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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

JENNIFER JUAN, individually, and on behalf of all others similarly situated, Plaintiff, vs. UNITED LAB SERVICES, INC., a California corporation; and DOES 1 through 10, inclusive, Defendants	Case No.: CVRI2406552 <u>CLASS AND REPRESENTATIVE ACTION</u> [*Assigned for All Purposes to the Hon. Harold W. Hopp, Dept. 1*] **PLAINTIFF'S NOTICE OF AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT AGREEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** [*Filed with the Declaration of Kane Moon, the Declaration of Plaintiff, the Declaration of Sean Hartranft, and [Proposed] Preliminary Approval Order*] <u>PRELIMINARY APPROVAL HEARING</u> Date: July 27, 2026 Time: 8:30 a.m. Dept.: 1 Judge: Hon. Harold W. Hopp Action Filed: November 19, 2024 Trial Date: Not Set

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

PLEASE TAKE NOTICE that on July 27, 2026 at 8:30 a.m., in Department 1 of this Court located at the Riverside Historic Courthouse, 4050 Main Street, Riverside, CA 92501, pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 *et seq*., Plaintiff Jennifer Juan ("Plaintiff") will move the Court, and hereby does, for an Order granting preliminary approval of the proposed class action settlement between Plaintiff and Defendant United Lab Services, Inc. Plaintiff further moves the Court for an Order:

1. Granting preliminary approval of the Class and PAGA Action Settlement Agreement;
2. Certifying a Class for settlement purposes;
3. Approving the Class Notice, Request for Exclusion Form, and Objection Form, and the plan for distribution of said documents;
4. Appointing Plaintiff as the Class Representative for settlement purposes;
5. Appointing Moon Law Group, PC, as Class Counsel for settlement purposes;
6. Appointing APEX Class Action LLC as the Administrator; and
7. Setting a Final Approval Hearing no earlier than 130 days from preliminary approval.

The motion will be based upon this notice, the attached memorandum of points and authorities, the supporting declarations and attachments 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.

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

Respectfully submitted,

Dated: July 2, 2026 **MOON LAW GROUP**

By:____________________________________
Kane Moon
Allen Feghali
H. Scott Leviant
Sandy Pham

Attorneys for Plaintiff

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I. INTRODUCTION

Plaintiff Jennifer Juan ("Plaintiff") seeks preliminary approval of a proposed $320,000.00 non-reversionary, wage-and-hour class action settlement (the "Settlement") with Defendant United Lab Services, Inc. ("Defendant," together with Plaintiff, the "Parties"). The Settlement will provide substantial monetary payments to approximately 376 Class Members who collectively worked a total of 6,567 workweeks and to 248 Aggrieved Employees who worked a total of 3,794 pay periods under the California Private Attorneys General Act of 2004 ("PAGA"). 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 experienced, neutral, class action mediator Marc Feder. Accordingly, Plaintiff requests the Court preliminarily approve the proposed Settlement, certify the proposed Settlement Class, approve the proposed Class Notice and Forms, and set a Final Approval Hearing no earlier than 130 days from the date of the order granting Preliminary Approval of the Settlement.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims

Defendant offers mobile medical visits and diagnostic testing in California. (Declaration of Kane Moon in Support of Plaintiff's Motion for Preliminary Approval of Class and PAGA Action Settlement Agreement ["Moon Decl."], ¶ 3.) Plaintiff was employed as a mobile medical assistant during the alleged Class Period, from approximately October 2023 to December 2023. (Declaration of Plaintiff Jennifer Juan in Support of Plaintiff's Motion for Approval of Class and PAGA Action Settlement Agreement ["Juan Decl."], ¶ 2.) Plaintiff typically worked five days each workweek and roughly eight or more hours each workday. (*Id.*) Plaintiff contends both she and her coworkers were subjected to the same unlawful labor practices, including failure to pay minimum wages for all hours worked. (*Id.* at ¶ 3; Moon Decl., ¶ 3.)

