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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

FABIAN CAMILO BUITRAGO MALAVER, individually, and on behalf of all others similarly situated,

Plaintiff,

vs.

THE NEW IEM, LLC, a limited liability company; and DOES 1 through 10, inclusive,

Defendants.

Case No. 24CV102931

ASSIGNED FOR ALL PURPOSES TO:
HON. SOMNATH RAJ CHATTERJEE; DEPT. 21

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 Malaver, the Declaration of Julie Green, and [Proposed] Preliminary Approval Order*]

PRELIMINARY APPROVAL HEARING:
Date: November 25, 2025
Time: 2:30 p.m.
Dept.: 21
Reserv. ID: 638109765399

Date Action Filed: December 11, 2024
Trial Date: Not Set

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

PLEASE TAKE NOTICE that on November 25, 2025 at 2:30 p.m. in Department 21 of this Court located at 1225 Fallon Street, Oakland, California 94612, pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 *et seq*., Plaintiff Fabian Camilo Buitrago Malaver ("Plaintiff") will, and hereby does, move the Court for an order granting preliminary approval of the proposed class action and PAGA settlement between Plaintiff and Defendant The New IEM, LLC.

Specifically, Plaintiff moves the Court for an order:

1. Granting preliminary approval of the Settlement Agreement and Stipulation to Resolve Class Action and PAGA Claims;
2. Provisionally certifying a Class, for settlement purposes only;
3. Approving the Class Notice and plan for its distribution;
4. Appointing Plaintiff as the Class Representatives, for settlement purposes only;
5. Appointing Kane Moon, Allen Feghali, and Julie S. Oh of Moon Law Group, PC as Class Counsel, for settlement purposes only;
6. Appointing CPT Group, Inc. as the Settlement Administrator;
7. Approving of Court Appointed Special Advocates of Alameda County as the *cy pres* recipient of any uncashed settlement checks; and
8. Scheduling a Final Approval Hearing no earlier than 160 days from the date of preliminary approval.

The motion will be based upon this notice, the attached memorandum of points and authorities, the supporting Declarations of Kane Moon (and exhibits attached thereto), Julie Green and Plaintiff, 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.

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Respectfully submitted,

Dated: September 24, 2025

MOON LAW GROUP, PC

By: ______________________________

Kane Moon
Allen Feghali
Julie S. Oh
Jamie C. Osganian
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Fabian Camilo Buitrago Malaver ("Plaintiff" or "Named Plaintiff") seeks preliminary approval of a proposed $759,000.00 non-reversionary, wage and hour class action and PAGA settlement (the "Settlement") with Defendant The New IEM, LLC ("Defendant," and together with Plaintiff, the "Parties"). The Settlement will provide substantial monetary payments to an estimated 342 Class Members who worked an estimated aggregate of 41,009 Workweeks as of the mediation date, May 8, 2025, of which roughly 268 are PAGA Class Members who worked an estimated aggregate of 16,159 PAGA Workweeks as of the mediation date, May 8, 2025. 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 a mediation session by an experienced and neutral class action mediator, Lisa Klerman, Esq. Accordingly, Plaintiff requests the Court preliminarily approve the Settlement, provisionally certify the proposed Settlement Class, approve the distribution of the proposed Class Notice to Class Members, and set a Final Approval Hearing no earlier than 160 days from the date of preliminary approval.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims and Procedural History

This is a wage and hour class action and representative action for alleged Labor Code violations and claims for civil penalties pursuant to the California Private Attorneys General Act, Labor Code sections 2698, *et seq.* ("PAGA"). (Declaration of Kane Moon in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ["Moon Decl."], ¶ 2.) Plaintiff seek to represent all past and present non-exempt, hourly-paid employees of Defendant who worked in California at any time during the period from December 11, 2020 to the date the Court enters the Preliminary Approval Order, subject to the escalator provision ("Class Period"), for various alleged violations of the California Labor Code. (*Id.*) Defendant is the largest independent full-line manufacturer of electrical distribution equipment and integrated power systems in the United States, which has its corporate office in Fremont, California. (*Id.*) Plaintiff worked for Defendant from February 2024 to November 2024 as an assembler. (Declaration of Plaintiff Malaver in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ["Plaintiff Decl."], ¶ 2.) Throughout the time he worked for Defendant, Plaintiff was employed in an hourly paid, non-exempt position. (*Id.*) Plaintiff contends he and his coworkers were subjected to the same unlawful labor practices, including failure to pay wages for all hours worked. (*Id.* at ¶¶ 3–6.)

