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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

ZACHARY CLAYTON, individually, and on behalf of all others similarly situated, Plaintiff, vs. WABASH NATIONAL CORPORATION; and DOES 1 through 10, inclusive, Defendants.	Case No.: CVRI2407382 <u>CLASS AND REPRESENTATIVE ACTION</u> [*Assigned for all purposes to Hon. Harold W. Hopp, Dept. 1*] **PLAINTIFFS' NOTICE OF AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** [*Filed with the Declaration of Kane Moon, the Declaration of Plaintiff Clayton, the Declaration of Plaintiff Ordaz, the Declaration of Paul K. Haines, the Declaration of Sean Hartranft, the Declaration of Nathan W. Austin, the Declaration of Sarah Reynoso, and [Proposed] Preliminary Approval Order*] <u>PRELIMINARY APPROVAL HEARING</u>: Date: April 20, 2026 Time: 8:30 a.m. Dept.: 1 Judge: Harold W. Hopp Action filed: December 9, 2024 Trial date: Not set

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

PLEASE TAKE NOTICE that on April 20, 2026, at 8:30 a.m. in Department 1 of this Court located at the Riverside Historic Courthouse, 4050 Main Street, Riverside, CA 92501, pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 *et seq*., Plaintiffs Zachary Clayton ("Plaintiff Clayton") and Ricardo Ruiz Ordaz ("Plaintiff Ordaz") (together, "Plaintiffs") will move the Court, and hereby do, for an Order granting preliminary approval of the proposed class action settlement between Plaintiffs and Defendant Wabash National Corporation. Plaintiffs further move the Court for an Order:

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

The motion will be based upon this notice, the attached memorandum of points and authorities, the supporting declarations and attachments thereto, the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: March 24, 2026

MOON LAW GROUP

By:____________________________________

Kane Moon
Allen Feghali
Charlotte Mikat-Stevens

Attorneys for Plaintiff Zachary Clayton

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I. INTRODUCTION

Plaintiffs Zachary Clayton ("Plaintiff Clayton") and Ricardo Ruiz Ordaz ("Plaintiff Ordaz") (together, "Plaintiffs") seek preliminary approval of a proposed $690,000.00 non-reversionary, wage-and-hour class action settlement (the "Settlement") with Defendant Wabash National Corporation ("Defendant," and together with Plaintiffs, the "Parties"). The Settlement will provide substantial monetary payments to approximately 531 Class Members who collectively worked a total of 38,333 Workweeks and to 505 Aggrieved Employees who worked a total of 28,618 Pay Periods under the California Private Attorneys General Act of 2004 ("PAGA"). As set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, informal discovery, and negotiations between the Parties. The negotiations were at arm's-length and were facilitated through mediation by experienced, neutral, class action mediator Brandon McKelvey, Esq. Accordingly, Plaintiffs request the Court preliminarily approve the proposed Settlement, certify the proposed Class, approve the proposed Class Notice and Forms, and set a Final Approval Hearing no earlier than 130 days from the date of the order granting Preliminary Approval of the Settlement.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Claims

Defendant is a manufacturer of advanced engineered solutions and services for transportation, logistics, and infrastructure markets and has employed Plaintiffs and other putative Class Members in California during the relevant period. (Declaration of Kane Moon in Support of Plaintiffs' Motion for Preliminary Approval of Class and PAGA Action Settlement ["Moon Decl."], ¶ 3.) Plaintiff Clayton was employed as an Assembler during the Class Period from approximately August 8, 2022 to November 15, 2023. (Declaration of Plaintiff Zachary Clayton in Support of Plaintiffs' Motion for Approval of Class and PAGA Action Settlement ["Fuentes Decl."], ¶ 2.) Plaintiff Ordaz was employed as a Forklift Driver during the Class Period from approximately September 2022 to March 2024. (Declaration of Plaintiff Ricardo

Ruiz Ordaz in Support of Approval of Class Action Settlement ["Ordaz Decl."], ¶ 2.) Plaintiffs contend both they and their coworkers were subjected to the same unlawful labor practices, including failure to pay minimum wages for all hours worked. (Clayton Decl., ¶ 3; Ordaz Decl., ¶ 3; Moon Decl., ¶ 3.)