Plaintiff's claims stem from allegations that Defendant failed to compensate Plaintiff and other Class Members for all hours worked, including off-the-clock time spent traveling between patient locations under Defendant's timekeeping policy, engaging in work-related communications with managers and other employees outside scheduled shifts, and preparing and sanitizing equipment for patient visits. (Moon Decl., ¶ 4.) Plaintiff also alleges that Defendant failed to incorporate all non-discretionary remuneration into the regular rate of pay for purposes of calculating overtime and premium payments. (*Id.*) Plaintiff's meal and rest period claims are based on allegations that Class Members regularly had missed, short, late, or interrupted breaks without compensation in lieu thereof. (*Id.*) Plaintiff further brings a claim for unreimbursed necessary business expenses, including the cost of medical equipment, tools, uniforms, personal cellular telephone use, and vehicle mileage. (*Id.*) Finally, Plaintiff also brings derivative claims for waiting time penalties, wage statement violations, unfair business practices, and civil penalties under the Private Attorneys General Act ("PAGA") pursuant to Labor Code sections 2698, *et seq*. (*Id.*)

Because of Defendant's alleged violations of various provisions of the Labor Code, Plaintiff filed this class and representative action on November 19, 2024, which alleges that Defendant systematically: (1) failed to pay minimum wages, (2) failed to pay overtime wages, (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 all wages at termination, (7) failed to provide accurate and itemized wage statements, and (8) engaged in unfair business practices. (*Id.* at ¶ 5.)

Pursuant to PAGA, on November 9, 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, and paid the required filing fee. (*Id.* at ¶ 6., Exh. 2) On January 24, 2025, Plaintiff sent an Amended PAGA Notice letter to Defendant via certified mail and the LWDA via online submission. (*Id.*, Exh. 3). On February 18, 2025, Plaintiff filed a First Amended Class and Representative Action Complaint ("FAC") to add a cause of action for civil penalties under PAGA. (*Id.*) For purposes of settlement, Plaintiff filed a Second Amended Complaint (the "Operative Complaint") on April 24, 2026, which defines the class consistent with the Settlement. (*Id.*) Plaintiff's administrative exhaustion period under PAGA expired without the LWDA indicating its intent to investigate the alleged violations. (*Id.*) Pursuant to Labor Code section 2699, subdivision (*l*)(1), Class Counsel submitted a file-stamped copy of Plaintiff's complaint that contained the Court-assigned case number to the LWDA. (*Id.*)

Defendant ardently opposes the merits of this case and denies Plaintiff's factual allegations. (Moon Decl., ¶ 7.) Defendant asserts it complied with all its compensation obligations, including compensating Class Members for any and all off-the-clock work and overtime work, and therefore, Plaintiff and other Class Members were paid all wages owed. (*Id.*) Defendant maintains compliance with all its meal and rest period obligations, and that Plaintiff and the putative Class were provided with the opportunity to take all meal and rest periods to which they were entitled or otherwise voluntarily waived breaks. (*Id.*) As for unreimbursed business expenses, Defendant maintains it complied with all of its reimbursement obligations and that Class Members were compensated for any and all business expenses necessarily incurred. (*Id.*) To the extent Plaintiff received wage statements that were allegedly inaccurate, Defendant asserts Plaintiff suffered no actual damage or harm as a result. (*Id.*; *see, e.g.*, *Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013, No. C 12–05860 CRB) 2013 WL 622032, at *10 ["A plaintiff must adequately plead an injury arising from an employer's failure to provide full and accurate wage statements, and the omission of the required information alone is not sufficient."].) With respect to Plaintiff's claim for waiting time penalties, Defendant alleges 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., ¶ 7; *see, e.g.*, *Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012, No. ED CV 11–298 GHK (DTBx)) 2012 WL 9506073, *5.) For these reasons, among others, Defendant denies all of Plaintiff's claims and allegations, and further claims it did not engage in any unfair business practices and denies liability under PAGA. (Moon Decl., ¶ 7.) Defendant also maintains the claims are improper for class treatment, in part, due to the individualized and testimony-intensive nature of the wage claims that could bar class certification or significantly reduce Defendant's overall liability. (*Id.*)

