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Attorneys for Plaintiff Benito Sierra

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

BENITO SIERRA, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

DIRECT EDGE MEDIA, INC.; and DOES 1 through 10, inclusive,

Defendants

Case No. 30-2024-01447843-CU-OE-CXC

CLASS AND REPRESENTATIVE ACTION

PLAINTIFF'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, the Declaration of Plaintiff, the Declaration of Jodey Lawrence, the Declaration of Jared W. Slater, the Declaration of Brad Eisenstein, [Proposed] Order, Notice of Errata*]

PRELIMINARY APPROVAL HEARING
Date: August 10, 2026
Time: 1:30
Dept. CX103
Judge: Hon. Lon Hurwitz

Res. ID: 74862436

Complaint Filed: December 20, 2024
Trial Date: Not set

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

PLEASE TAKE NOTICE that on August 10, 2026, at 1:30 p.m., in Department CX103 of this Court located at the Civil Complex Center at 751 West Santa Ana Blvd., Santa Ana, California 92701, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769 *et seq*., Plaintiff Benito Sierra ("Plaintiff") will move the Court for an Order granting preliminary approval of the proposed class action settlement between Plaintiff and Defendant Direct Edge Media, Inc. Plaintiff further moves the Court for an Order:

1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement ("Settlement" or "Settlement Agreement");
2. Certifying a Class for settlement purposes;
3. Approving the Court Approved Notice of Class and Representative Action Settlement, the Request for Exclusion Form and the Objection Form, and plan for their distribution;
4. Appointing Plaintiff as Class Representative for settlement purposes;
5. Appointing Plaintiff's Counsel, Kane Moon, Esq., Allen Feghali, Esq., S. Phillip Song, Esq., and Moon Law Group, PC, as Class Counsel for settlement purposes;
6. Appointing Phoenix Class Action Administration Solutions as the Administrator; and
7. Setting a final approval hearing no earlier than 120 days from preliminary approval.

The motion will be based upon this notice, the attached memorandum of points and authorities, the supporting declarations, and 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: May 26, 2026 MOON LAW GROUP, PC

By:________________________________
Kane Moon
Allen Feghali
S. Phillip Song

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Benito Sierra ("Plaintiff") seeks preliminary approval of a proposed $250,000.00 non-reversionary, wage and hour class and representative California Private Attorneys General Act, Labor Code sections 2698, *et seq.* ("PAGA") action settlement with Defendant Direct Edge Media, Inc. ("Defendant" and together with Plaintiff, the "Parties"). The Class Action and PAGA Settlement Agreement (the "Settlement") will provide substantial monetary payments to approximately 115 class members. As set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. Accordingly, Plaintiff requests that the Court preliminarily approve the proposed Settlement, certify the proposed settlement class, approve the proposed notice, and set a final approval hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims and Procedural History

Defendant is a full-service commercial printing company headquartered in the Orange County area and provides services nationally, with multiple production facilities located in California and Colorado. (Declaration of Kane Moon in Support of Preliminary Approval ["Moon Decl."], ¶ 4.). Plaintiff worked for Defendant as a Driver from approximately October 2020 to June 2024. (*Id.*)

Pursuant to PAGA, on December 19, 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, Ex. 2.) On December 20, 2024, Plaintiff filed a Class Action complaint, which, as amended, alleges that Defendant systematically: (1) failed to pay minimum wages; (2) failed to pay overtime compensation; (3) failed to provide meal periods; (4) failed to authorize and permit rest breaks; (5) failed to indemnify necessary business expenses; (6) failed to timely pay final wages at termination; (7) failed to provide accurate itemized wage statements; (8) engaged in unfair business practices; and (9) violated civil penalty provisions recoverable as PAGA penalties pursuant to Labor Code section 2698 *et seq*. (*Id.* at ¶¶ 6-7.) These claims stem from Defendant's alleged failure to incorporate nondiscretionary bonuses into the regular rate of pay and alleged failure to pay employees for off-the-clock work, failure to reimbursement necessary business expenses, as well as alleged systematic failures to provide meal periods and rest breaks. (*Id.* at ¶ 5.)

