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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ESTHER MARTINEZ, individually, and on behalf of all others similarly situated,

Plaintiff,

vs.

COMMUNITY SUPPORT SOLUTIONS, INC.; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 30-2024-01448130-CU-OE-CXC

[Hon. Melissa R. McCormick, Dept. CX105]

COMPLEX ACTION

NOTICE OF MOTION AND PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

[*Filed with the Declarations of Plaintiff, Kane Moon, Maria Roberts, and Sean Hartranft, and [Proposed] Order*]

PRELIMINARY APPROVAL HEARING
Date: April 16, 2026
Time: 2:00 p.m.
Dept.: CX105

Reservation #: 74786914

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

PLEASE TAKE NOTICE that on April 16, 2026, at 2:00 p.m. in Department CX105 of this Court located at 751 West Santa Ana, California 92701, pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 *et seq*., Plaintiff Esther Martinez ("Plaintiff") will move the Court for an Order granting preliminary approval of the proposed class action settlement between Plaintiff and Defendant Community Support Solutions, Inc. ("Defendant"). Plaintiff further moves the Court for an Order:

1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement;
2. Certifying a Class for settlement purposes;
3. Approving the Class Notice and the plan for distribution of the Class Notice;
4. Appointing Esther Martinez as 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 Settlement Administrator; and
7. Scheduling a Final Approval Hearing.

The motion will be based upon this notice, the attached memorandum of points and authorities, the Declarations of Kane Moon (and exhibits attached thereto) on behalf of proposed Class Counsel, Declaration of Plaintiff Esther Martinez, Declaration of Sean Hartranft, Declaration of Maria Roberts, the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: February 26, 2026 MOON LAW GROUP, PC

By:____________________________________
Kane Moon
Allen Feghali
S. Philip Song

Attorneys for Plaintiff

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I. INTRODUCTION

Plaintiff Esther Martinez ("Plaintiff") seeks preliminary approval of a proposed $600,000.00 non-reversionary, wage-and-hour class action settlement ("Settlement") with Defendant Community Support Solutions, Inc., and Does 1 through 10 ("Defendant," and together with Plaintiff, the "Parties"). The Settlement will provide substantial monetary payments to approximately 275 Class Members who collectively worked an estimated total of 30,000 workweeks, and 95 Aggrieved Employees under the California Private Attorneys General Act of 2004 ("PAGA") who worked an estimated total of 2,250 pay periods. As set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, informal discovery, and negotiations between the Parties. The negotiations were at arm's-length and were facilitated through mediation by experienced neutral mediator Carl West. Accordingly, Plaintiff request 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

Defendant is a home aide agency operating in Orange County. (Declaration of Kane Moon in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement Agreement and Class Notice ["Moon Decl."], ¶ 4.) Its employees are assigned to provide in-home care to disabled principals in the principals' own residences. (*Id.*) Defendant employed Plaintiff and other putative Class Members in California during the relevant period. (*Id.*) Plaintiff worked for Defendant as an in-home aide from October 2023 until July 2024 and was classified as a non-exempt employee throughout her employment. (*Id.*) Plaintiff was generally scheduled to work at least five days per week and often more than eight hours in a workday. (*Id.*) Plaintiff alleges that she and other employees were not compensated for all hours worked. (*Id.*)

Plaintiff's claims for unpaid minimum and overtime wages involve allegations that Class Members were not paid for certain off-the-clock work and that Defendant did not include all applicable remuneration in calculating overtime rates. (*Id.* at ¶ 5.) Plaintiff's meal and rest period claims are based on allegations that, due to the nature of their duties, Class Members sometimes ate lunch while continuing to work rather than receiving a full, uninterrupted meal period, and that premium wages were not paid for missed or noncompliant breaks. (*Id.*) Plaintiff also brings a claim for unreimbursed business expenses, alleging that Class Members used their personal cellphones for work tasks, including clocking in and out and communicating with supervisors, and that Plaintiff occasionally used her personal vehicle to perform work-related errands without reimbursement. (*Id.*) Plaintiff additionally asserts derivative claims for waiting time penalties, wage statement accuracy, unfair business practices, and civil penalties under PAGA. (*Id.*)

