fund doctrine provides that, when a number of persons are entitled in common to  
25 a specific fund, and an action brought by a plaintiff for the benefit of all results in the creation or  
26 preservation of that fund, the plaintiff may be awarded attorneys' fees and costs out of the fund.  
27 (*Progressive West Ins. Co. v. Superior Court* (2005) 135 Cal.App.4th 263, 273.) The common fund  
28 doctrine is therefore applicable in class action settlements, as class action settlements produce a specific

1 fund to which a number of persons are entitled in common and are the product of an action brought by  
2 a plaintiff for the benefit of a class. (*See Petrovic v. Amoco Oil Co.* (8th Cir. 1999) 200 F.3d 1140, 1153.)

3 (ii) *The Common Fund Doctrine is Favorable.*

4 The common fund doctrine was recognized in *Quinn v. State of California* (1995) 15 Cal.3d 162  
5 as the favorable method for calculating the attorneys' fees award in class actions. In *Quinn*, the California  
6 Supreme Court explained that the common fund doctrine promotes "...fairness to the successful litigant,  
7 who might otherwise receive no benefit because his recovery might be consumed by the expenses;  
8 correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who  
9 should bear their share of the burden of its recovery; and encouragement of the attorney for the successful  
10 litigant, who will be more willing to undertake and diligently prosecute proper litigation for the  
11 protection or recovery of the fund if he is assured that he will be properly...compensated should his  
12 efforts be successful." (*Quinn*, 15 Cal.3d at 162.) Even before *Quinn*, California Courts routinely used  
13 the common fund doctrine to determine a reasonable award of attorneys' fees. (*See, e.g., In re Pacific*  
14 *Enterprises Securities City and County of San Francisco Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79;  
15 *see also City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110 [recognizing that the  
16 common fund doctrine has been applied "consistently in California when an action brought by one party  
17 creates a fund in which other persons are entitled to share"]; *Vincent v. Hughes Air West, Inc.* (9th Cir.  
18 1977) 557 F.2d 759, 769 [finding the common fund doctrine attempts to "spread litigation costs  
19 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden  
20 alone."].)

21 The common fund doctrine is also recognized as the favorable method for calculating the  
22 attorneys' fees award in class actions when compared to the alternative lodestar approach, which requires  
23 courts to wade through, oftentimes, voluminous and indecipherable time records to determine the  
24 reasonable hours expended by class counsel. Commenting on the lodestar approach, Chief Judge  
25 Marilyn Hall Patel opined in *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373:  
26 "This court is compelled to ask, 'Is this process necessary?' Under a cost-benefit analysis, the answer  
27 would be a resounding, 'No!' Not only do the *Lindy Kerr-Johnson* analyses consume an undue amount  
28 of court time with little resulting advantage to anyone, but in fact, it may be to the detriment of the Class

Members” because it incentivizes counsel to expend unnecessary time and/or take superfluous action in litigation, prolonging a lawsuit to increase their prospective award. In contrast to the lodestar approach, the common fund doctrine encourages the efficient resolution of litigation by providing an incentive for early settlement, reducing the demands on judicial resources, and endorsing practice by experienced attorneys. (*Id.* at pp. 1378-79.)

(iii) *The Class Counsel Fees Payment Aligns with Leading Treatises on Fee Awards Calculated Using the Common Fund Doctrine.*

The Class Counsel Fees Payment aligns with leading treatises on fee awards calculated using the common fund doctrine, which concur that “[n]o general rule can be articulated on what is a reasonable percentage of a common fund. Usually, [fifty percent] of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.” (*See Conte & Newberg, Newberg on Class Actions* (3rd Ed.) § 14.03.) Here, the Class Counsel Fees Payment is not to exceed 33 1/3% of the Gross Settlement Amount and is currently estimated at \$89,666.67, which aligns with prevailing guidelines established in California case law and academic literature and is consistent with prior awards approved in California. (*Compare, Settlement*, ¶ 3.1.2. with *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 [“Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”]; *see also Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F.Supp. 294 [stating that cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10 million.]

b) **The Class Counsel Fees Payment Comports with California Labor Code Section 2699(g)**