Plaintiff's claim for unpaid wages stems from Defendant's alleged failure to compensate Plaintiff and Class Members for off-the-clock work and Defendant's alleged failure to incorporate non-discretionary bonuses or additional compensation into the regular rate of pay for purposes of paying overtime and meal period premiums, which Defendant disputes. (Moon Decl., ¶ 3.) Moreover, Plaintiff brings claims against Defendant for meal and rest period violations, failure to reimburse necessary business expenses, and derivative claims for waiting time penalties, wage statement violations, unfair business practices, and civil penalties under PAGA, all of which Defendant disputes. (*Id.*)

Because of the foregoing alleged violations of various provisions of the Labor Code, Plaintiff filed a class action on December 11, 2024, which alleges Defendant systematically: (1) failed to pay minimum wages, (2) failed to pay overtime compensation, (3) failed to provide meal periods, (4) failed to authorize and permit rest periods, (5) failed to indemnify necessary business expenses, (6) failed to pay final wages at termination, (7) failed to provide accurate itemized wage statements, and (8) engaged in unfair competition. (*Id.* at ¶ 4.)

On December 7, 2024, Plaintiff gave written notice to the California Labor and Workforce Development Agency (the "LWDA") of the alleged Labor Code violations, with certified mail service on Defendant, and paid the required filing fee. (*Id.* at ¶ 5, Exh. 2.)

On February 11, 2025, Plaintiff filed a First Amended Class Action and Representative Action Complaint (the "Operative Complaint") which added an additional cause of action for civil penalties pursuant to Labor Code sections 2698, *et seq.* ("PAGA"). (*Id.* at ¶ 6.) Plaintiff subsequently submitted a copy to the LWDA in compliance with Labor Code section 2699, subd.

(*l*)(1). (*Id.*) To date, the LWDA has not indicated its intent to investigate the alleged violations or intervene in this Action. (*Id.*)

Defendant ardently opposes the merits of this case, denies Plaintiff's factual allegations, and maintains that Plaintiff face substantial risk with respect to certifying his claims (for any purpose other than settlement), proving liability for any of the alleged Labor Code violations or recovering any of the penalties sought in connection with his derivative claims. (*Id.* at ¶ 7.) Defendant contends, among other things, that Plaintiff and the Class Members have been paid proper wages. (*Id.*) Moreover, Defendant contends that it timely provided meal periods and rest breaks and argues that Plaintiff and Class Members voluntarily relinquished or waived their right to enjoy rest and meal periods or, alternatively, there were exigent circumstances that prohibited such rest and meal periods. (*Id.*) Furthermore, to the extent that Plaintiff received wage statements that were allegedly inaccurate, which Defendant disputes, Defendant asserted that Plaintiff suffered no actual damage or harm as a result. (*Id.*; see e.g., *Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013) No. C 12-05860 CRB, 2013 WL 622032, at *10 ["A plaintiff must adequately plead an injury arising from an employer's failure to provide full and accurate wage statements, and the omission of the required information alone is not sufficient."].)

With respect to Plaintiff's claim for waiting time penalties, Defendant alleged that its good-faith belief that it paid all wages precluded the imposition of waiting time penalties since Plaintiff could not prove that Defendant alleged failure to pay all final wages at the time of separation was "willful." (Moon Decl., ¶ 8; 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 claimed that it did not engage in any unfair business practices and denied liability under PAGA. (Moon Decl., ¶ 8.) Defendant also disputes that Plaintiff's claims are appropriate for class certification or other representative treatment due to the individualized nature of the claims. (*Id.*)

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

Following the filing of the Operative Complaint, the Parties met and conferred regarding an agreement to mediate the claims. (*Id.* at ¶ 9.) In preparation for mediation, the Parties agreed to a protocol for an informal exchange of documents and information before mediation. (*Id.*) Prior to mediation, Plaintiff obtained from Defendant, through informal discovery, documents and data that were necessary and helpful to evaluate the claims asserted in this action. (*Id.*) Defendant produced the time and pay records for all employees who worked from December 2020 to January 2025, Plaintiff's personnel file, and Defendant's written policies. (*Id.*) Defendant also provided information regarding the estimated number of current and formerly employed Class Members, PAGA Class Members, and PAGA Workweeks (*Id.*)

In preparation for mediation, Plaintiff's Counsel reviewed and analyzed all the information Defendant provided, including the sample records and documents regarding Defendant's wage and hour policies. (*Id.* at ¶ 10.) Plaintiff's Counsel retained a statistics expert to analyze the sample records and prepare a damage analysis prior to the mediation. (*Id.*) The sample time and pay records analyzed contained 188,007 actual shifts worked (representing roughly 90% of total shifts worked in the Class Period through the mediation date, May 8, 2025), which allowed Plaintiff's expert to prepare an analysis with a reasonable degree of certainty. (*Id.*) In conjunction with their extensive factual investigation, Plaintiff's Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly, Plaintiff's Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum and realistic monetary exposure for all claims. (*Id.*) Thus, Plaintiff's and his Counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement. (*Id.*)

C. **Settlement Negotiations**

On May 12, 2025, the Parties participated in a full day of private mediation before Lisa Klerman, Esq., a respected mediator of complex wage and hour actions. (*Id.* at ¶ 11.) 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.*) Through extended settlement discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached a settlement. (*Id.*) The material terms of the settlement are set out in Settlement Agreement and Stipulation to Resolve Class Action and PAGA Claims. (*Id.*, Exh. 1 [the "Settlement"].)