B. Discovery and Investigation

Following the filing of the complaint, the Parties met and conferred and agreed to mediate the action. (*Id.* at ¶ 8.) The Parties agreed to mediate on January 20, 2026, and further agreed to a protocol for an informal exchange of documents and information before the mediation. (*Id.*) Prior to mediation, Plaintiff obtained from Defendant, through informal discovery, documents and data that were necessary and helpful to evaluate the claims asserted in this action. (*Id.*) Defendant produced human resource documents and policies, Plaintiff's complete time and pay records, as well as an estimated 47% sample size of the time records and payroll data for the Class which were reviewed, investigated, and analyzed by Class Counsel and Plaintiff's expert. (*Id.*) Defendant further provided crucial information regarding the total approximate Class size, the estimated average hourly rate of pay for the Class, the estimated number of current and former putative Class Members and Aggrieved Employees, and the estimated number of workweeks and pay periods. (*Id.*)

In preparation for mediation, Class Counsel reviewed and analyzed all the information and documents Defendant had produced. (*Id.* at ¶ 9.) Class Counsel retained a statistics expert to analyze the sample records produced and prepare a damage analysis prior to mediation. (*Id.*) Based on the data and documents Defendant produced, Plaintiff's expert was able to prepare an analysis with a high degree of certainty. (*Id.*) In conjunction with their extensive factual investigation, Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly, Class Counsel were able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. (*Id.*) Thus, Plaintiff and Class 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 Agreement. (*Id.*)

C. Settlement Negotiations

On January 20, 2026, the Parties participated in a full day of private mediation before Marc Feder, Esq., an experienced, professional, neutral, class action mediator. (*Id.* at ¶ 10.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive 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 Settlement. (*Id.*, Exh. 1 [the "Settlement Agreement"].)

Class Counsel have conducted a thorough investigation into the facts of this case. (*Id.* at ¶ 22.) Based on the foregoing document and information exchange and on their own independent investigation and evaluation, Class Counsel are of the opinion that the proposed Settlement Agreement is fair, reasonable, and adequate. (*Id.*) Furthermore, in light of 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 Agreement is in the best interests of Class Members. (*Id.*; *see also id.* at ¶¶ 23–29.) **Indeed, the $320,000.00 gross settlement figure represents approximately 88% of the realistic recovery estimated to be $362,713.01.** (*Id.* at ¶ 30.)

D. <u>Key Terms of the Proposed Settlement</u>

<u>[Riverside CMO Section G(3)(i)]</u>

Under the Settlement, Defendant will pay $320,000.00 to resolve this litigation, subject to potential increase. (Settlement Agreement, ¶¶ 3.1, 8.). Defendant shall separately pay the employer's share of applicable payroll taxes. (*Id.* at ¶ 3.1.) The Settlement Agreement's key terms include:

1. <u>Class and Class Members</u>: The proposed Settlement Class for purposes of the Settlement contains approximately 376 members and is defined as: all persons, excluding Registered Nurses and Nurse Practitioners, employed by Defendant as hourly-paid, non-exempt employees in the State of California during the Class Period. (Settlement Agreement, ¶ 1.5, 8.) "Class Period" means the period from November 19, 2020, to March 21, 2026. (*Id.* at ¶ 1.13.)

2. <u>Participating Class Member</u>: means a Class Member who does not submit a valid and timely Request for Exclusion. (*Id.* at ¶ 1.33.)

3. Aggrieved Employee: "Aggrieved Employee" means all persons, excluding Registered Nurses and Nurse Practitioners, employed by Defendant as hourly-paid, non-exempt employees in the State of California during the PAGA Period. (*Id.* at ¶ 1.4.) "PAGA Period" means the period from November 14, 2023, to March 21, 2026. (*Id.* at ¶ 1.29.)

4. Workweeks: "Workweek" means any workweek during which a Class Member worked for Defendant in California at least one day during the Class Period. (*Id.* at ¶ 1.42.)

5. PAGA Pay Periods: PAGA Pay Period" means any pay period during which an Aggrieved Employee worked for Defendant in California at least one day during the PAGA Period. (*Id.* at ¶ 1.28.)