Plaintiffs' claim for unpaid minimum and overtime wages stem from allegations that Defendant failed to compensate Plaintiffs and others for off-the-clock work and failed to incorporate non-discretionary bonuses into employees' regular rate of pay for purposes of paying overtime. (Moon Decl., ¶ 4.) Moreover, Plaintiffs bring claims for meal and rest period violations. (*Id.*) Plaintiffs' meal period claim is based on an analysis of time and pay records, which show Class Members regularly had missed, short, or untimely lunch breaks, and that despite a quantifiable number of unique meal period violations, Defendant did not pay any meal period premiums owed. (*Id.*) Plaintiffs' rest period claim is based on allegations that due to the nature of their work, employees' rest periods were often short, late, interrupted, and sometimes missed altogether. (*Id.*) Plaintiffs further bring a claim for unreimbursed necessary business expenses, based on allegations that employees were required to purchase uniforms and tools for work purposes without reimbursement. (*Id.*) Plaintiffs also bring derivative claims for waiting time penalties, wage statement violations, unfair business practices, and civil penalties under the Private Attorneys General Act ("PAGA") pursuant to Labor Code sections 2698, *et seq*. (*Id.*)

Because of Defendant's alleged violations of various provisions of the Labor Code, on December 9, 2024, Plaintiff Clayton initiated his lawsuit against Defendant entitled *Zachary Clayton v. Wabash National Corporation*, Riverside County Superior Court Case No. CVRI2407382 ("*Clayton* Action"), which, in its amended form, alleges that Defendant systematically: (1) failed to pay minimum wages, (2) failed to pay overtime wages, (3) failed to provide meal periods, (4) failed to authorize and permit rest periods, (5) failed to indemnify necessary business expenses, (6) failed to timely pay all wages at termination, (7) failed to provide accurate and itemized wage statements, (8) engaged in unfair business practices, and (9) violated civil penalty provisions recoverable under PAGA. (*Id.* at ¶ 5.) On May 1, 2025, Plaintiff Ordaz initiated a lawsuit against Defendant entitled *Ricardo Ruiz Ordaz v. Wabash*

National Corporation, Riverside County Superior Court Case No. CVRI2502244. (*Id.*) On July 7, 2025, Plaintiff Ordaz initiated a second lawsuit against Defendant entitled *Ricardo Ruiz Ordaz v. Wabash National Corporation*, Riverside County Superior Court Case No. CVRI2503943. (*Id.*) For purposes of Settlement, the Parties consolidated the *Clayton* Action with the lawsuits filed by Plaintiff Ordaz by filing a Consolidated Class and Representative Action Complaint in the *Clayton* Action, and they further agree that this consolidated complaint is the "Operative Complaint." (*Id.*)

Defendant ardently opposes the merits of this case and denies Plaintiffs' factual allegations. (*Id.* at ¶ 6.) Defendant asserts it complied with all its compensation obligations, including compensating Class Members for any and all off-the-clock work and overtime work, and therefore, Plaintiff and other Class Members were paid all wages owed. (*Id.*) Defendant argues it did not fail to incorporate any non-discretionary bonuses into the regular rate of pay for purposes of paying overtime, and that all bonuses were discretionary. (*Id.*) Defendant maintains its compliance with all its meal and rest period obligations, and that Plaintiffs and the putative Class were provided with the opportunity to take all meal and rest periods to which they were entitled or otherwise voluntarily waived breaks. (*Id.*) As for the unreimbursed business expenses, Defendant maintains it did not require the Class to incur any business-related expenses. (*Id.*) Defendant also argues it paid employees all wages due and owing upon separation from employment. (*Id.*) To the extent Plaintiffs received wage statements that were allegedly inaccurate, Defendant asserts Plaintiffs 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 Plaintiffs' claim for waiting time penalties, Defendant alleges its good-faith belief that it paid all wages precludes the imposition of waiting time penalties since Plaintiffs cannot prove Defendant's alleged failure to pay all final wages at the time of separation was "willful." (Moon Decl., ¶ 6; *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 claims it did not engage in any unfair business practices and denies liability for unpaid wages, liquidated damages, statutory penalties, civil penalties, attorneys' fees, or costs of litigation. (Moon Decl., ¶ 6.) Defendant also maintains Plaintiffs' claims are improper for class treatment. (*Id.*)

B. Discovery and Investigation

The Parties agreed to mediate this action with Brandon McKelvey, Esq., an experienced class and PAGA action mediator. (*Id.* at ¶ 7.) In preparation for mediation, the Parties agreed to a protocol for an informal production of documents and information before mediation. (*Id.*) Prior to mediation, Plaintiffs obtained from Defendant, through informal discovery, voluminous documents and data that were necessary and helpful to evaluate the claims asserted in this action. (*Id.*) Defendant produced its employee handbook and a sample size of time records and payroll data which were reviewed, investigated, and analyzed by Class Counsel and Plaintiffs' expert. (*Id.*) Defendant further provided crucial information regarding the total approximate Class size, the estimated number of current and former putative Class Members and Aggrieved Employees, and the estimated number of Workweeks and Pay Periods. (*Id.*)