Because of the claimed violations of various provisions of the Labor Code, Plaintiff filed this class and representative action on December 23, 2024 which alleges that Defendant: failed to pay minimum wages; failed to pay overtime compensation; failed to provide meal periods; failed to authorize and permit rest breaks; failed to indemnify necessary business expenses; failed to timely pay final wages at termination; failed to provide accurate itemized wage statements; and engaged in Unfair Business Practices. (*Id.* at ¶ 6.) On February 25, 2025, Plaintiff filed a First Amended Complaint, which adds a ninth cause of action against the Defendant under the Private Attorneys General Act of 2004 ("PAGA"). (*Id.*) The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint"). (*Id.*) Through this action, Plaintiff seeks to recover, on behalf of herself and the class, meal and rest period premiums, minimum wages, overtime wages, and penalties pursuant to Labor Code section 2699 *et seq*. (*Id.*)

Defendant disputes all of the factual allegations asserted and the legal claims pled, as contrary to its policies, practices and its time and wage records. (*Id.* at ¶ 7.) Consistent with its policies and practices Defendant asserts the putative Class was paid all minimum and overtime wages owed and employees were not permitted to work off-the-clock. (*Id.*) Defendant further maintains that it complied with its meal and rest period obligations. (*Id.*) With respect to unreimbursed business expenses, Defendant asserts it provided its employees with all equipment necessary to fulfill their job duties and reimbursed Class Members for any necessary expenses incurred in the course of their employment. (*Id.*) Defendant believes its wage statements were accurate and compliant, but to the extent any Plaintiff received a wage statement that was not inaccurate, Defendant asserts that Plaintiff suffered no actual damage or harm as a result. (Moon Decl., ¶ 7; *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."].). (*Id.*) With respect to Plaintiff's claim for waiting time penalties, Defendant alleges that its good-faith belief that they paid all wages due at the time of separation, and did not willfully withhold any compensation owed to any departing employee. (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, Defendant disputes it did not engage in any unfair business practices and denies liability under PAGA. (Moon Decl., ¶ 7.) Defendant also maintains the putative class claims pled 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 any liability. (*Id.*) Defendant also has in effect a binding employment arbitration policy with a class action waiver, which would prevent this case proceeding on class basis as to the majority of the putative class members or those who meet the PAGA criteria. (*Id.*)

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

Following the filing of the complaint, the Parties met and conferred regarding an agreement to mediate the claims. (*Id.* at ¶ 8.) On June 30, 2025, the Parties mediated the Action with Hon. Carl West, retired Los Angeles Superior Court judge and experienced class and PAGA action mediator. (*Id.*) In preparation for mediation, the Parties agreed and Plaintiff obtained from Defendant through informal discovery, a statistically significant sample of time and payroll records of the putative Class, Plaintiff's time and pay records and personnel file, Defendant's human resource documents, as well as employee policies, and information regarding the estimated number of current and former Class Members, Workweeks, Aggrieved Employees, PAGA Pay Periods, and average hourly pay. (*Id.*)

In preparation for mediation, Class Counsel reviewed and analyzed all the information and records Defendant provided, including the sample records and documents regarding Defendant's wage and hour policies. (*Id.* at ¶ 9.) Class Counsel retained a statistics expert to analyze the sample records and prepare a damage analysis prior to both mediations. (*Id.)* The sample time and pay records analyzed contained 3,329 shifts that Class Members worked (representing approximately 7.67% of total shifts worked in the Class Period), which allowed Plaintiff's expert 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 and realistic monetary exposure for all claims. (*Id.*) Thus, Plaintiff's 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. (*Id.*)

C. <u>Settlement Negotiations</u>

On June 30, 2025, the Parties mediated with Judge West, during which the negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, and upon the mediation recommendation of the mediator, the Parties reached a settlement, the material terms of which are encompassed within the Class Action and PAGA Settlement Agreement and Class Notice (the "Settlement Agreement" or "Settlement"). (*Id.*, Ex. 1 ["Settlement"].)

Based on Class Counsel's thorough investigation and evaluation of the facts and claims pled, the documents and information exchanged and based on the recommendation of the mediator, they are of the opinion that the proposed Settlement is fair, reasonable, and adequate. (*Id.* at ¶ 20.) Furthermore, considering all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, and the defenses that Defendant may assert both to certification and on the merits, the Settlement is in the best interests of the Class. (*Id.* ¶¶ 20-34.) **Indeed, the $600,000.00 Maximum Settlement Amount represents an estimate of approximately 68.9% of Defendant's realistic maximum liability for all claims, including alleged penalties, of $870,844.92.** (*Id.* at ¶ 30.)