[Riverside CMO Section G(3)(h)]

6. No Reversion: None of the Gross Settlement Amount shall revert to Defendant. (*Id.* at ¶ 3.1.)

7. Plaintiff's General Release: Plaintiff and Plaintiff's respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally will release and discharges Released Parties related from all claims transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiffs' PAGA Notices ("Plaintiffs' Release"). (*Id.* at ¶ 5.1.) Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. (*Id.*) Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now knows or believes to be true but agrees, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them. (*Id.*) For purposes of Plaintiff's General Release, Plaintiff expressly waive and relinquish the provisions, rights, and benefits, if any, of California Civil Code section 1542, which reads: A GENERAL RELEASE DOES NOT EXTEND TO

CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY. (*Id.* at ¶ 5.1.1.)

8. Released Class Claims: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims alleged on behalf of Class Members or reasonably could have been alleged on the facts and legal theories contained in the Operative Complaint during the Class Period. (*See id.* at ¶ 5.2.) This Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. (*Id.*)

9. Released PAGA Claims: Plaintiff, on her own behalf and on behalf of the State of California, alleged Aggrieved Employees and the LWDA will release all claims for civil penalties under PAGA, based on the facts and Labor Code sections that were alleged or reasonably could have been alleged in the PAGA Notices and the Operative Complaint. The release will be as to the Released Parties. (*Id.* at ¶ 5.3.)

10. Released Parties. "Released Parties" means: Defendant and each of its former and present parent, affiliates, divisions, joint ventures; members; employees, agents; managing agents; benefit plans/administrators; payroll companies/PEOs; directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns and subsidiaries. (*Id.* at ¶ 1.38.)

11. PAGA Penalties: The Parties agree that $30,000.00 is allocated as PAGA Penalties to be paid from the Gross Settlement Amount, with 65% ($19,500.00) allocated to the LWDA PAGA Payment and 35% ($10,500.00) allocated to the Individual PAGA Payments. (*Id.* at ¶ 3.2.5.) Class Counsel have submitted the proposed Settlement Agreement to the LWDA. (Moon Decl., ¶ 12, Ex. 4.)

12. Net Settlement Amount: "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in amounts as approved by the Court: Individual PAGA

Payments, LWDA PAGA Payment, Class Representative Enhancement Award, Class Counsel Fees Payment, Class Counsel Litigation Costs Payment, and Administration Expenses Payment. (*Id.* at ¶ 1.25.) The remainder is to be paid to Participating Class Members through Individual Class Payments. (*Id.*)

[Riverside CMO Section G(3)(g)]

13. No Claim Form. The Administrator shall disburse the entire Gross Settlement Amount without asking or requiring any Class Member to submit a claim as a condition of payment. (*Id.* at ¶ 3.1.)

[Riverside CMO Section G(3)(j)]

14. Tax Treatment: 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). (*Id.* at ¶ 3.2.4.1.) The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. (*Id.*) The remaining 80% 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.*) The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. (*Id.*) Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. (*Id.*)

[Riverside CMO Section G(3)(c)]

15. Deadline for Cashing Settlement Checks. The Administrator shall issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them via First Class United States Postal Service ("USPS") Mail with postage prepaid. (Settlement Agreement, ¶ 4.4.1.) The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided (the "Void Date"). (*Id.*) The Administrator shall send checks for Individual Class Payments to all Participating Class Members and checks for Individual PAGA Payments to all Aggrieved Employees (including Non-Participating Class Members who qualify as Aggrieved Employees), including to those for whom their Class Notice was returned undelivered. (*Id.*) The Administrator may send Participating Class Members a single check combining their Individual Class and PAGA Payments. (*Id.*) The Administrator may send

Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. (*Id.*) Before mailing any checks, the Administrator must update recipients' mailing addresses using the National Change of Address Database. (*Id.*) The Administrator shall disburse all Individual Class Payments and all Individual PAGA Payments mailing checks. (*Id.*) For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, 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" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (*Id.* at ¶ 4.4.4.)

16. <u>Class Representative Enhancement Award</u>: "Class Representative Enhancement Award" means the payment of $7,500.00 to the Class Representative for a general release, and in recognition of having initiated the Action, provided services in support thereof, and incurred risks inherent in the role of named Plaintiff. (*Id.* at ¶¶ 1.14, 3.2.1.)