A file-stamped copy of complaint containing the Court-assigned case number was submitted to the LWDA. (*Id.* at ¶ 7.) To date, the LWDA has not given its intention to investigate and intervene on the matter. (*Id.*)

Defendant ardently opposes the merits of this case, denying Plaintiff's factual allegations and contending the putative Class was paid all proper wages and provided with all meal rest period opportunities to which they were entitled. (*Id.* at ¶ 8.) Defendant maintains it reimbursed Class Members for all necessary business expenses incurred, and that cellphone use was not required for work purposes. (*Id.*) Furthermore, Defendant asserts that Plaintiff suffered no actual harm as a result of any alleged inaccurate wage statements, and that there was no knowing or intentional violation. (*Id.*) Defendant also alleges that its good-faith belief it paid all wages precludes waiting time penalties. (Moon Decl., ¶ 9.) For these reasons, Defendant denies unfair business practices and denies liability under PAGA. (*Id.*) Finally, Defendant disputes the certifiability of the class due to the individualized nature of the wage claims. (*Id.*)

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

Prior to mediation, Plaintiff obtained from Defendant, through informal but extensive discovery, information sufficient to meaningfully evaluate the claims at issue, including Plaintiff's complete personnel file, a sample of time and corresponding payroll records for Class Members, and information regarding the estimated number of Class Members, Workweeks, Aggrieved Employees, PAGA Pay Periods, and average hourly pay. (*Id.* at ¶ 10.)

Plaintiff's Counsel retained a statistics expert[1] to analyze the sample records and prepare a damage analysis prior to mediation. (*Id.* at ¶ 11.) The sample time and pay records analyzed

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[1] A true and correct of the expert's curriculum vitae is attached to the Moon Decl. as **Exhibit 3**.

contained 2,936 shifts (approximately 5.1% of total shifts worked in the Class Period), allowing the expert to prepare a damage analysis with a high degree of certainty. (*Id.*) In conjunction with their extensive factual investigation, Plaintiff's Counsel investigated the applicable law regarding the claims and defenses, enabling them to evaluate the probability of class certification, success on the merits, and Defendant's maximum and realistic monetary exposure for all claims. (*Id.*)

The Parties aver that they are not aware of the nature of any claims asserted in any case, or the definition of a class of parties on whose behalf any action was brought that would overlap with the putative Class, as defined in this matter, or would otherwise be extinguished or adversely affected by approval of this Settlement. (*Id.* at ¶ 12.)

C. <u>Settlement Negotiations and Notice of Settlement to the LWDA</u>

On January 14, 2026, the Parties participated in a full-day mediation with Hon. Carl J. West (Ret.), an experienced neutral class and PAGA action mediator. (Moon Decl., ¶ 13.) The negotiations were at arm's length and adversarial, and both sides were prepared to litigate through trial and appeal had settlement not been reached. (*Id.*) A settlement was reached after extensive discussions, as reflected within the Settlement. (*Id.*, Ex. 1)

In compliance with Labor Code section 2699, Plaintiff's Counsel submitted to the LWDA a notice of settlement and a copy of the proposed Settlement Agreement. (*Id.* at ¶ 14, Ex. 4). To date, Plaintiff's administrative exhaustion period under PAGA expired without the LWDA indicating its intent to investigate the alleged violations. (*Id.* at ¶ 14.).

The $250,000.00 Gross Settlement Amount represents approximately 75.8% of Plaintiff's risk-adjusted realistic exposure estimate of $329,686.46. (*Id.* at ¶ 39.)

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

1. <u>Non-Reversionary Gross Settlement Amount ("GSA")</u>: Defendant will pay a non-reversionary $250,000.00 to resolve this litigation, exclusive of Defendant's employer-side payroll taxes, which Defendant will separately pay. (Settlement, ¶ 3.1.) The Administrator will disburse the GSA without requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. (*Id.*)

2. <u>Class, Class Period, Workweeks</u>: There are approximately 115 Class Members, defined as: all persons who worked for any Defendant in California as an hourly, non-exempt employee at any time during the period beginning four years before the filing of the initial complaint in this action and ending on March 13, 2026. (Moon Decl., ¶ 44; Settlement, ¶¶ 1.5, 4.1.) The Class Period is from December 20, 2020, to March 13, 2026. (Settlement, ¶ 1.12.) There are 12,827 Workweeks in the Class Period, defined as any week in which a Class Member worked for Defendant for at least one day during the Class Period. (*Id.* at ¶¶ 1.45, 4.1, 8.)