In preparation for mediation, Class Counsel reviewed and analyzed all the information and documents Defendant had produced. (*Id.* at ¶ 8.) Class Counsel retained a statistics expert to analyze the sample records produced and prepare a damage analysis prior to mediation. (*Id.*) After reviewing the data and documents Defendant produced, which included the time and payroll records of 505 employees (approximately 88% of the Class), Plaintiffs' expert was able to prepare an analysis with a high degree of certainty. (*Id.*) In conjunction with their extensive factual investigation, Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly, Class Counsel were able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. (*Id.*) Thus, Plaintiffs and Class Counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement Agreement. (*Id.*)

C. Settlement Negotiations

On October 24, 2025, Defendant and Plaintiff Clayton participated in a full day of private mediation before Brandon McKelvey, Esq., an experienced, professional, neutral, class and PAGA action mediator. (*Id.* at ¶ 9.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses, the Parties reached a global resolution of the Actions, the material terms of which are encompassed within the Class and PAGA Action Settlement Agreement. (*Id.*, Exh. 1 [the "Settlement Agreement"].)

Class Counsel have conducted a thorough investigation into the facts of this case. (*Id.* at ¶ 25.) Based on the foregoing document and information exchange and on their own independent investigation and evaluation, Class Counsel are of the opinion that the proposed Settlement Agreement is fair, reasonable, and adequate. (*Id.*) Furthermore, in light of all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, and the defenses that Defendant may assert both to certification and on the merits, the Settlement Agreement is in the best interests of Class Members. (*Id.*; *see also id.* at ¶¶ 26–39.) **Indeed, the $690,000.00 gross settlement figure represents approximately 70% of the realistic recovery estimated to be $986,437.50.** (*Id.* at ¶ 33.)

D. Key Terms of the Proposed Settlement

Under the Settlement, Defendant will pay $690,000.00 to resolve this litigation, subject to potential increase. (Settlement Agreement, ¶¶ 3.1, 8). Defendant shall separately pay the employer's share of applicable payroll taxes. (*Id.* at ¶ 3.1.) The Settlement Agreement's key terms include:

1. Class and Class Members: The proposed Class for purposes of the Settlement contains approximately 531 members and is defined as: all current and former hourly-paid employees of Defendant who worked for Defendant in California at any time during the Class Period. (Settlement

Agreement, ¶¶ 1.5, 4.) "Class Period" means the period from April 25, 2023, through December 23, 2025. (*Id.* at ¶ 1.12.)

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

3. Aggrieved Employee: "Aggrieved Employee" means all current and former hourly-paid employees of Defendant who worked for Defendant in California at any time during the PAGA Period. (*Id.* at ¶ 1.4.) "PAGA Period" means the period from April 25, 2023, through December 23, 2025. (*Id.* at ¶ 1.31.)

4. Workweeks: "Workweek" means any workweek during which a Class Member worked for Defendant in California at least one day during the Class Period. (*Id.* at ¶ 1.44.)

5. PAGA Pay Periods: "PAGA Pay Period" means any pay period during which an Aggrieved Employee worked for Defendant in California at least one day during the PAGA Period. (*Id.* at ¶ 1.30.)

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

7. Plaintiffs' General Release. Plaintiffs will release any and all claims that Plaintiffs have or may have against the Released Parties related to or arising from Plaintiffs' employment with Defendant ("Plaintiffs' General Release"). (*Id.* at ¶ 5.1.) Plaintiffs acknowledge that Plaintiffs may discover facts and/or law different from, and/or in addition to, the facts and/or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' General Release shall be and remain effective in all respects, notwithstanding the existence of such different and/or additional facts and/or law or Plaintiffs' discovery of them. (*Id.*) Notwithstanding the foregoing, Plaintiffs' General Release excludes any claims or actions to enforce the Settlement, any claims for vested benefits, unemployment benefits, disability benefits, social security benefits or workers' compensation benefits that arose at any time, any claims that are not releasable as a matter of law or public policy, and any claims arising after October 29, 2025. (*Id.*)

8. Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiffs' General Release, Plaintiffs expressly waive and relinquish the provisions, rights, and

benefits, if any, of California Civil Code section 1542, which reads: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party." (*Id.* at ¶ 5.1.1.)