17. <u>Class Counsel Fees Payment and Class Counsel Expenses Payment</u>: The Settlement Agreement provides a fee application of not more than one-third of the Gross Settlement Amount or $106,666.66 for Class Counsel's attorneys' fees, plus reimbursement for out-of-pocket litigation costs not to exceed $20,000.00. (*Id.* at ¶ 3.2.2.) At this time, Class Counsel's costs are $16,629.86. (Moon Decl., ¶ 15, Ex. 5.)

18. <u>Administration Expenses Payment</u>: The Settlement Agreement provides the Settlement Administrator will be paid an Administration Expenses Payment in an amount estimated not to exceed $8,750.00 for its fees and expenses in administering this Settlement. (*Id.* at ¶ 3.2.3.) The Parties jointly agree to appoint APEX Class Action LLC ("APEX") as the neutral entity to administer this Settlement. (Settlement Agreement, ¶ 1.2.) Prior to selecting APEX, Class Counsel solicited bids for estimated administration costs from different, reputable settlement administrators, including APEX (not-to-exceed bid of $8,750.00), Phoenix Class Action Administration Solutions (bid of $9,000.00), and ILYM Group, Inc. (bid of $8,850.00). The Parties jointly selected APEX as the proposed Administrator for its competitive price and the Parties' prior experiences with APEX's thoroughness in its Administrator duties. (Moon Decl., ¶ 16, Ex. 6.)

[Riverside CMO Section G(3)(f)]

19. Class Notice: The proposed method for providing notice of the proposed Settlement Agreement and distribution thereof is the one most likely to give actual notice to the greatest number, if not all, of the Class Members. The Class Notice sets forth, in plain terms, a statement of case, the terms of the Settlement Agreement, the approximate amount of attorneys' fees, costs, and service awards being sought, and an explanation of how the Settlement allocations are calculated. (*See* Settlement Agreement, Ex. A.) Class Members will be notified of the proposed Settlement by first-class mail of the Class Notice, Request for Exclusion Form, and Objection Form. (*Id.* at ¶ 7.4.2.) Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. (*Id.* at ¶ 7.4.3.) If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. (*Id.*) The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time. (*Id.*) "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods, and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members. (*Id.* at ¶ 1.10.)

20. Procedure for Disputing Workweeks and/or Pay Periods, Opting Out, or Objecting: The Notice will inform Class Members of their estimated Individual Class Payments and the number of Workweeks during the Class Period and/or the number of Pay Periods during the PAGA Period. (*See id.*, Exh. A.) Class Members may dispute their Workweeks and/or Pay Periods if they believe they were employed more Workweeks in the Class Period and/or more PAGA Pay Periods in the PAGA Period. (*See id.*, ¶ 6.12.2, Exh. A.) Any Class Member, other than Plaintiff, may request to be excluded from the Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or before the Notice Response Deadline. (*Id.* at ¶ 7.5.1.) Any Class Member, other than Plaintiff, may object to the terms of this Agreement with respect to the Class

Claims and may appear at the Final Approval Hearing and object whether or not they have filed a written objection. (*Id.* at ¶ 7.8.2.) The Class Notice includes a Request for Exclusion Form as well as an Objection Form. (Settlement Agreement, Exh. A.)

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 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.) In order to approve a class action settlement, "the court must satisfy itself that the class settlement is within the 'ballpark' of reasonableness." (*Id*. at p. 133.) The record need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of 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, Class Counsel have provided information exceeding the threshold required to provide this Court with materials and information necessary to determine that the proposed Settlement is fair, adequate, and reasonable.

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

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

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption here that the negotiations were conducted in good faith. (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."].)