Plaintiff's Counsel have conducted a thorough investigation into the facts of this case. (*Id.* at ¶ 18.) Based on the foregoing document and information exchange and on their own independent investigation and evaluation, Plaintiff's Counsel are of the opinion that the proposed Settlement is fair, reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and circumstances, the risk of significant delay, trial risk, the risk of not certifying the Class, appellate risk, and the defenses that Defendant may assert both to certification and on the merits, the Settlement is in the best interest of the Settlement Class. (*Id.*; *see also id.* at ¶¶ 20–35.) **Indeed, the $759,000.00 gross settlement figure represents roughly 62.5% of the realistic recovery estimated to be $1,214.418.96.** (*Id.* at ¶ 36.)

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

Under the Settlement, Defendant will pay a non-reversionary, all-inclusive Gross Settlement Amount of *no less than* $759,000.00 to resolve this action. (Settlement, ¶ 48.) The key terms include:

1. <u>Class and Class Period</u>: The proposed Class for purposes of the Settlement contains approximately 343 individuals and is defined as: all past and present non-exempt, hourly-paid employees of The New IEM, LLC who worked in California at any time during the Class Period, excepting those employees who have already released, assigned, or otherwise forfeited the claims asserted in the Action as set forth in Paragraph 64 of the Settlement. (*Id.* at ¶ 4; Moon Decl., ¶ 41.) The "Class Period" is the period from December 11, 2020 to the date the Court enters the Preliminary Approval Order, subject to the escalator provision. (Settlement, ¶ 7.)

2. <u>PAGA Class Members and PAGA Period</u>: There are an estimated 268 PAGA Class Members, defined as: all past and present non-exempt, hourly-paid employees of The New IEM, LLC who worked in California at any time during the PAGA Period. (*Id.* at ¶ 25; Moon Decl., ¶ 19.) The "PAGA Period" is the period from December 11, 2023 to the date the Court enters the Preliminary Approval Order, subject to the escalator provision. (Settlement, ¶ 26.) PAGA Class

Members collectively worked an estimated 16,159 PAGA Workweeks through the mediation date, May 8, 2025. (Moon Decl., ¶ 29.)

3. Non-reversionary Gross Settlement Amount: This amount is $759,000.00, subject to a potential increase under the escalator clause, and excludes Defendant's employer's share of payroll taxes. (Settlement, ¶ 48.) No portion will revert to Defendant. (*See id.* at ¶ 50.e. Any amounts provided under the Settlement not approved by the Court will be allocated to the Net Settlement Amount to be distributed *pro rata* to Participating Class Members.)

4. Escalator Clause: Defendant represented at the time of mediation that there were approximately 41,009 Workweeks Class Members worked through the mediation date, May 8, 2025. (*Id.* at ¶ 49.) The Parties understood that the Workweeks would increase between the date of the mediation and Preliminary Approval and, therefore, considered this during their settlement negotiations. Accordingly, should the actual number of Workweeks increase by more than ten percent (10%) (*i.e.*, by more than 4,101 Workweeks), then the Gross Settlement Amount shall increase proportionately over the 10% threshold (*i.e.*, meaning if the Workweeks increase by 11% the Gross Settlement Amount will increase by 1%). (*Id.*) Alternatively, if this clause is triggered, Defendant may choose to end the Class Period on the date that the number of total Workweeks reaches the additional 10% threshold (45,110 Workweeks) so that the Gross Settlement Amount does not have to be increased. (*Id.*)

5. Net Settlement Amount: "Net Settlement Amount" means the settlement amount to be distributed to Participating Class Members, which is the Gross Settlement Amount less Attorneys' Fees and Costs, the General Release Payment, the Enhancement Award, the PAGA Payment, and Settlement Administration Costs. (*Id.* ¶ 23.)

6. Individual PAGA Payment: "Individual PAGA Payment" means the payment to a PAGA Class Member of his or her *pro rata* portion of the PAGA Payment. (*Id.* at ¶ 19.)

7. Individual Settlement Payment: "Individual Settlement Payment" means the payment to a Participating Class Member of his or her *pro rata* share of the Net Settlement Amount. (*Id.* at ¶ 20.)

8. Tax Treatment: The Individual Settlement Payment shall be reported as follows: (i) 10% will be considered wages, and will be reported as such to each Participating Class Member on a W-

2 Form; (ii) 45% will be considered interest on the non-wage damages, and will be reported as such to each Participating Class Member on an IRS Form 1099, if applicable; and (iii) 45% will be considered payment on behalf of claims for statutory penalties, and will be reported as such to each Participating Class Member on an IRS Form 1099, if applicable. (*Id.* at ¶ 52.b.) The Individual PAGA Payment will be considered 100% payment on behalf of claims for civil penalties, and will be reported as such to each PAGA Class Member on an IRS Form 1099, if applicable (*Id.*)

9. Settlement Administrator and Costs: Settlement Administrator" means CPT Group, Inc. or such other third-party administrator mutually agreed upon by the Parties and subject to approval by the Court. (*Id.* at ¶ 35.) At this time, the Settlement Administrator estimates costs will be $10,500.00. (Moon Decl., ¶ 16, Exh 5.)