3. <u>Aggrieved Employees, PAGA Period, PAGA Pay Periods</u>: There are approximately 65 Aggrieved Employees, defined as: past and present non-exempt, hourly-paid employees of DEM who worked in California during the applicable PAGA Period. (*Id.* at ¶¶ 1.4, 4.1; Moon Decl., ¶ 44.) The PAGA Period is from December 19, 2023 to March 13, 2026. (Settlement, ¶ 1.31.) There are approximately 2,521 PAGA Pay Periods, defined as any Pay Period during which an Aggrieved Employee worked for DEM for at least one day during the PAGA Period. (*Id.* at ¶¶ 1.30, 4.1; Moon Decl., ¶ 44.)

4. <u>Released Class Claims</u>: 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 any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action arising out of the allegations and claims asserted in the operative Complaint (the "Operative Complaint"), including without limitation to any and all claims for alleged unpaid wages (including but not limited to minimum, overtime, final pay upon termination), alleged unpaid meal and rest period premiums, failure to pay timely wages, failure to maintain required records, itemized wage statements, failure to reimburse for reasonable and necessary business expenses, failure to provide employment records, failure to furnish or provide all documents signed or obtained) including sections 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2699, 2699.3, 2699.5, and 2802, California Civil Code, applicable IWC Wage Orders, or Business & Professions Code Section 17200, Code of Civil Procedure Section 1021.5, and claims for restitution and other equitable relief, liquidated damages,

or penalties; and any other benefit claimed on account of the allegations that were alleged, or reasonably could have been alleged, based on the facts asserted in the operative Complaint. (*Id.* at ¶ 5.2.) This release shall apply to all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the operative complaint and ascertained in the course of the Action. (*Id.*) Participating Class Members who negotiate or otherwise deposit their Settlement Payment Check will be deemed to have opted into the Action for purposes of the Fair Labor Standards Act ("FLSA") and as to those Class Members, they expressly waive and release any FLSA claims arising during the Class Period and reasonably related to the claims and allegations in the Operative Complaint. (*Id.*) This release excludes the release of claims not permitted by law. (*Id.*) The following language will be printed on the reverse of each Settlement Payment Check, or words to this effect: "By endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of Class Action Settlement and I consent to join in the FLSA portion of the Action, elect to participate in the settlement of the FLSA claims, and agree to release all of my FLSA claims that are covered by the Settlement." (*Id.*) Except as set forth in Section 6.3 of the Settlement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (*Id.* at ¶ 5.2.)

5. Released PAGA Claims: All Participating Class Members and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice and ascertained in the course of the Action including, but not limited to, all statutes/ordinances referenced in the Operative Complaint and the PAGA Notice and corresponding provisions of the California Industrial Welfare Commission Wage Orders and the California Code of Regulations, including but not limited to Labor Code Sections 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197,

1197.1, 1198, 2698, 2699, 2699.3, 2699.5, and 2802, as well as Code of Civil Procedure Section 1021.5, as related to the above claims, including claims for failure to pay minimum wages, failure to pay overtime wages, failure to provide required meal periods, failure to provide required rest periods, failure to properly pay accrued sick days, failure to properly pay unused vacation pay, failure to pay timely wages during employment, failure to pay all wages due to discharged and quitting employees, failure to maintain required records, failure to furnish accurate itemized wage statements, failure to reimburse necessary business expenses, liquidated damages, civil penalties, and premium wages. (*Id.* at ¶ 5.3.)

6. PAGA Penalties: $20,000.00 is to be paid from the GSA in settlement of the Released PAGA Claims, 35% of which is allocated to the Aggrieved Employees ($7,000.00) and 65% to the LWDA ($13,000.00). (*Id.* at ¶¶ 1.34, 3.2.5)

7. Net Settlement Amount: means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments. (Settlement, ¶ 1.28.) The remainder is to be paid to Participating Class Members. (*Id.*)

8. Individual Class Payment: means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period. (*Id.* at ¶ 1.23.)

9. Individual PAGA Payment: means the Aggrieved Employee's pro rata share of 35% of the PAGA Penalties calculated according to the number of Pay Periods worked during the PAGA Period. (*Id.* at ¶ 1.24; *see* Notice of Errata [the Settlement provides *'Individual PAGA Payment' means the Aggrieved Employee's pro rata share of 35% of the PAGA Penalties calculated according to the number of* ***Workweeks*** *worked during the PAGA Period."* This is a scrivener's error. The word "Workweeks" should read "PAGA Pay Periods" to conform to the calculation methodology actually set forth in Paragraph 3.2.5.1 of the Settlement Agreement].)