The proposed Settlement Agreement at issue here was reached following extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses with Marc Feder, an experienced, professional, neutral, class action mediator. (Moon Decl., ¶ 10.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*)

In preparation for mediation, Class Counsel reviewed and analyzed all the information and documents Defendant had produced. (*Id.* at ¶ 9.) Class Counsel retained a statistics expert to analyze the sample records produced and prepare a damage analysis prior to mediation. (*Id.*) Based on the data and documents Defendant produced, Plaintiff's expert was able to prepare an analysis with a high degree of certainty. (*Id.*) In conjunction with their extensive factual investigation, Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly, Class Counsel were able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. (*Id.*) Thus, Plaintiff and Class 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 Agreement. (*Id.*)

Furthermore, Class Counsel also have considerable experience and have demonstrated competence with litigating wage-and-hour class actions. (Moon Decl., ¶¶ 41–56.) The experience of Class Counsel was helpful in assessing the reasonableness of the Settlement at issue here, and from this experience Class Counsel concluded that this litigation could not have been settled on better terms than provided under the proposed Settlement Agreement. (Moon Decl., ¶ 59.) Again, this supports the conclusion that the terms of the Settlement Agreement are based on objective evidence that has been considered and weighed against the risks, expenses, and time consumption to both sides of continued litigation of this action.

2. The Settlement Is Fair and Reasonable in Light of the Parties' Respective Legal Positions

A settlement is not judged against what 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, the Settlement obviates the significant risk that this Court may deny certification of all or some of Plaintiff's claims. (Moon Decl., ¶ 33.) Furthermore, even if Plaintiff were able to pursue her 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.*) While Plaintiff is confident in the merits of their claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 31.)

Plaintiff also recognizes that proving the amount of wages owed to each Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id.*) Class Counsel are also of the opinion that because the issues here are fairly contested, there is a possibility of the Court not awarding PAGA penalties even if Plaintiff prevailed on the merits. (Moon Decl., ¶ 32.) Because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of not being able to recover anything. (Moon Decl., ¶ 30.)

The proposed settlement of $320,000.00 therefore represents a substantial recovery when compared to Plaintiffs' reasonably forecasted recovery. (Moon Decl., ¶ 36.) 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 Gross Settlement Amount is within the "ballpark" of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*) Indeed, the Net Settlement Amount available for settlement payments is currently estimated to be $147,083.34 for an estimated Class size of 376 individuals.[1] (*Id.* at ¶ 35.) **As a result, it is estimated each Participating Class Member is eligible to receive an average benefit of approximately $391.18 prior to tax withholdings on the wage portion of payments ($147,083.34 / 376).** (*Id.*) Considering Class Members' average hourly rate is $20.75, the average benefit is approximately 18.85 hours of work. (*Id.*) **Furthermore, it is estimated there are 248 Aggrieved Employees who will receive an estimated average of $42.34 from the 35% share of the PAGA Penalties ($10,500.00 / 248).** (*Id.*) The amounts to Participating Class Members and/or Aggrieved Employees will vary based on each Participating Class Member's and/or Aggrieved Employee's duration of employment during the Class Period or PAGA Period, respectively. (*Id.*) Thus, those who worked longer for Defendant will receive a benefit greater than the average estimated amount. Based on an estimated 6,567 Workweeks, the average Workweek value is $22.40 ($147,083.34 / 6,567 Workweeks). (*Id.*) Assuming a Class Member worked one Workweek,

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[1] The Net Settlement Amount is $320,000.00 less the following: $10,500.00 for Individual PAGA Payments to the Aggrieved Employees, $19,500.00 for the LWDA PAGA Payment, $7,500.00 for the Class Representative Enhancement Award to Plaintiff, up to $106,666.66 for the Class Counsel Fees Payment, up to $20,000.00 for the Class Counsel Litigation Costs, and up to $8,750.00 for the Administration Expenses Payment. (Settlement Agreement, ¶¶ 1.25, 3.2.)

the lowest class payment is estimated to be $22.40 (1 Workweek x $22.40 average Workweek value). (*Id.*) Assuming a class member worked 279 Workweeks (maximum number of weeks in the Class Period), **the highest-class payment is estimated to be $6,248.86 (279 Workweeks x $22.40 average Workweek value)**. (*Id.*) Based on an estimated 3,794 Pay Periods during the PAGA Period, the average pay period value is $2.77 ($10,500.00 / 3,794 Pay Periods). (*Id.*) Assuming an Aggrieved Employee worked one Pay Period, **the lowest PAGA payment to an Aggrieved Employee is estimated to be $2.77 (1 Pay Period x $2.77 average Pay Period value).** (*Id.*) Assuming an Aggrieved Employee worked 62 Pay Periods (maximum number of biweekly pay periods in the PAGA Period), **the highest PAGA payment is estimated to be $171.59 (62 Pay Periods x $2.77 average Pay Period value)**. (*Id.*) The Administrator will calculate the high and low range of payments to Class Members and Aggrieved Employees following preliminary approval and receipt and processing of the Settlement Class data. (*Id.*) Class Counsel will provide more accurate estimates to the Court in Plaintiff's motion for final approval. (*Id.*)