10. Released Parties: "Released Parties" means and includes The New IEM, LLC and its respective current and former parents, predecessors or successors, holding companies, affiliated companies or entities, owners, shareholders, members, partners, officers, directors, managers, employees, and agents. (*Id.* at ¶ 33.)

11. Class Released Claims: "Class Released Claims" means any and all claims, known or unknown, contingent or accrued, against Defendant and the other Released Parties that arise from the facts, transactions or occurrences alleged in the Action, or that reasonably could have been alleged based on any fact set forth in the Action, arising during the Class Period, including and not limited to, claims for failure to pay all wages earned for all hours worked at the correct rate including minimum, regular, and overtime wages (*e.g.*, including, but not limited to, failure to pay paid sick leave and PTO at the correct rates), failure to provide meal periods and rest breaks or pay premium payments at the correct rate, failure to provide meal periods and rest breaks or pay premium payments at the correct rate, failure to provide and maintain complete and accurate itemized wage statements that include all information required by the California Labor Code, untimely payment of wages during employment and at the time of termination, failure to reimburse business expenses, violations of the corresponding California Labor Code provisions, including §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 246, 246.5, 247, 247.5, 248, 248.1, 248.2, 248.3, 248.5, 248.6, 248.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, the applicable California

Wage Orders, and all related or corresponding local and federal laws, violation of California Business and Professions Code Section 17200 *et seq.* including attorneys' fees, costs and interest, arising from the foregoing violations, except those arising under California Labor Code Section 2698 *et seq.*. (*Id.* at ¶ 8.)

12. PAGA Released Claims: "PAGA Released Claims" means any and all claims for PAGA civil penalties against Defendant and the other Released Parties that arise from the facts, transactions or occurrences alleged in the letter sent by Class Counsel to the Labor and Workforce Development Agency on or about December 7, 2024 ("LWDA Letter") and the Action, or that reasonably could have been alleged based on any fact set forth in the LWDA Letter and the Action, arising during the PAGA Period, for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 246, 246.5, 247, 247.5, 248, 248.1, 248.2, 248.3, 248.5, 248.6, 248.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2699, and 2802, and the applicable California Wage Orders, including attorneys' fees, costs and interest arising from the foregoing.

13. Uncashed Settlement Checks and *Cy Pres*: It is expressly understood and agreed that the checks for the Individual Settlement Payments and Individual PAGA Payments will become void and no longer available if not cashed within one hundred and eighty (180) calendar days after mailing. (*Id.* at ¶ 57.d.) Consistent with Code of Civil Procedure section 384, subdivision (b), the funds from voided checks will be transferred by the Settlement Administrator to Court Appointed Special Advocates ("CASA") of Alameda County ("Cy Pres Recipient"), subject to approval by the Court. (*Id.*) There is no financial interest in the proposed *cy pres* recipient that would create a conflict of interest. (Moon Decl., ¶ 64; Plaintiff Decl., ¶ 8.)

14. Class Notice: The proposed Class Notice sets forth, in plain terms, a statement of case, the terms of the Settlement, the approximate amounts of attorneys' fees, costs, PAGA Payment, and awards to Plaintiff being sought, an explanation of how the individual payments are calculated, and the Final Approval Hearing information. (Settlement, Exh. A.) The proposed method for providing notice of the proposed Settlement and distribution thereof is the one most likely to give actual notice to the greatest number, if not all, of the Class Members. (*Id.* at ¶ 53.a.) Class Members will be notified of the proposed Settlement by first-class mail in English and Spanish. (*Id.*) The Settlement

Administrator will undertake its best efforts to ensure the Class Notice is provided to the current address of Class Members, including conducting a national change of address search and re-mailing the notice to updated addresses. (*Id.*)

15. Procedure for Disputing Workweeks, Opting Out, or Objecting: The Class Notice explains the procedure under which a Class Member can dispute the number of individual Workweeks credited to them. (Settlement, ¶ 54, Exh. A.) Additionally, the Class Notice explains how Settlement Class Members may, should they choose to do so, opt-out or otherwise object to the Settlement. (*Id.* at ¶¶ 55, 56.)

16. Funding: On the Effective Date, Defendant shall remit to the Settlement Administrator: (i) the Gross Settlement Amount of $759,000.00, subject to increase pursuant to Paragraph 49 of this Agreement, and (ii) the Employer's Taxes. (*Id.* at ¶ 57.a.)