D. Key Terms of the Proposed Settlement

Under the Settlement, Defendant will pay $600,000.00 to resolve this litigation. (Settlement, ¶ 3.1.) This amount is all-inclusive. The Settlement's key terms include:

1. Class: "Class" means all persons who worked for Defendant as an hourly, non-exempt employee at any time during the Class Period. (*Id.* at ¶ 1.6.)

2. Class Period: "Class Period" means the period from December 23, 2020 to August 29, 2025. (*Id.* at ¶ 1.13.)

3. Participating Class Member: Participating Class Member means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. (*Id.* at ¶ 1.35.)

4. No Reversion: This Settlement is non-reversionary requiring Defendant to make payments to Settlement Class Members, which shall be issued by a Settlement Administrator according to a specific formula based on Eligible Workweeks or Pay Periods, and which under no circumstance will any of the funds be reverted to Defendants. (*Id.* at ¶ 3.1.)

5. Maximum Settlement Amount: This amount is $600,000.00 and excludes Defendant's employer's taxes, which shall be paid separate and in addition to the gross amount. (*Id.*)

6. Funding: Defendant shall fully fund the Maximum Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator within 60 days after the Effective date of the Settlement or October 30, 2026, whichever is later. (*Id.* at ¶ 4.3.)

7. Distribution: Within 14 days after Defendant funds the Maximum Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Aggrieved Employees Payments, the LWDA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. (*Id.* at ¶ 4.4.) Disbursement of the Class Counsel Fees Payment, the Class Counsel

Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Aggrieved Employees Payments. (*Id.*)

8. Unclaimed Funds. There is no *cy pres* beneficiary. (*See id.* at ¶ 4.4.3.) For any Class Member whose Individual Class Payment check or Aggrieved Employe Payment check is uncashed and cancelled after the void date (not less than 180 days after the date of mailing), the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund for the benefit of those Class Members who did not cash their checks until such time that they claim their property thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 348, subd. (b). (*Id.*)

9. Plaintiff's Release: Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties 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, Plaintiff's PAGA Notice, or ascertained during the Action. (*Id.* at ¶ 5.1.) Plaintiff also waives her rights under California Civil Code Section 1542. (*Id.* at ¶ 5.1.1.)

10. Participating Class Members' Release: All Participating Class Members release and discharge Released Parties from all causes of action and claims that were alleged in the Action or reasonably could have been alleged based on the facts and legal theories contained in the operative complaint. (*Id.* at ¶ 5.2.)

11. Aggrieved Employees' Release: All Aggrieved Employees will release and discharge Released Parties from all causes of action and claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004 that were alleged in the operative complaint in the Action or reasonably could have been alleged based on the facts and legal theories contained in the operative complaint in the Action. (*Id.* at ¶ 5.3.)

12. PAGA Penalties: "PAGA Penalties" means twenty-thousand dollars and zero cents ($30,000.00) to be paid from the Maximum Settlement Amount, allocated 35% to the Aggrieved

Employees ($10,500.00) and the 65% to LWDA ($19,500.00) in settlement of PAGA claims. (*Id.* at ¶ 1.34.) Class Counsel have submitted the signed Settlement Agreement to the LWDA. (Moon Decl., ¶ 16, Ex. 5.)

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

14. Individual Class Payments (Excludes PAGA Payments): "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.)

15. PAGA Period: "PAGA Period" means the period from December 19, 2023 to August 29, 2025. (*Id*. at ¶ 1.31.)

16. Tax Allocation of Payments: All Individual Class Payments to Participating Class Members shall be allocated as follows for tax purposes: 15% 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.) 85% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion") (*Id.*) Individual PAGA Payments are allocated entirely as penalties. (*Id.*, Exh. A, § 3.4.)

17. Class Representative Service Payment: "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action and providing services in support of the Action (*Id.* at ¶ 1.15.) Plaintiff requests for the Class Representative Service Payment of not more than seven thousand five hundred dollars and zero cents ($7,500.00) in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member. (*Id.* at ¶ 3.2.1.) This amount is for Plaintiff's time and effort, as well as their exposure to substantial risk, in bringing and presenting the action. (Moon Decl., ¶¶ 17, 37-40.)

18. Attorneys' Fees and Costs: The Settlement provides that Defendant will not oppose a fee application of up to one-third ($200,000.00) of the Maximum Settlement Amount, plus out-of-pocket costs not to exceed $20,000.00. (Settlement, ¶ 3.2.2.) At this time, Moon Law Group, PC's costs are $18,103.56. (Moon Decl., ¶¶ 16, 45, Ex. 4.)