3. Class Counsel Have Extensive Experience in Class Action Litigation

The Settlement negotiations were conducted by highly capable and experienced counsel. (Moon Decl., ¶¶ 41–56.) Class 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.*) Although Plaintiff and her 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. (Moon Decl., ¶¶ 10, 22.)

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

The proposed Class Notice, in the form attached to the Settlement Agreement 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 the Settlement. (Settlement Agreement, Ex. A.) If there are Class Members who wish to object to this proposed class action Settlement, they will have the opportunity to submit written objections and be heard at the Final Approval Hearing. (*Id.*) 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. <u>The Proposed Attorneys' Fees and Costs Are Reasonable</u>

Under the Settlement, subject to the Court's approval, Defendant will not oppose a fee application of not more than one-third of the Gross Settlement Amount or $106,666.66 for Class Counsel's attorneys' fees, plus reimbursement for out-of-pocket litigation costs not to exceed $20,000.00. (Settlement Agreement, ¶ 3.2.2.) These amounts are disclosed to Class Members in the proposed Class Notice and are reasonable. (Settlement Agreement, Exh. A.)

1. Class Counsel Will Request an Award of Fees Based On the "Common Fund" Method

California courts have long awarded attorneys' fees as a percentage of the benefit created by counsel in pursuing claims on behalf of a class. (*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.)

Class Counsel seek an award of attorneys' fees on the "percentage of recovery/common fund" theory. (Moon Decl., ¶ 61.) 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 Class Counsel's 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." (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 requests attorneys' fees equal of not more than one-third of the Gross Settlement Amount or $106,666.66, 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 Agreement, ¶ 3.2.2. *with Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].) Accordingly, Plaintiff respectfully requests that the Court preliminarily approve Class Counsel's ability to request attorneys' fees as negotiated by the Parties and requested herein.

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 their 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 Class Counsel for their decision to assume risk by taking on this matter. (Moon Decl., ¶¶ 61–65.) In fact, prosecution of this action involved significant financial risk for Class Counsel. (Moon Decl., ¶¶ 66-67.) Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once Class Counsel undertook this litigation on behalf of the Class, they committed to pursue it to its conclusion, placing its fiduciary duty to the Class ahead of all other concerns. (Moon Decl., ¶ 65.)

4. The Experience, Reputation, and Ability of Class Counsel Support the Requested Fee Award

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possess considerable expertise in litigating class actions. (Moon Decl., ¶¶ 41-56.) Class 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, Class Counsel's requested fee award is supported here.

Class Counsel's experience in wage-and-hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. (*Id.* at ¶ 61.) 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.* at ¶ 57.) Based on these and other factors, Class Counsel have frequently received fee awards of this percentage from the gross recovery for the class. (*See Id.* at ¶¶ 45, 50, 54.) Therefore, the requested fee award is fair, reasonable, and adequate.

D. The Class Representative Enhancement Award to Plaintiff Is Reasonable

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 Agreement here, subject to the Court's approval, Defendant agrees to pay a Class Representative Enhancement Award to Plaintiff in the amount of $7,500.00. (Settlement Agreement, ¶ 3.2.1.) This award is in recognition of Plaintiff in exchange for a general release, and in recognition of having initiated the Action, provided services in support thereof, and incurred risks inherent in the role of named Plaintiff. (Settlement Agreement, ¶ 1.14.) Class Counsel represent that Plaintiff devoted a great deal of time and work assisting counsel in the case and communicated with counsel very frequently for litigation and to prepare for mediation. (Moon Decl., ¶¶ 37–40.) This amount is fair and reasonable, particularly in light of the substantial benefits Plaintiff generated for all Class Members. (Moon Decl., ¶¶ 23-35.)