10. Uncashed Settlement Checks: Any funds remaining uncashed after 180 days from issuance will be transmitted to the California Controller's Unclaimed Property Fund, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure ("CCP") section 384(b). (*Id.* at ¶¶ 4.4.1, 4.4.3.)

11. Tax Allocation of Settlement Payments: 20% of each Participating Class Member's Individual Class Payment will be allocated as wages and 80% as interest and penalties. (*Id.* at ¶ 3.2.4.1.) 100% of each Individual PAGA Payment will be allocated as penalties. (*Id.* at ¶ 3.2.5.2.)

12. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment: mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action. (*Id.* at ¶ 1.7.) The Settlement provides, subject to Court approval, a Class Counsel Fees Payment of not more than 33% of the GSA, which is currently estimated to be $83,333.33, and a Class Counsel Litigation Expenses Payment of not more than $20,000.00. (*Id.* at ¶ 3.2.2.) At this time, Plaintiff's Counsel's costs are approximately $16,242.41. (Moon Decl., ¶ 18, Ex. 5.)

13. Class Representative Service Payment: Subject to Court approval, Plaintiff shall be paid a Class Representative Service Payment not to exceed $7,500.00. (*Id.* at ¶ 3.2.1.) This amount is payment to the Class Representative for initiating the Action and providing services in support of the Action (*Id.* at ¶ 1.14.)

14. Notice of Proposed Settlement: The Class Notice will be mailed in English via first-class United States Postal Service ("USPS") mail of the settlement. (*Id.* at ¶ 7.4.2.) Phoenix Class Action Administration Solutions ("Phoenix"), the proposed Administrator, will undertake its best efforts to ensure notice is provided to current addresses, including conducting a cross-check against USPS' National Change of Address List. (*Id.*) Defendant will provide Class Data within 15 calendar days of preliminary approval. (*Id.* at ¶ 4.2.) The Administrator will mail notices within 14 calendar days of receiving the Class Data. (*Id.* at ¶ 4.4.) Returned notices will be re-mailed after a skip-trace. (*Id.*) Settlement administration costs are estimated to be $5,750.00, with a cap of $5,750.00 under the Settlement. (Moon Decl., ¶ 20, Ex. 6; Settlement ¶ 3.2.3.) The Declaration of

Jodey Lawrence is filed concurrently herewith and describes Phoenix's qualifications, data security procedures, and insurance.

15. Response Deadline and Procedures: Class Members will have 60 calendar days from the date of initial mailing to object, opt out, or challenge the number of Workweeks and/or PAGA Pay Periods, with an extension of 14 calendar days for re-mailed notices. (Settlement, ¶ 7.4.4.) A Request for Exclusion Form and an Objection Form will be provided. (*Id.* Ex. A.) Class Members need not file a notice of intention to appear at the Final Approval Hearing. (*Id.* at ¶ 7.7.2, Ex. A.)

16. Funding and Distribution: Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay DEM's share of payroll taxes, by transmitting the funds to the Administrator no later than 14 days after the Effective Date. (*Id.* at ¶ 4.3.)

17. Website and Final Judgment: The Administrator will maintain a website to post information of interest to Class Members. (*Id.* at ¶ 7.8.1.) The Class Notice include the URL of the website. (*Id.* at Ex. A.) The Administrator will provide notice of final judgment to the Class on the website. (*See id.* at ¶ 7.8.1.)

III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL

To prevent fraud, collusion, or unfairness to the class, the settlement of a class action requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached through arm's-length bargaining; (2) investigation is sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk,* 48 Cal.App.4th at p. 1800.)

In evaluating a settlement, the trial court considers: 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 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. (*Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116, 128.) To approve a class action settlement, the court must satisfy itself that the class settlement is within the "ballpark" of reasonableness. (*Id*. at p. 133.) The record need not contain the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [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 only an "understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."].)

As discussed below, Plaintiff's Counsel have provided information necessary for this Court to determine that the proposed settlement is fair, adequate, and reasonable.

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

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. (Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 11.51.) Settlement is favored, and assessed realistically. (*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 a plaintiff might have received more if the case had been fully litigated is no reason not to approve the settlement."].)