Labor Code section 2699(g) states: “any employee who prevails in any action shall be entitled to an award of reasonable attorneys’ fees and costs.” This fee-shifting provision reflects the understanding that counsel must accept significant risk of substantial expenses and consumption of time and other resources in litigating a PAGA action, and thus, that it is reasonable for counsel to recover reasonable fees and costs if successful in litigating the same. Notably, the reasonableness of an award is

1 unaffected when the fees are larger than the total recovery for the aggrieved employees at the conclusion  
2 of the case because once counsel undertake the litigation, they are committed to pursuing the case to its  
3 conclusion, placing the fiduciary duty to the aggrieved employees ahead of all other concerns. Here, this  
4 Action arose, in part, under Labor Code sections 2699, *et seq.* Therefore, Labor Code section 2699(g)  
5 applies. The prosecution of this Action involved significant financial risk to Class Counsel, as they  
6 undertook this matter solely on a contingency basis, with no guarantee of recovery. (*Moon Decl.*, ¶¶ 59-  
7 62.) The Class Counsel Fees Payment therefore comports with the fee-shifting provision of Labor Code  
8 section 2699(g).

9 c) **The Class Counsel Fees Payment is Commensurate with Class**  
10 **Counsel's Significant Experience, Reputation, and Ability in Class**  
11 **Action Settlements**

12 Here, the experience, reputation, and ability of Plaintiff's Counsel support the Class Counsel  
13 Fees Payment, as fees are generally awarded commensurate with the experience, reputation, and skill of  
14 counsel, and Plaintiff's Counsel have significant and specific experience in litigating class and  
15 representative actions on behalf of employees. (*Moon Decl.*, ¶¶ 32-55.) Moreover, Plaintiff's Counsel  
16 have been involved as lead or co-counsel in a multitude of class and representative actions resulting in  
17 beneficial results to class members in California. (*Id.*) This experience has familiarized Plaintiff's  
18 Counsel with this rapidly evolving area of law, such that they possess significant expertise in this narrow  
19 field. (*Id.*)

20 2. **The Class Counsel Expenses Payment is fair And reasonable**

21 The Class Counsel Expenses Payment is fair and reasonable because class counsel is entitled to  
22 recover the out-of-pocket litigation costs they reasonably incur in investigating, prosecuting, and settling  
23 a class and representative action, and the Class Counsel Expenses Payment reflects such costs. (*Staton*  
24 *v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 974.) Here, Class Counsel has reasonably incurred  
25 \$22,820.95 in litigation costs. Such costs were reasonably incurred because they were actually incurred  
26 and required to prosecute the Action. (*Moon Decl.* ¶ 58; Ex. 4.) For example, they include, but are not  
27 limited to, the complaint filing fee and mediation fee. (*Id.*) The Parties have agreed to reimbursement of  
28 litigation costs not to exceed \$25,000.00, and any un-awarded litigation costs shall become part of the

1 Net Settlement Amount for allocation to Participating Class Members. (*Settlement*, ¶ 3.1.2.)

2 **3. The Class Representative Service Payment is Fair and Reasonable**

3 The Class Representative Service Payment is fair and reasonable, as named plaintiffs in class  
4 action lawsuits “are eligible for reasonable incentive payments to compensate them for the expense or  
5 risk they incur in conferring a benefit on other members of the class,” and the Service Payment here is  
6 reasonable and compensate Plaintiff for the benefit he conferred on the Class. (*Munoz, supra*, 86  
7 Cal.App.4th at 412; *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 806; *See In re*  
8 *Cont'l Ill. Sec. Litig.* (7th Cir. 1992) 962 F.2d 566, 571 [“Since without a named plaintiff there can be  
9 no class action, such compensation as may be necessary to induce him to participate in the suit could be  
10 thought the equivalent of the lawyers’ nonlegal but essential case-specific expenses, such as long-  
11 distance phone calls, which are reimbursable”.].) In addition to this monetary benefit, Plaintiff has likely  
12 effectuated lawful wage-and-hour policies and practices at Defendant’s business from which currently  
13 employed Class Members are deriving benefit in the form of proper pay and working conditions.