19. Administration Expense Payment: The Parties have jointly selected Apex Class Action, LLC[1] ("Apex") as the neutral entity to administer the Settlement. (Settlement, ¶ 1.2.) The Administration Expense Payment will be paid from the Maximum Settlement Amount to be reimbursed its reasonable fees and expenses as a result of the procedures and processes expressly required by the Settlement Agreement, not to exceed $5,990.00. (*Id.* at ¶ 3.2.3.) Apex's costs are estimated not to exceed $5,990.00. (Moon Decl., ¶ 17, Exh. 5.) To the extent the Administration Expenses are less or the Court approves payment less than $5,990.00, the Administrator will retain the remainder in the Net Settlement Amount. (Settlement, ¶ 3.2.3.)

20. Notice of Proposed Settlement: The Administrator will receive the Class Data from Defendant's Counsel not later than 15 days after the Court grants Preliminary Approval of the Settlement. (*Id.* at ¶ 4.2.) Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database. (*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, which includes a skip trace, and re-mail the Class Notice to the most current address obtained. (*Id.* at ¶¶ 1.11, 7.4.3.) The deadlines for Class Members' written objections, Challenges to Workweeks and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. (*Id.* at ¶ 7.4.4.) The Administrator will inform the Class Member of the extended deadline with the re mailed Class

[1] The Declaration of Sean Hartranft on Behalf of Apex Class Action, LLC is filed concurrently herewith and includes a description of Apex's qualifications and experience, its procedures in place to protect the security of class data, and its insurance in the event of a data breach or mishandling of the settlement funds.

Notice. (*Id.*) The Notice of Class Action Settlement and Hearing Date for Final Court Approval ("Class Notice") has been approved by both Parties and is incorporated by referenced into the Settlement. (*Id.* at ¶ 1.12.) The Class Notice shall be translated into Spanish and shall advise Settlement Class Members of their options, which include filing an Opt-Out Request to the class settlement; filing an objection to the Settlement and receiving an Individual Settlement Payment and an Aggrieved Employee Payment (if applicable); or taking no action and receiving an Individual Settlement Payment and an Aggrieved Employee Payment (if applicable). (*Id.* at ¶¶ 1.12, 7.4, Ex. A.) Class Members will be notified by first-class mail of the Settlement. (*Id.* at ¶ 4.4.1.)

21. Website: The Administrator will establish and maintain and use an internet website to post information of interest to Class Members. (*Id.* at ¶ 7.8.1.) The website will be provided to the Class in the Class Notice following preliminary approval. (*See id.*, Exh. A, § 9.) The Final Judgment will be posted to the website. (*Id.*)

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. <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, 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."].)

As stated above, the proposed Settlement was reached following extensive negotiations with experienced mediator Judge Carl West and based on his recommendation at mediation. (Moon Decl., ¶ 10.) As stated above, the settlement negotiations were 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.*)

Prior to reaching the Settlement, Class Counsel conducted formal and informal discovery and investigation into the claims alleged by Plaintiff, including, among other things, reviewing and analyzing internal policy manuals regarding Defendant's wage-and-hour policies and practices as well as a sample of Defendant's time and pay records for putative Class Members, and preparing a damage analysis. (*Id.* at ¶¶ 8-9.) 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's 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. (*Id.*)

Class Counsel also have considerable experience and have demonstrated competence with litigating wage-and-hour class actions. (*Id.* at ¶¶ 48-62.) Again, this supports the conclusion that the terms of the Settlement are based on objective evidence that has been considered and weighed against the risks, expenses, and time consumption to both sides of continued litigation of this action.

2. The Settlement Is Fair and Reasonable 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.) While Plaintiff is confident in the merits of her 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.*) Furthermore, even if Plaintiff were able to pursue her claims on a class-wide basis and thus 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.* at ¶ 34.)

The proposed settlement of $600,000.00 therefore represents a substantial recovery when compared to any potential recovery. (*Id.* at ¶ 36.) Because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the significant risk of not recovering any damages or penalties. (*Id.* at ¶ 33.) 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 that the Settlement amount of $600,000.00 is within the "ballpark" of reasonableness, and that preliminary settlement approval is appropriate. (*Id.* at ¶ 36.)