Here, the Settlement was reached following a full-day mediation session with experienced mediator Hon. Carl J. West (Ret.). (Moon Decl., ¶ 13.) Prior to settling, Plaintiff's Counsel conducted informal discovery and investigation including reviewing the time and pay records, retaining a statistician expert to analyze the records produced by Defendant and prepare a damage analysis, and investigating the applicable law regarding the claims and defenses asserted in the litigation. (*Id*. at ¶¶ 11, 31-32.) Thus, Plaintiff's Counsel were able to evaluate the probability of class certification, success on the merits, and Defendant's maximum and realistic monetary exposure. (*Id*.)

Plaintiff's Counsel have considerable experience in litigating wage and hour class actions. (Moon Decl., ¶¶ 51-61.) This supports the conclusion that the Settlement terms are based on objective evidence, weighed against the risks and expenses of continued litigation.

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

A settlement is not judged against what might plaintiff recovered 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 Computers, 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."])

The Settlement obviates the significant risk that this Court may deny certification of all or some of Plaintiff's claims. (Moon Decl., ¶ 42.) While Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each cause of action. (*Id*. at ¶ 40.) Plaintiff also recognizes that proving the amount of wages due to each Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id*.) Furthermore, even if Plaintiff was able to pursue his claims on a class-wide basis and thereafter obtained 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 Members. (*Id*. at ¶ 42.)

The proposed settlement of $250,000.00 therefore represents a substantial recovery when compared to Plaintiff's reasonably forecasted recovery. (*Id*. at ¶ 45.) Because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id*. at ¶ 39.) When considering the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, the settlement amount of $250,000.00 is within the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id*. at ¶ 45.)

The Net Settlement Amount available for settlement payments is currently estimated to be **$113,416.67** for an estimated Class size of **115 individuals**.[2] (*Id*. at ¶ 44.) Each Participating Class

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[2] The Net Settlement Amount is at least $250,000.00 less the following: $7,500.00 for the Class Representative Service Payment, $5,750.00 for the Administration Expenses Payment,

Member is eligible to receive an average benefit of approximately **$986.23**, or approximately **50.71 hours of work**. (*Id.*) Based on 12,827 Workweeks, **the average Workweek value is estimated to be $8.84**. (*Id.*) The Individual Class Payments are estimated to range from $8.84 to $2,413.32. (*Id.*) Additionally, **65 Aggrieved Employees** are each expected to receive an average of **$107.69** from the Individual PAGA Payments of $7,000.00, at a **PAGA Pay Period value of $2.78** based on the **2,521 PAGA Pay Periods**. (*Id.*) The Individual PAGA Payments are estimated to range from $2.78 to $161.24. (*Id.*) Accurate estimates of the high, low, and average payments will be provided to the Court in Plaintiff's Motion for Final Approval. (*Id.* at ¶ 44.)

3. Plaintiff's Counsel Have Extensive Experience in Class Action Litigation

The settlement negotiations were conducted by highly capable and experienced counsel. (*See id.* at ¶¶ 51-61.) Plaintiff's Counsel have a strong record of vigorous and effective advocacy for their clients and are experienced in handling complex wage and hour class action litigation. (*Id.*) Although Plaintiff and his counsel were prepared to litigate the claims, they support the proposed Settlement as being in the best interest of the Class Members. (*Id.* at ¶ 31.)

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

The proposed Notice of Class and Representative Action Settlement ("Class Notice"), in the form attached to the Settlement as Exhibit A, should be approved for dissemination to the Class. The Class Notice informs the class of the terms of the Settlement and of their rights to be excluded from the Settlement. If there are Class Members who wish to object to this proposed Settlement, they can also file an objection and be heard at the Final Approval Hearing. Accordingly, the proposed Class Notice meets all the requirements of Rule 3.769(f) of the California Rules of Court.

C. <u>The Proposed Attorneys' Fees and Costs Are Reasonable</u>

The Settlement provides a Class Counsel Fees Payment of not more than 33% of the Gross Settlement, which is currently estimated to be $83,333.33 and a Class Counsel Litigation Expenses Payment of not more than $20,000.00. (Settlement, ¶ 3.2.2.) These amounts are subject to Court

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$20,000.00 for the PAGA Penalties payments to the LWDA and to Aggrieved Employees, $83,333.33 for Class Counsel's attorneys' fees, and up to $20,000.00 for Class Counsel's litigation costs. (Settlement Agreement, ¶¶ 1.28, 3.1-3.2.5.)

approval. (*Id.*) These amounts will be disclosed to all Class Members in the proposed Class Notice and are reasonable.