14 Courts routinely approve class action settlement agreements containing enhancements for class  
15 representatives, acknowledging they are necessary to provide incentive to represent classes and  
16 appropriate given the benefit class representatives help bring about for the class. (*See Rodriguez v. W.*  
17 *Publ’g Corp.*, (9th Cir. 2009) 563 F.3d 948, 958-59.) “[C]riteria courts may consider in determining  
18 whether to make an incentive award include: 1) the risk to the class representative in commencing suit,  
19 both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class  
20 representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the  
21 litigation; and 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of  
22 the litigation. (*In re Cellphone Fee Termination Cases*, (2010) 186 Cal.App.4th 1380, 1394-95.) Here,  
23 to bring about his goal of remediation and deterrence, Plaintiff had to initiate this Action and actively  
24 participate in its litigation for more than a year, which should be fairly compensated given the class wide  
25 benefits.

26 Incentive awards are particularly important to plaintiffs in wage-and-hour cases because they (1)  
27 promote the important public policies underlying the wage-and-hour laws, and (2) compensate  
28 employees for the significant risk they face to their future employability. (*See California Labor Code*

1 section 90.5(a) [“It is the policy of [the State of California] to vigorously enforce minimum labor  
2 standards [to] ensure employees are not required or permitted to work under substandard unlawful  
3 conditions or for employers that have not secured the payment of compensation, and to protect  
4 employers who comply with the law from those who attempt to gain a competitive advantage at the  
5 expense of their workers by failing to comply with minimum labor standards.”]; *Gentry v. Super. Ct.*,  
6 (2007) 42 Cal.4th 443, 460-61 [the California Supreme Court recognizing that “retaliation against  
7 employees for asserting statutory rights under the Labor Code is widespread,” despite anti-retaliation  
8 statutes designed to protect employees]; *see also Frank v. Eastman Kodak Co.*, (W.D.N.Y. 2005) 228  
9 F.R.D. 174, 187.) Here, Plaintiff’s action promoted the State of California’s explicit intention to protect  
10 hourly employees from underpayment, non-payment, and non-compliant working conditions, which  
11 further supports a fair enhancement award.

12 In light of the benefits he helped produce for the Class, the risks he undertook in pursuing this  
13 Action, the important public policy his efforts supported, and the time and work Plaintiff spent assisting  
14 Plaintiff’s Counsel in the case, Plaintiff should be awarded the full Service Payment of \$7,500.00, which  
15 the Parties have agreed to under the Settlement. (*Moon Decl.*, ¶¶ 28-31; *Settlement*, ¶ 3.1.1.; *see generally*  
16 *Garcia Decl.*)

#### 17 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

##### 18 **A. Legal Standard**

19 For the reasons set forth below, and for purposes of settlement, the Class satisfies the  
20 prerequisites for certification under the California Code of Civil Procedure section 382: that there be an  
21 ascertainable class; and that there be a well-defined community of interest in the questions of law and  
22 fact involved affecting the parties to be represented. (*Daar v. Yellow Cab Co.* (1967) 67 Cal. 2d 695,  
23 704.) There is an ascertainable class when: the class is identifiable, is numerous, and shares a well-  
24 defined community of interest. (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) There is a well-  
25 defined community of interest when there are predominant questions of law or fact; the class  
26 representative possesses claims or defenses typical of the class; and the class representative can  
27 adequately represent the class. (*Richmond v. Dart Indus., Inc.*, (1981) 29 Cal. 3d 462, 470.)

28 ///

1                   **1. The Class Is Identifiable**

2           Here, the Class is identifiable because its definition is precise and comprised of objective criteria  
3 rendering Class Members discernable. The objective criteria include the nature of the position held by  
4 the Class Member, i.e., non-exempt; the time period during which the Class Member held the position,  
5 i.e., from February 11, 2023, through December 21, 2025. (*Settlement*, ¶¶ 1.3., 1.10.); the state in which  
6 the Class Member worked, i.e., California; and the employer of the Class Member, i.e., Defendant.  
7 (*Settlement*, ¶ 1.3.) Such objective terms are sufficient for finding a class identifiable. (*See e.g., Wilner*  
8 *v. Sunset Life Ins. Co.*, (2000) 78 Cal.App.4th 952, 959-60.)