9. Released Class Claims. Plaintiffs will release, on behalf of themselves and all other Participating Class Members, all claims against the Released Parties that were alleged in Plaintiffs' operative Consolidated Class and Representative Action Complaint or that reasonably could have been alleged based solely on the facts asserted therein including but not limited to (1) failure to pay minimum wages, including vacation time pay, (2) failure to pay overtime compensation, (3) failure to provide meal periods, (4) failure to authorize and permit rest breaks, (5) failure to timely pay final wages at termination, (6) failure to provide accurate itemized wages statements, (7) failure to indemnify necessary business expenses, and (8) unfair business practices (9) statutory penalties of any nature; (10) interest; (11) attorneys' fees and costs; (12) and any other claims arising out of or related to the Complaints filed in the Actions during the Class Period. ("Released Class Claims"). (*Id.* at ¶ 5.2.) The Released Class Claims exclude any claims for vested benefits, unemployment benefits, disability benefits, social security benefits or workers' compensation benefits that arose at any time, any claims that are not releasable as a matter of law or public policy, and any claims arising outside the Class Period. (*Id.*)

10. Released PAGA Claims. Plaintiffs will release, on behalf of themselves and the LWDA, all claims against the Released Parties for civil penalties pursuant to the California Private Attorney's General Act of 2004, which were alleged or could have been alleged in Plaintiffs' respective PAGA Notices to the LWDA and in Plaintiffs' operative Consolidated Class and Representative Action Complaint, including Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2699, and 2802 ("Released PAGA Claims"). (*Id.* at ¶ 5.3.) The Released PAGA Claims include only claims for penalties under PAGA that arose during the PAGA Period. (*Id.*)

11. Date Releases Become Effective. The released claims will become effective upon entry of the Court's Final Approval Order and Defendant's full funding of the Gross Settlement Amount and its employer-share of payroll taxes. (*Id.* at ¶ 5.4.)

12. Released Parties. ""Released Parties" means: Defendant, together with its officers, directors, and employees. (*Id.* at ¶ 1.40.)

13. PAGA Penalties: The Parties agree that $69,000.00 is allocated as PAGA Penalties to be paid from the Gross Settlement Amount, with 65% ($44,850.00) allocated to the LWDA PAGA Payment and 35% ($24,150.00) allocated to the Individual PAGA Payments. (*Id.* at ¶ 3.2.5.) Class Counsel have submitted the proposed Settlement Agreement to the LWDA. (Moon Decl., ¶ 13, Exh. 3.)

14. Net Settlement Amount: "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in amounts as approved by the Court: Individual PAGA Payments, LWDA PAGA Payment, Class Representative Enhancement Awards, Class Counsel Fees Payment, Class Counsel Litigation Costs Payment, and Administration Expenses Payment. (*Id.* at ¶ 1.27.) The remainder is to be paid to Participating Class Members through Individual Class Payments. (*Id.*)

15. No Claim Form. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. (*Id.* at ¶ 3.1.)

16. Tax Treatment: Twenty percent (20%) of each Participating Class Member's Individual Class Payment shall be allocated to settlement of wage claims (the "Wage Portion"). (*Id.* at ¶ 3.2.4.1.) The Wage Portion is subject to tax withholding and shall be reported on IRS W-2 Forms by the Administrator. (*Id.*) The remaining eighty percent (80%) of each Participating Class Member's Individual Class Payment shall be allocated to settlement of claims for penalties and interest (the "Non-Wage Portion"). (*Id.*) The Non-Wage Portion is not subject to withholdings and shall be reported on IRS 1099 Forms by the Administrator. (*Id.*) Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. (*Id.*)

17. Deadline for Cashing Settlement Checks. The Administrator shall issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them via First Class United States Postal Service ("USPS") Mail with postage prepaid. (Settlement Agreement, ¶ 4.4.1.) The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided (the "Void Date"). (*Id.*) The Administrator shall send checks for Individual Class Payments to all Participating Class Members and checks for Individual PAGA Payments to all Aggrieved Employees (including Non-Participating Class Members who qualify as Aggrieved Employees), including to those for whom their Class Notice was returned undelivered. (*Id.*) The Administrator may send Participating Class Members a single check combining their Individual Class and PAGA Payments. (*Id.*) Before mailing any checks, the Administrator must update recipients' mailing addresses using the National Change of Address Database. (*Id.*) For any Class Member whose Individual Class Payment and/or Individual PAGA Payment is uncashed after the Void Date, the Administrator shall cancel those checks and transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of each individual who failed to timely cash his or her check, until such time that he or she claims his or her property thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384(b). (*Id.* at ¶ 4.4.3.)