III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL

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

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

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

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

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

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

The proposed Settlement at issue was reached following extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses with an experienced and neutral class action mediator. (Moon Decl., ¶ 11.) At mediation, the Parties engaged in intensive settlement discussions during which they debated their respective positions and exchanged views regarding the strengths and weaknesses of the alleged claims. (*Id.*) With the assistance of the mediator, the Parties were able to resolve the Action. (*Id.*)

Plaintiff's Counsel also performed an extensive investigation into the facts, claims, and defenses at issue, including by reviewing the governing law, analyzing Defendant's written policies and sample of time and pay data, and retaining a statistics expert to prepare a damage analysis regarding Defendant's potential liability. (*Id.* at ¶¶ 9-10.) In preparation for mediation, the Parties agreed to a protocol for an informal exchange of extensive documents and information before mediation. (*Id.* at ¶ 9.) Plaintiff obtained from Defendant, through extensive informal discovery, documents and data that were necessary and helpful to evaluate the claims asserted in this action, including the time and pay records for all employees who worked from December 2020 to January 2025. (*Id.*)

Courts typically assess the status of discovery in determining whether a class action settlement agreement is fair, reasonable, and adequate. (*Dunk, supra,* 48 Cal.App.4th at p. 1801.) As discussed above, the Parties engaged in extensive informal discovery prior to reaching a settlement. (Moon Decl., ¶¶ 9-10.) Prior to the mediation, Defendant produced a randomized 90% sample of time and payroll records for the relevant time period. (*Id.* at ¶ 10.) The Parties made efforts to ensure the sample included sufficient records of the Class Members to ensure they could analyze the claims of the Class in a representative fashion. (*Id.*)

Plaintiff contends that a 90% sampling of records is statistically significant and reliable. (*See, e.g.*, *Tyson Foods, Inc. v. Bouaphakeo* (2016) 577 U.S. 442 [holding statistical evidence was admissible to prove liability and damages across a class, thereby allowing it to support class certification].) The timekeeping data and payroll data produced for mediation were generated from uniform timekeeping and payroll systems, which allowed Plaintiff's expert to extrapolate his findings with confidence. (Moon Decl., ¶ 10.) The employees in the sample were also subject to the same wage and hour policies and procedures (e.g., non-exempt). (*See id.* at ¶¶ 9-10.) Given these circumstances, the 90% sample can be probative as to the experiences of all Settlement Class Members. (*See Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 938.)

Defendant also produced information regarding the estimated number of current and former Class Members, Workweeks, PAGA Class Members, and PAGA Workweeks. (Moon Decl., ¶ 9.) This extensive informal discovery and investigation allowed Plaintiff's Counsel to perform a comprehensive damages analysis and estimate Defendant's potential liability. (*Id.* at ¶ 11.)

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

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

Based on Plaintiff's Counsel's review of the time, payroll, and additional data provided by Defendant, on Plaintiff's expert's analysis of the sample records provided by Defendant, and on information from Plaintiff, Plaintiff's Counsel evaluated the estimated maximum and risk-adjusted exposure that Defendant faced. Defendant represented at the time of mediation that there were approximately 41,009 Workweeks Class Members worked thus far during the Class Period. (*Id.* at ¶ 49.) Additionally, there were an estimated: 343 Class Members, 80 former employees falling within the three-year statute of limitations ("SOL") period for waiting time penalties, 268 employees falling within the one-year SOL period for inaccurate wage statement penalties and PAGA penalties, and 16,159 PAGA Workweeks through the mediation date, May 8, 2025. (Moon Decl., ¶ 19.) Based on Plaintiff's Counsel's review of the time, payroll, and additional data provided by Defendant, on Plaintiff's expert's analysis of the sample records provided by Defendant, and on information from Plaintiff, Plaintiff's Counsel evaluated the estimated maximum and risk-adjusted exposure that Defendant faced. (*Id.*) Based on the information provided at mediation, Defendant's ***realistic* exposure** (adjusted for risks at certification and proof on the merits) for the alleged claims, including penalties, is estimated to be **$1,214,418.95**. (*Id.* at ¶¶ 19, 36.) This amount was calculated as follows: **$141,797.18** (90% discount) for the off-the-clock work claim; **$42,089.75** (75% discount) for the regular rate of pay claim; **$739,590.00** (75% discount) for the meal period claim; **$118,667.62** (90% discount) for the rest period claim; **$10,019.00** (90% discount) for the unreimbursed expenses claim; **$31,810.40** (95% discount) for the waiting time penalties claim; **$49,650.00** (95% discount) for the wage statement claim; and **$80,795.00** (95% discount) for the PAGA penalties claim. (*Id.* at ¶¶ 19–35.) The foregoing discounts were based on the evidence presented and arguments made during arm's-length settlement negotiations. (*Id.* at ¶¶ 11, 19–35.) **The $759,000.00 gross settlement figure represents roughly 62.5% of the total realistic recovery**. (*Id.* at ¶ 36.) This is an excellent result for the Class, particularly because, under the Settlement, Class Members will receive timely and guaranteed relief, avoiding the risk of not being able to recover anything. (*Id.*)