9                   **2. The Class Is Numerous**

10          Here, the Class is numerous because it consists of an estimated 301 Class Members, and such a  
11 class size has regularly been found sufficient for finding of numerosity. (*See e.g., id.*, citing *Bowles v.*  
12 *Super. Ct.* (1955) 44 Cal.2d 574 [“Thus, our Supreme Court has upheld a class representing the ten  
13 beneficiaries of a trust in an action for removal of the trustees.”]; *see Rose v. City of Hayward*, (1981)  
14 126 Cal.App.3d 926, 934 [“The requirement of California Code of Civil Procedure section 382 that there  
15 be ‘many’ parties to a class action suit is indefinite and has been construed liberally”] [“Where a question  
16 is of common interest to ‘many’ persons, an action may be maintained as a class action even where the  
17 parties are numerous, and it is in fact practicable to join them all”] [“No set number is required as a  
18 matter of law for the maintenance of a class action.”].)

19                   **3. The Class Shares a Well-Defined Community of Interest**

20          Here, the Class shares common questions of law and fact that predominate over individual issues.  
21 The questions of law and fact center around (1) whether Defendant had legally compliant policies and  
22 practices to: pay employees all wages owed; provide employees with code-compliant meal periods;  
23 authorize and permit its employees to take code-compliant rest breaks; and ensure reimbursement of all  
24 necessary business expenses incurred; (2) whether Defendant timely paid final wages to employees; and  
25 (3) whether Defendant had legally compliant wage statements. The operative Complaint establishes that  
26 all Class Members would need to answer these same questions of law and fact to prevail on their injuries;  
27 all Class Members have suffered from and seek redress for the same injuries; and all Class Members’  
28 legal remedies would be identical in the event they prevailed. Such is sufficient for finding a class shares

1 common questions of law and fact. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d  
2 605.)

3 Here also, the Class Representative has claims typical of the Class. A class representative has  
4 claims typical of the class when his or her claims arise from the same event, practice, or course of  
5 conduct, and if the claims rest on the same legal theories. (*Classen v. Weller* (1983) 145 Cal.App.3d 27,  
6 47 [“The only requirements are that common questions of law and fact predominate and that the class  
7 representative be similarly situated” vis-à-vis the class.”].) This is precisely the case here. Like all other  
8 Class Members, Plaintiff was a former non-exempt employee of Defendant; Plaintiff worked for  
9 Defendant in California; Plaintiff typically worked five days and forty hours per workweek; and Plaintiff  
10 was subjected to the employment policies and practices of Defendant, which are the basis of his  
11 individual and class claims and legal theories in support thereof. (*See generally* Garcia Decl.) The Class  
12 Members are also all non-exempt employees of Defendant; who worked for Defendant in California;  
13 who worked the same average workday and workweek as Plaintiff; and who were also subjected to the  
14 same policies and practices as Plaintiff, which are also the basis of their claims and alleged legal theories.  
15 The Class Representative, therefore, has identical claims to those of the Class.

16 Here, last, the Class Representative adequately represents the Class. A class representative  
17 adequately represents the class when he or she is represented by counsel qualified to conduct the pending  
18 litigation; and his or her interests are not antagonistic to those of the class. (*McGhee v. Bank of America*,  
19 (1976) 60 Cal.App.3d 442, 451.) Plaintiff retained counsel with extensive experience in prosecuting  
20 complex class actions, including similar class actions that previously settled. (*Moon Decl.*, ¶¶ 32-55.)  
21 With their combined experience, Class Counsel are unquestionably “qualified, experienced and  
22 generally able to conduct the proposed litigation.” (*Miller, supra*, (1983) 148 Cal.App.3d at 875.) In  
23 addition, Plaintiff has no conflicts of interest with any Class Members, and Plaintiff has, with counsel,  
24 helped bring about the Settlement in this Action and diligently reviewed the Settlement terms, showing  
25 his dedication. Plaintiff’s willingness to serve as a representative demonstrates his goal to bring about  
26 the best results possible for the Class. (*McGhee*, 60 Cal.App.3d at 451.)