The Net Settlement Amount available for Class settlement payments is currently estimated to be $336,510.00 for a Class of 275 individuals.[2] (*Id.* at ¶ 35.) **As a result, it is currently estimated that each Participating Settlement Class Member is eligible to receive an average benefit of at least $1,223.67.** (*Id.*) **Considering that Class Members' average regular hourly rate is $18.20, the average benefit represents at least 67.23 hours of work.** (*Id.*) This amount will vary based on each Participating Class Member's duration of employment during the Class Period. (*Id.*) Thus, Class Members who worked longer for Defendant within the Class Period will receive a net benefit greater than the average estimated amount. (*Id.*) Based on 30,000 Workweeks, the average Workweek value is estimated to be $11.22. (*Id.*) Assuming a Class Member worked

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[2] The Maximum Settlement Amount is: $600,000.00 less the following: up to $7,500.00 as a Class Representative Service Payment, up to $5,990.00 as Administrator Expenses Payment, $19,500.00 for the LWDA's PAGA Payment portion, $10,500.00 for the PAGA Members' PAGA Payment portion, up to $200,000.00 for Class Counsel Fees Payment, and up to $20,000.00 for Class Counsel Litigation Expenses Payment. (Moon Decl., ¶ 35, n.3.)

one Workweek, the estimated lowest Individual Class Payment is $11.22. (*Id.*) There are approximately 244 Workweeks during the Class Period of December 23, 2020 to August 29, 2025. Assuming a Class Member worked for the entire duration of the Class Period, the estimated highest Individual Class Payment is $2,737.68 ($11.22 Workweek value x 244 Workweeks). (*Id.*) 35% of the PAGA Penalties, or $10,500.00, is allocated to the Aggrieved Employees. (*Id.*) Based on an estimated 95 Aggrieved Employees, the average Aggrieved Employee Payment is estimated to be $110.53 ($10,500 / 95 Aggrieved Employees). (*Id.*) Based on an estimated 2,250 PAGA Pay Periods, the average PAGA Pay Period value is estimated to be $4.67 ($10,500 / 2,250 PAGA Pay Periods). Assuming an Aggrieved Employee worked one PAGA Pay Period, the lowest Aggrieved Employee Payment is estimated to be $4.67. (*Id.*) There are approximately 44 pay periods during the PAGA Period of December 19, 2023, to August 29, 2025. (*Id.*) Assuming an Aggrieved Employee worked for the entire duration of the PAGA Period, the highest Aggrieved Employee Payment is estimated to be $205.48 ($4.67 average PAGA Pay Period value x 44 PAGA Pay Periods). (*Id.*) Accurate estimates of the high, low, and average payments will be provided to the Court in Plaintiff's Motion for Final Approval after the Administrator has processed the Class Data. (*Id.*)

3. Class Counsel Have Extensive Experience in Class Action Litigation

The Settlement negotiations were conducted by highly capable and experienced counsel. (*Id.* at ¶¶ 48-61.) 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. (*Id.* at ¶ 20.)

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

The proposed Class Notice, in the form attached to the Settlement as Exhibit A, should be approved for dissemination to the Class. The Notice informs the Class of the terms of the Settlement and of their rights to be excluded from the Settlement. (Settlement, Ex. A.) If there are Class Members who wish to object to this proposed class action Settlement, they will have the opportunity to file their objections and be heard at the Final Approval Hearing. (*Id.*) Accordingly, the proposed 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 agrees to pay Class Counsel's reasonable attorneys' fees in an amount not to exceed $200,000.00, which is one-third of the Maximum Settlement Amount, and up to $20,000.00 in litigation costs. (Settlement, ¶ 3.2.2.) These amounts are disclosed to all Class Members in the proposed Class Notice and are reasonable. (Settlement, Ex. 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., ¶ 42.) 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].)

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 to one-third of the Maximum Settlement Amount, which is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. (*Compare* Settlement, ¶ 3.2.2, *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 the 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 her 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., ¶¶ 32-36.) In fact, prosecution of this action involved significant financial risk for Class Counsel. (*Id.* at ¶¶ 42–44.) Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.* at ¶¶ 42,44,62.) Once Class Counsel undertook this litigation on behalf of the Class, they committed to pursue it to its conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶ 39.)

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. (*Id.* at ¶¶ 59-61) Class Counsel have been involved as lead counsel or co-counsel in numerous class actions that resulted in millions in recovery. (*Id.* at ¶¶ 48-58.) 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 ¶ 60.) 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. 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 ¶¶ 51, 57, 58.) Therefore, the requested fee award is reasonable and fair.