With regards to the PAGA claims, Plaintiff and his Counsel believe the Settlement is a fair and reasonable resolution that satisfies PAGA's dual statutory purposes of deterrence and punishment, on the one hand, and providing PAGA Class Members with genuine and meaningful relief, on the other. (Moon Decl., ¶ 37; Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendant has had to hire legal counsel, engage in extensive discovery, and participate in mediation. Defendant is also now having to pay the PAGA Amount to the LWDA under the Settlement, assuming final settlement approval is granted. (Settlement, ¶ 50.d.) Not including its own attorneys' fees and costs as well as the employer's share of payroll taxes, Defendant will pay no less than $759,000.00 to resolve this matter—of which $50,000.00 is allocated toward the PAGA claims and will be distributed, in compliance with Labor Code section 2699 as 65% ($32,500.00) to the LWDA and 35% ($17,500.00) to PAGA Class Members. (Moon Decl., ¶ 37.) Further, the $50,000.00 amount allocated for the PAGA Released Claims represents 62% of the total realistic recovery for the alleged PAGA claims ($80,795.00). (*Id.*) Moreover, Plaintiff's Counsel are of the opinion that because the issues here are fairly contested, there is a possibility of the Court not awarding the PAGA penalties even if Plaintiff prevailed on the merits due to the largely discretionary nature of awarding PAGA penalties. (*Id.*) Indeed, under Labor Code section 2699, subdivision (e)(2), a Court can reduce PAGA penalties "if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (Lab. Code § 2699(e)(2).) Moreover, under the new PAGA, Defendant contended that it took reasonable steps to reduce its potential PAGA penalty liability by 80% by taking actions such as conducting wage and hour refresher training and posting meal periods and rest break charts at various locations in its facilities, among other things.

(Moon Decl., ¶ 35.) In other words, were this matter to go to trial, any award granted would be at the discretion of the Court and subject to a substantial reduction. (*Id*. at ¶ 37.)

While Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 38.) Plaintiff also recognizes that proving the amounts of wages owed to each Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id.*) The Settlement obviates the significant risk that this Court may deny certification of all or some of Plaintiff's claims. (*Id.* at ¶ 39.) Furthermore, even if Plaintiff was able to pursue his claims on a class-wide basis and obtain certification of all or some of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the Class. (*Id.*) This Settlement avoids the risks, burdens, and the accompanying expense of further litigation. (*Id.* at ¶ 40.) Although the Parties have engaged in a significant amount of investigation, informal discovery, and class-wide data analysis, they have not conducted depositions or extensive expert discovery. (*Id.*) Moreover, preparation for class certification and a trial would remain for the Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or any summary judgment ruling. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through trial. (*Id.*)

The Net Settlement Amount available for settlement payments is estimated to be *no less than* **$405,500.00** for an estimated Settlement Class of **343 individuals**.[1] (Settlement, ¶ 48.) As a result, a Participating Class Member will receive an average benefit of approximately **$1,182.22**, prior to tax withholdings on the wage portion of payments. (Moon Decl., ¶ 41.) Considering Class Members' average rate is $28.48, the average benefit is roughly **41.5 hours of work**. (*Id.*) The Net Settlement Amount results in **an estimated Workweek value of roughly $9.89** for the currently estimated **41,009 Workweeks**. (*Id.*) Additionally, it is currently estimated there are **268 PAGA Class Members** who will receive an estimated average of approximately **$65.30** from their $17,500.00 total

[1] The Net Settlement Amount is at least $759,000.00 less the following: $50,000.00 for the PAGA Payment, $253,000.00 for Class Counsel Attorneys' Fees, up to $25,000 for Class Counsel Costs, up to $10,500.00 for Settlement Administration Costs, $10,000.00 for the General Release Payment to Plaintiff, and $5,000.00 for the Enhancement Award to Plaintiff. (Settlement, ¶ 48.)

share of the PAGA Payment, which results in an estimated **pay period value of $1.08** based on the currently estimated **16,159 PAGA Workweeks**. (*Id.*) The actual amounts to Participating Class Members and PAGA Class Members will vary based on each individual's duration of work during the Class Period or PAGA Period, respectively; thus, those who worked longer will receive a gross benefit greater than the average estimated amount. (*Id.*) The high and low range of payments to Class Members will be calculated by the Settlement Administrator following preliminary approval and receipt and processing of the Class List and will be provided to the Court in a motion for final approval. (*Id.*)

The proposed Settlement of $759,000.00 therefore represents a substantial recovery when compared to Plaintiff's reasonably forecasted recovery. (*Id.* at ¶ 42.) When considering the risks of litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to establish liability, and the probability of appeal, it is clear the Settlement amount of $759,000.00 is within the "ballpark" of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*)

3. Plaintiff's Counsel Have Extensive Experience in Class and PAGA Action Litigation, Which Was Integral to Negotiating the Settlement

The Settlement negotiations were conducted by highly capable counsel with considerable experience and demonstrated competence with litigating wage and hour class actions. (*Id.* at ¶¶ 47–66.) Plaintiff's Counsel have a strong record of vigorous and effective advocacy for their clients and are experienced in handling complex wage and hour class action litigation. (*Id.*) The experience of Plaintiff's Counsel was helpful in assessing the reasonableness of the Settlement at issue here, and from this experience they concluded that this litigation could not have been settled on better terms than provided under the Settlement. (*Id.* at ¶ 67.) Although Plaintiff and his counsel were prepared to try the claims alleged in the litigation, they support the proposed Settlement as being in the best interest of the Class based on objective evidence that has been considered and weighed against the risks, expenses, and time consumption to both sides of continued litigation. (*Id.* at ¶¶ 11, 18, 38-40.)