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 on behalf of a class. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34.) The California Supreme Court affirmed in *Laffitte v. Robert Half Int'l Inc*. (2016) 1 Cal.5th 480 that trial courts may determine a reasonable fee by choosing an appropriate percentage of the fund created. (*Id*. at p. 503.) Class Counsel seek an award of attorneys' fees on the "percentage of recovery/common fund" theory, which serves to "spread litigation costs proportionally among all the beneficiaries" (*Vincent v. Hughes Air West, Inc.* (1977) 557 F.2d 759, 769.) 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. (*See* Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03.)

Here, Plaintiff requests attorneys' fees equal to one-third of the Gross Settlement Amount, consistent with prevailing guidelines. (*Compare* Settlement, ¶ 3.2.2 *with Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11. [stating fee awards in class actions average around one-third of the recovery.)

Additionally, the fee-shifting provisions of Labor Code §§ 218.5, 226, 1194 and 2699, *et seq*. would permit Plaintiff to recover his actual attorneys' fees, even if those fees were larger than the total class recovery at the conclusion of this case. This further supports the reasonableness of the requested fee. Plaintiff's Counsel also undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id*.)

2. The Experience, Reputation and Ability of Plaintiff's Counsel Support the Requested Fee Award

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Plaintiff's Counsel possess considerable expertise in litigating class actions and have been involved as lead counsel or co-counsel in several class actions, resulting in millions in recovery. (Moon Decl., ¶¶ 51-61.)

Their experience in wage and hour class actions was integral in evaluating the strengths and weaknesses of the case and the reasonableness of the settlement. (*Id.* at ¶ 62.) Therefore, the requested fee award is reasonable and fair. A detailed analysis of why the fee request is appropriate, including contemporaneously made billing entries to support a lodestar analysis, will be provided in support of Plaintiff's motion for final approval.

D. <u>The Service Payment To Plaintiff Is Reasonable</u>

Named plaintiffs in class action lawsuits are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on the class. (*Munoz, supra, 1*86 Cal.App.4th at p. 412.) Service awards are particularly important in wage and hour cases where retaliation against employees for asserting statutory rights is widespread despite anti-retaliation protections. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61.)

The Settlement provides a Class Representative Service Payment of $7,500.00 to Plaintiff, subject to Court approval. (Settlement, ¶ 3.2.1.) Plaintiff devoted significant time assisting counsel in the case and communicated with counsel frequently for litigation and to prepare for mediation. (Moon Decl., ¶¶ 46-50; Declaration of Plaintiff Benito Sierra in Support of Approval of Class Action and PAGA Action Settlement ["Plaintiff Decl."], ¶¶ 11–21.) This amount is reasonable particularly in light of the substantial benefits Plaintiff generated for all class members. (Moon Decl., ¶¶ 46–50.) A detailed analysis of why the proposed amount is appropriate will be provided in support of Plaintiff's motion for final approval.

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

A. <u>Legal Standard</u>

The proposed Settlement Class is well suited for class certification. Code of Civil Procedure section 382 provide that when a question is of common or general interest, one or more may sue or defend for the benefit of all. Two requirements must be met: (1) an ascertainable class; and (2) a well-defined community of interest in the questions of law and fact. (*Daar v. Yellow Cab Co*. (1967) 67 Cal. 2d 695, 704.) The community-of-interest requirement embodies three factors: (1)

predominant 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 favors the fullest and most flexible use of the class action device, and any doubt as to the appropriateness of class treatment should be resolved in favor of certification. (*Id.* at pp. 469-75.)

B. <u>Plaintiff Maintains That The Criteria For Class Certification Are Satisfied</u>

1. The Class Is Ascertainable and Numerous

The proposed class is ascertainable because the class definition is sufficiently precise, consists of 115 class members, and Class Members can be readily identified from Defendant's regular business records based on their employment by Defendant in California, non-exempt classification, and actual work during the Class period. (*See Miller v. Woods*, 148 Cal. App. 3d 862, 873 (1983); *Wilner v. Sunset Life Ins. Co*. (2000) 78 Cal.App.4th 952, 959-60.)