#### 27 **4. A Class Action is Superior to a Multiplicity of Litigation**

28 If a Court finds all other requirements for class certification are satisfied, it must finally determine

1 that a class action is superior to alternative means for the fair and efficient adjudication of the litigation.  
2 By consolidating many potential individual actions into a single proceeding, this Court’s use of the class  
3 action device enables it to manage a litigation in a manner that serves the economics of time, effort, and  
4 expense for the litigants and the judicial system. Absent class treatment, similarly situated employees  
5 with small but meritorious claims for damages would, as a practical matter, have no means of redress  
6 because of the time, effort, and expense required to prosecute individual actions. (*Gentry v. Super. Ct.*,  
7 (2007) 42 Cal. 4th 443, 457-62; *Leyva v. Medline Ind.*, (9th Cir. 2013) 716 F.3d 510, 515.) For this  
8 reason, and those detailed in this Section, the Class satisfies the requirements for provisional  
9 certification.

## 10 **V. THE CLASS NOTICE MERITS APPROVAL**

### 11 **A. The Class Notice Satisfies State Law**

12 Notice requirements are set forth in the California Rules of Court rules 3.766(e) and 3.766(f).  
13 California law vests the Court with broad discretion to fashion an appropriate notice program. (*Cartt v.*  
14 *Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no statutory or Due Process requirement that all  
15 class members receive actual notice. However, as the Court of Appeals has explained, “[t]he notice given  
16 should have a reasonable chance of reaching a substantial percentage of the class members...” (*Id.* at p.  
17 974.) Here, the Class Notice will be provided to Class Members by direct mailing through First Class  
18 U.S. Mail, the best possible form of notice under the circumstances. (*Settlement*, ¶ 6.3.)

### 19 **B. The Class Notice Is Accurate and Informative**

20 The Class Notice, in substantially the form attached to the Settlement as **Exhibit A**, should be  
21 approved for dissemination to the Class Members. The Class Notice informs the Class Members of the  
22 purpose and terms of the Settlement; their right, and the steps that must be taken, to be excluded from  
23 the Settlement; and their right, and the steps that must be taken, to object to the Settlement and be heard  
24 at the Final Fairness Hearing. Accordingly, the Class Notice meets all requirements of California Rules  
25 of Court rule 3.769(f).

26 The Class Notice also fulfills the requirement of neutrality in class notices: it summarizes the  
27 proceedings to date and the terms and conditions of the Settlement in an informative and coherent  
28 manner; makes clear that the Settlement does not constitute an admission of liability by Defendant,

1 which denies all liability; and recognizes that this Court has not ruled on the merits of this Action. (Conte  
2 & Newberg, Newberg on Class Actions (3rd Ed.) § 8.39.) It also states that Final Approval has not yet  
3 been granted. Accordingly, the Class Notice complies with the standards of fairness, completeness, and  
4 neutrality required of a combined settlement-certification class notice.

5 **VI. CONCLUSION**

6 For the foregoing reasons, Plaintiff respectfully requests the Court to grant preliminary approval  
7 of the Settlement and set a Final Fairness Hearing not less than 120 days from preliminary approval.

8 Respectfully submitted,

9 Dated: January 29, 2026

MOON LAW GROUP, P.C.

10  
11 By: \_\_\_\_\_

Kane Moon, Esq.  
Allen Feghali, Esq.  
Lilit Ter-Astvatsatryan  
Jacquelyne VanEmmerik  
Nichelle Christopherson  
Attorneys for Plaintiff, *Rodrigo Cruz Garcia*

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county of Los Angeles, State of California. I am over the age of 18 and  
4 not a party to the within action; my business address is 1055 W. Seventh St., Suite 1880, Los  
Angeles, California 90017. On **January 29, 2026**, I served the foregoing document described as:

5 **PLAINTIFF RODRIGO CRUZ GARCIA'S NOTICE OF MOTION AND MOTION FOR**  
6 **PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION**  
**SETTLEMENT AGREEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**

7 X by placing \_\_\_\_ the original X a true copy thereof enclosed in sealed envelope(s) addressed as  
8 follows:

9  
10 ☒ **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to  
11 accept electronic service, I caused the documents to be sent to the persons at the  
electronic service addresses listed above via e-mail. I did not receive an error message.

12 I declare under penalty of perjury under the laws of the State of California that the foregoing  
is true and correct.

13 Executed this, **January 29, 2026** at Los Angeles, California.

14  
15 \_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
/s/ ss  
Signature