B. The Proposed Class Notice Should Be Approved

The proposed Class Notice, in the form attached to the Settlement as **Exhibit A**, should be approved for dissemination to the Class. The Class Notice informs the Class of the terms of the

Settlement and of their rights to be excluded from or object to the Settlement. (Settlement, Exh. A.) Accordingly, the proposed Class Notice meets all the requirements of Rule 3.769(f) of the California Rules of Court. (Cal. Rules of Court, rule 3.769(f).)

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

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

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

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

Plaintiff's Counsel will seek an award of attorneys' fees on the "percentage of recovery/common fund" theory. (Moon Decl., ¶ 69.) The purpose of this approach is to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1975) 15 Cal.3d 162, the California Supreme Court stated, "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons[ ] are entitled to share." (*Id.* at pp. 110–11 [pincite omitted].)

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

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

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

Here, Plaintiff's Counsel will request fees equal to one-third of the Gross 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, *with Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].) Accordingly, Plaintiff requests the Court preliminarily approve his counsel's ability to request attorneys' fees as negotiated by the Parties.

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

Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(g)(1), 2802(d).) Under these sections, Plaintiff would be permitted to recover his actual attorneys' fees, even if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) This Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Plaintiff's Counsel for their decision to assume risk by taking on this matter. (See Moon Decl., ¶¶ 39-40.) In fact, prosecution of this action involved significant financial risk for Plaintiff's Counsel. (*Id.* at ¶¶ 71-74.) His Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.* at ¶¶ 70-74.) Once Plaintiff's Counsel undertook this litigation on behalf of the Class, they committed to pursue it to its conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶ 72.)

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

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Plaintiff's Counsel possess considerable expertise in litigating class actions. (*Id.* at ¶¶ 47-66.) Plaintiff's Counsel have been involved as lead counsel or co-counsel in numerous class actions that resulted in millions in recovery. (*Id.*) Plaintiff's Counsel's experience in wage and hour litigation was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. (*Id.* at ¶ 67.) Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal) as well as the procedural law of class action litigation. (*Id.* at ¶ 65.) Based on these and other factors, Plaintiff's Counsel have frequently received fee awards of this percentage from the gross recovery for the class. (*See id.* at ¶¶ 51, 56, 60.)

D. <u>The General Release Payment and Enhancement Award to Plaintiff Are Reasonable</u>

Named plaintiffs in class action lawsuits "are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz*, *supra*, 186 Cal.App.4th at p. 412.) Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. (See *Rodriguez v. W. Publ'g Corp*. (9th Cir. 2009) 563 F.3d 948, 958–59.) Service awards are particularly important to plaintiffs in wage and hour cases because they promote the important public policies underlying the wage and hour laws. This strong policy is codified in California Labor Code section 90.5, which provides, "[i]t is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions . . ." (Lab. Code § 90.5.) Nonetheless, the California Supreme Court has noted that "retaliation against employees for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61.) In this context, class representatives should be rewarded for assuming the risk of retaliation for the sake of class members. (See *Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

Under the Settlement here, subject to the Court's approval, Defendant agrees to pay a General Release Payment of $10,000.00 and an Enhancement Award of $5,000.00 to Plaintiff, which will be in addition to the amounts he will receive as a Class Member. (Settlement, ¶ 50.c.) The General Release Payment is for his full release and discharge of any claims that he has ever had against the Released Parties through the date of execution of the Agreement, including any claims he has or may have against the Released Parties arising under the California Fair Employment and Housing Act that are not alleged in the Action and a waiver of his rights under Civil Code Section 1542. (*Id*. at ¶ 17; Moon Decl., ¶ 46; Plaintiff Decl., ¶ 17.) The Enhancement Award is in recognition of his efforts and work in prosecution of the Action. (*Id.* at ¶ 14.) Plaintiff has devoted a great deal of time and work assisting counsel in the case and communicated with counsel frequently for litigation and to prepare for the mediation session. (Moon Decl., ¶¶ 43-46; Plaintiff Decl., ¶¶ 9–16.) The requested payments are fair and reasonable, particularly considering the substantial benefits Plaintiff generated for all Class Members. (Moon Decl., ¶¶ 36–46.)