With approximately 115 Class Members, numerosity is plainly satisfied. (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934.)

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 must have claims or defenses typical of the class; and (3) class representatives must adequately represent the class. *Dunk*, 48 Cal. App. 4th at 1806. This inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp*. (1987) 191 Cal.App.3d 605.) Plaintiff's claims satisfy all three requirements.

In this case, the employment practices at issue are: whether Defendant had legally compliant policies and practices to pay employees all wages owed; had legally compliant policies and practices to provide employees with meal periods; had legally compliant policies and practices authorizing and permitting its employees to take rest periods; had legally compliant policies and practices reimbursing its employees for business expenses; whether final payment of wages was untimely and excluded unpaid wages, including meal period premium wages, and rest period premium wages; whether all wages were paid to employees at the time of termination of the employment relationship; and whether the wage statements were consequently non-compliant. Plaintiff contends that the factual and legal issues are the same for all Class Members. Further, all Class Members suffered from and seek redress for the same alleged injuries. Considering that 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 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 ["[t]he only requirements are that common questions of law and fact predominate and that the class representative be similarly situated" vis-à-vis the class.].) A representative plaintiff's claims are typical of the class if they arise from the same event, practice or course of conduct, and if the claims rest on the same legal theories. (*Id*.) That is precisely the case here. Plaintiff is a former employee of Defendant; as such, he alleges that he was subject to the same policies and practices as other similarly situated employees. (Plaintiff Decl., ¶¶ 2,6.)

4. Plaintiff and His Counsel Meet the Adequacy Requirement

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

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., ¶¶ 51-61.) With their combined experience, Plaintiff's Counsel unquestionably are "qualified, experienced and generally able to conduct the proposed litigation." (*Miller*, *supra*, 148

Cal.App.3d at 875.) In addition, Plaintiff has no conflicts, and Plaintiff has, with counsel, litigated this case and diligently reviewed the settlement terms, showing his dedication. (Plaintiff Decl., ¶¶ 8-21.) Plaintiff's willingness to serve as a representative demonstrates his serious commitment to bringing about the best results possible for the class. (*Id.* at ¶¶ 11-21; *McGhee*, *supra,* 60 Cal.App.3d at p. 451.)

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

Finally, in making its class certification decision, the Court must determine that a class action would be superior to alternative means for the fair and efficient adjudication of the litigation. 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. 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. (*Gentry v. Super. Ct.* (2007) 42 Cal. 4th 443, 457-62; *Leyva v. Medline Ind.* (9th Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the superiority concerns are essentially non-existent.

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

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

Notice requirements are set forth in the California Rules of Court. Cal. Rules of Court, Rule 3.766 (e) and (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, 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 first-class mailed notice. (Settlement, ¶ 7.4.2.) 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 . . . ." (*Id.* at p. 974.) In this case, notice will be provided by direct mailing, the best possible form of notice under the circumstances. (Settlement, ¶ 7.4.2.)

B. <u>The Class 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 in English.[3] (*Id.* at ¶¶ 1.11, 7.4.2.) It informs Class Members of the settlement terms and their rights to be excluded, object, and be heard at the Final Approval Hearing. (*Id.*, at Ex. A.)

The Class Notice is neutral, summarizes the proceedings, the Settlement terms, and makes clear that the Settlement does not constitute an admission of liability by Defendant. (*Id.*) It also states that the final settlement approval decision has yet to be made. (*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 120 days from preliminary approval.

Respectfully submitted,

Dated: May 26, 2026

MOON LAW GROUP, PC

By: ______________________________
Kane Moon
Allen Feghali
S. Phillip Song

Attorneys for Plaintiff

[3] The Class Notice will be provided to Class Members in English. (Moon Decl., ¶ 3, n.1.) The Parties confirm translation of the Class Notice is not required as all Class Members are proficient in English. (*Id.*)

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1055 W. Seventh St., Suite 1880, Los Angeles, California 90017. On **May 26, 2026**, I served the foregoing document described as:

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

X__ by placing ___ the original _X_ a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Attorneys for Defendant

[✓] **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service **CASE ANYWHERE.** I did not receive an error message.

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

Executed this**, May 26, 2026** at Los Angeles, California.

Ivette Hernandez	*/s/ Ivette Hernandez*
Type or Print Name	Signature