D. <u>The Class Representative Service Payment to Named Plaintiff Is Reasonable</u>

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

Enhancement awards are particularly important to plaintiffs in wage-and-hour cases because they promote the important public policies underlying 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 does not object to a Class Representative Service Payment in the amount of $7,500.00 to Plaintiff. (Settlement, ¶ 3.2.1.) 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., ¶¶ 37-41.) This amount is reasonable, particularly in light of the substantial benefits Plaintiff generated for the Class. (*Id.*) Additionally, Plaintiff's Individual Class Payment is estimated to be only $437.58 ($11.22 Workweek value x 39 Workweeks), and Plaintiff's Aggrieved Employee Payment is estimated to be $93.40 ($4.67 average PAGA Pay Period value x 20 PAGA Pay Periods). (*Id.* at ¶ 40.)

Indeed, when compared with the amounts awarded in typical class action cases, the Service Payment 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 $4,357." (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. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

A. Legal Standard

The proposed Settlement Class is well suited for class certification. The claims, as being resolved, derive from a core set of alleged violations of California's wage-and-hour laws and regulations. (Moon Decl., ¶ 3.) 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 of the Proposed Settlement 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 275 Class Members, and (3) Class Members can be readily identified by looking at Defendant's records. (Settlement, ¶ 4.1, Moon Decl., ¶ 21.)

Plaintiff maintains that, with respect to the proposed Settlement, there is an easily ascertainable Class, defined by objective and precise criteria. (*Id.*) Because proposed settling Class Members are identified using specific criteria in the regular business records of Defendants—their employment by Defendants in California, non-exempt classification, and actual work during the Class Period, the Class is ascertainable. (*See Wilner v. Sunset Life Ins. Co*. (2000) 78 Cal.App.4th 952, 959–60 [class membership defined by ownership of product that is the subject of the lawsuit is sufficient to make the class ascertainable].)

"The requirement of Code of Civil Procedure section 382 that there be 'many' parties to a class action suit is indefinite and has been construed liberally." (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934.) "Where a question is of common interest to 'many' persons, an action may be maintained as a class action even where the parties are numerous and it is in fact practicable to join them all." (*Id.*) "No set number is required as a matter of law for the maintenance of a class action." (*Id.*) "Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a trust in an action for removal of the trustees." (*Id.* [citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574]; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a class of 9 plaintiffs and 35 members].) Therefore, Plaintiff contends that numerosity is plainly satisfied.

2. There Are Many Common Issues of Law and Fact Which Predominate With Respect to the Proposed Settlement

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.

In this case, the employment practices at issue that are being resolved include: whether Defendant had legally compliant policies and practices to pay employees all 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 was untimely and 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 the wage statements were consequently non-compliant; whether Defendant's binding arbitration policy bars the claims pled from proceeding in court and results in waivers of class and representative claims; and whether Defendant's failure to pay all final wages was intentional. (Moon Decl., ¶ 3–7.)

Plaintiff contends that the factual and legal issues contemplated by the proposed settlement are the same for all identified Class Members, including Plaintiff. (*Id.* at ¶ 3.) Further, Plaintiff contends that all Class Members suffered from and therefore seek redress for the same alleged injuries. (*Id.* at ¶¶ 3–7) Considering that Settlement Class Members would need to prove the same issues of law and fact to prevail, and the legal remedies available also the same, 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. (Moon Decl., ¶ 3.)

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., ¶¶ 47-57.) 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 their dedication. (Moon Decl., ¶¶ 61-63.)

Plaintiff's willingness to serve as a representative demonstrates her serious commitment to bringing about the best results possible for the Class. (*Id.* at ¶¶ 37-40.)

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, ¶ 7.4 *et seq*.) 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, ¶ 7.4 *et seq*.)

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

The proposed 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, ¶ 7.4.2.) It informs the

Class Members of the terms of the Settlement and their right to be excluded from the Settlement. (*Id.* at 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 ¶ 7.7.2, Ex. A.)

The 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 in an informative and coherent manner. (Settlement, Ex. A.) It makes clear that the Settlement does not constitute an admission of liability by the Defendant, who deny all liability, and it recognizes that this Court has not ruled on the merits of the action. (*Id.*) It also states that the final settlement approval decision has yet to be made. (*Id.*) Accordingly, the Notice complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

VI. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiff respectfully request that the Court grant preliminary approval of the proposed Settlement and set a Final Approval Hearing.

Respectfully submitted,

Dated: February 26, 2026 MOON LAW GROUP, PC

By: ______________________________

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