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

IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

A. Legal Standard

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

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

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

1. The Class Is Ascertainable and Numerous

When determining whether a class is ascertainable, California courts focus on the following three factors: "(1) the class definition, (2) the size of the class and (3) the means of identifying class members." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, Plaintiff maintains there is an easily ascertainable Class, defined by objective and precise criteria. (Settlement, ¶¶ 4, 7.) The proposed Class that Plaintiff seeks to represent is ascertainable because (1) the Class definition is sufficiently precise, (2) the t Class consists of about 343 individuals, and (3) the Class Members can be readily identified by looking at Defendant's records. (*Id.*) Because Class Members are identified using specific criteria in the regular business records of Defendant—their employment by Defendant in California, non-exempt classification, and actual work during the Class Period—the Class is ascertainable. (See *Wilner v. Sunset Life Ins. Co*. (2000) 78 Cal.App.4th 952, 959–60 [class membership defined by ownership of product that is the subject of the lawsuit is sufficient to make the class ascertainable].) "The requirement of Code of Civil Procedure section 382 that there be 'many' parties to a class action suit is indefinite and has been construed liberally." (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934.) "Where a question is of common interest to 'many' persons, an action may be maintained as a class action even where the parties are numerous and it is in fact practicable to join them all." (*Id.*) "No set number is required as a matter of law for the maintenance of a class action." (*Id.*) "Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a trust in an action for removal of the trustees." (*Id.* [citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574]; see also *Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a class of 9 plaintiffs and 35 members].) Therefore, numerosity is plainly satisfied.

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

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

Here, Plaintiff's claims satisfy all three requirements. The employment practices at issue include whether Defendant: provided legally compliant meal periods to the Settlement Class, or paid meal period premiums in lieu thereof; provided legally compliant paid rest periods to the Class, or paid rest period premiums in lieu thereof; paid proper overtime compensation to the Class; timely paid final compensation upon separation of employment to Class Members who are former employees; timely paid wages to Class Members throughout Class Members' employment; provided accurate itemized wage statements to the Class; engaged in unlawful or unfair business practices affecting the Class in violation of California Business and Professions Code §§ 17200-17208; and reimbursed Class Members for all reasonably incurred business expenses. (Settlement, ¶ 37; Moon Decl., ¶¶ 3–4.) Plaintiff contends the factual and legal issues are the same for all Class Members, and further that all Class Members suffered from and seek redress for the same alleged injuries. (Plaintiff Decl., ¶¶ 2-5.) Considering Class Members would need to prove the same issues of law and fact to prevail, and their legal remedies are identical, it would be preferable to resolve all claims through a settlement than to force each Class Member to litigate their own individual claims. Thus, the Court should grant conditional class certification for settlement purposes because common questions of law and fact predominate over any individual questions within the Class.

3. Plaintiff's Claims Are Typical of the Claims of the Settlement 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, he alleges he was subject to the same policies and practices as other similarly situated employees. (Plaintiff Decl., ¶ 6.)

4. Plaintiff and His Counsel Meet the Adequacy Requirement

The adequacy of representation requirements is met by fulfilling two conditions: (1) a named plaintiff must be represented by counsel qualified to conduct the pending litigation, and (2) a named plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450.)

Here, all requirements are met. Plaintiff retained counsel with extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Moon Decl., ¶¶ 47–66.) With their experience, Plaintiff's Counsel unquestionably are "qualified, experienced and generally able to conduct the proposed litigation." (*Miller*, *supra*, 148 Cal.App.3d at p. 874.) In addition, Plaintiff and his Counsel have no conflicts with one another, other Class Members, the proposed Settlement Administrator, or the proposed *cy pres* recipient. (Plaintiff Decl., ¶¶ 7–8; Moon Decl., ¶ 68.) Further, Plaintiff has, with counsel, litigated this case and diligently reviewed the settlement terms, showing dedication, and with full knowledge and acceptance of duties, they have committed to his role as Class Representative. (Plaintiff Decl., ¶¶ 9–16.)

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. THE PROPOSED CLASS NOTICE IS CONSTITUTIONALLY SOUND

A. The Proposed Notice Plan Satisfies Due Process

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, ¶ 53.a.) 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 in both English and Spanish, the best possible form of notice under the circumstances. (Settlement, ¶ 53.a.)

B. The Class Notice Is Accurate and Informative

The proposed Notice Packet should be approved. It will be disseminated through direct U.S. first-class mail to the current address for each Settlement Class Member. (*Id.*) It informs the Settlement Class of the terms of the Settlement and the right to be excluded. (*Id.* at ¶ 55, Exh. A.) And if there are t Class Members who wish to object to the proposed Settlement, they are informed of their right to submit written objections and/or be heard at the Final Approval Hearing. (*Id.* at ¶ 56, Exh. A.)

The Clas 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, Exh. A.) It makes clear the Settlement does not constitute an admission of liability by Defendant, who denies all liability. (*Id.*) It also states that the final approval decision has yet to be made, and provides the date, time, and location of the Final Approval Hearing. (*Id.*) Accordingly, the Class Notice complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

VI. CONCLUSION

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

Respectfully submitted,

Dated: September 24, 2025

MOON LAW GROUP, PC

By: ______________________

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