Indeed, 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.)

IV. <u>CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED</u>

A. <u>Legal Standard</u>

The proposed Settlement Class is well suited for class certification. All of the claims derive from a core set of alleged violations of California's wage-and-hour laws and regulations. (Moon Decl., ¶ 2.) 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. <u>Plaintiff Maintains that the Criteria for Class Certification Are Satisfied</u>

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, the proposed Class that Plaintiff seeks to represent is ascertainable because (1) the Class definition is sufficiently precise, (2) the Class consists of about 376 Class Members, and (3) Class Members can be readily identified by looking at Defendant's records. (Settlement Agreement, ¶¶ 1.5, 1.9, 1.12.)

Plaintiff maintains that there is an easily ascertainable Class, defined by objective and precise criteria. (*Id.*) Because Class Members are identified using specific criteria in the regular business records of Defendant—their employment by Defendant in California, non-exempt classification, and actual work during the Class Period—the Settlement 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, Plaintiff contends that numerosity is plainly satisfied.

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

To satisfy the community of interest requirement, Parties must show (1) common questions of law and fact that predominate over individual issues, (2) class representatives 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 as follows: whether Defendant had legally compliant policies and practices to pay employees all minimum and overtime wages owed; whether Defendant had legally compliant policies and practices to provide employees with meal and rest periods; whether Defendant had legally compliant policies to reimburse employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge of their duties; whether final payment of wages excluded unpaid wages, including meal period premiums and rest period premiums; whether all wages were paid to employees at the time of termination of the employment relationship; whether Defendant's failure to pay all final wages was intentional; whether the wage statements were consequently non-compliant; whether Defendant engaged in unfair business practices; and whether Defendant violated civil penalty provisions recoverable under PAGA. (Moon Decl., ¶ 6.) Plaintiff contends that the factual and legal issues are the same for all identified Class Members, including Plaintiff, and further, that all Class Members suffered from and seek redress for the same alleged injuries. (Moon Decl., ¶ 4.) 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 agreement 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 a re [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, she alleges that she was subject to the same policies and practices as other similarly situated employees. (Juan Decl., ¶¶ 2-8.)

4. Plaintiff and Her 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., ¶¶ 41–56.) With their combined experience, Class 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 has no conflicts, and Plaintiff has, with counsel, litigated this case and diligently reviewed the settlement terms, showing her dedication. (Juan Decl., ¶¶ 9-23.) Plaintiff's willingness to serve as a representative demonstrates her serious commitment to bringing about the best results possible for the Class. (Juan Decl., ¶¶ 11-23.)

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 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 Agreement, ¶ 4.4.1.) 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 Agreement, ¶ 4.4.1.)

B. <u>The Notice Is Accurate and Informative</u>

The proposed Class Notice should be approved. It will be disseminated through direct U.S. first-class mail to the last known address for each Class Member. (Settlement Agreement, ¶ 4.1.1.) It informs the Class Members of the terms of the Settlement and their right to be excluded from the Settlement. (Settlement Agreement, ¶ 7.4.2, Ex. A.) And if there are Class Members who wish to object to the proposed class action Settlement, they will have the opportunity to file their objections and be heard at the Final Approval Hearing. (*Id.* at ¶ 7.8.2.)

The Class Notice also fulfills the requirement of neutrality in class notices. (Newberg, Newberg on Class Actions (3rd ed. 1992) § 8.39.) It summarizes the proceedings to date and the terms and conditions of the Settlement Agreement in an informative and coherent manner. (Settlement Agreement, Exh. A.) It makes clear the Settlement does not constitute an admission of liability by the Defendant, who denies all liability, and it recognizes that this Court has not ruled on the merits of the action. (*Id.*) It also states that the final approval decision has yet to be made and will provide 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 that the Court grant preliminary approval of the proposed Settlement and set a Final Approval Hearing no earlier than 130 days from the date of the order granting Preliminary Approval of the Settlement.

Respectfully submitted,

Dated: July 2, 2026 **MOON LAW GROUP, PC**

By: ________________________________

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