18. Class Representative Enhancement Award: "Class Representative Enhancement Award" means the payment (up to $5,000 each) to the Class Representatives for initiating the Action and providing services in support of the Action. (*Id.* at ¶¶ 1.14, 3.2.1.)

19. Class Counsel Fees Payment and Class Counsel Litigation Costs Payment: The Settlement Agreement provides a fee application of up to one-third of the Gross Settlement Amount or $230,000.00 for Class Counsel's attorneys' fees, plus reimbursement for out-of-pocket litigation costs not to exceed $30,000.00. (*Id.* at ¶ 3.2.2.) At this time, Class Counsel's costs are $20,950.78. (Moon Decl., ¶ 16, Exh. 4.) Class Counsel expect to incur additional costs following preliminary approval and through final approval for filing and service fees. (*Id.* at ¶ 16.) Class Counsel will provide an updated costs ledger to the Court at final approval. (*Id.*)

20. Administration Expenses Payment: The Settlement Agreement provides the Settlement Administrator will be paid an Administration Expenses Payment in an amount estimated not to exceed $8,900.00 for its fees and expenses in administering this Settlement. (*Id.* at ¶ 3.2.3.) The Parties jointly agree to appoint Apex Class Action Administration as the neutral entity to administer this Settlement. (Settlement Agreement, ¶ 1.2.) Prior to selecting Apex Class Action Administration, Class Counsel solicited bids for estimated administration costs from four different, reputable settlement administrators, including Phoenix Class Action Settlement Administration (not-to-exceed bid of $9,000.00), Simpluris, Inc. (bid of $11,989.00), ILYM Group, Inc. (bid of $8,950.00), and Apex (bid of $8,900.00). The Parties jointly selected Apex as the proposed Administrator because it had the lowest bid. As a result of appointing Apex as the Administrator, the Net Settlement Available to Class Members as Individual Class Payments will be greater than if any of the other three administrators is appointed (Moon Decl., ¶ 17, Exh. 5.)

21. Class Notice: The proposed method for providing notice of the proposed Settlement Agreement and distribution thereof is the one most likely to give actual notice to the greatest number, if not all, of the Class Members. The Class Notice sets forth, in plain terms, a statement of case, the terms of the Settlement Agreement, the approximate amount of attorneys' fees, costs, and service awards being sought, and an explanation of how the Settlement allocations are calculated. (*See* Settlement Agreement, Exh. A.) The Class Notice will be distributed in English and Spanish. (*Id.* at ¶ 1.11.) Class Members will be notified of the proposed Settlement by first-class mail of the Class Notice, Request for Exclusion Form, and Objection Form. (*Id.* at ¶ 7.4.2.) Not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. (*Id.* at ¶ 7.4.3.) If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search and shall re-mail the Class Notice to the most current address obtained. (*Id.*) The Administrator has no obligation to make further attempts to locate or send Class Notices to Class Members whose Class Notice is returned as undelivered by the USPS a second time. (*Id.*) "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all

reasonably available sources, methods, and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members. (*Id.* at ¶ 1.10.)

22. Procedure for Disputing Workweeks and/or Pay Periods, Opting Out, or Objecting: The Notice will inform Class Members of their estimated Individual Class Payments and the number of Workweeks during the Class Period and/or the number of Pay Periods during the PAGA Period. (*See id.*, Exh. A.) Class Members may dispute their Workweeks and/or Pay Periods if they believe they were employed more Workweeks in the Class Period and/or more PAGA Pay Periods in the PAGA Period. (*See id.*, ¶ 7.6, Exh. A.) Any Class Member, other than Plaintiffs, may request to be excluded from the Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or before the Response Deadline. (*Id.* at ¶ 7.5.) Any Class Member, other than Plaintiffs, may object to the terms of this Agreement with respect to the Class Claims and may appear at the Final Approval Hearing and object whether or not they have filed a written objection. (*Id.* at ¶ 7.7.) The Class Notice includes a Request for Exclusion Form as well as an Objection Form. (Settlement Agreement, Exh. A.)

III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL

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

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

As discussed below, Class Counsel have provided information exceeding the threshold required to provide this Court with materials and information necessary to determine that the proposed Settlement is fair, adequate, and reasonable.

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

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

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

The proposed Settlement Agreement at issue here was reached following extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses with Brandon McKelvey, Esq., an experienced, professional, neutral, class action mediator. (Moon Decl., ¶ 9.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*)

Prior to mediation, Plaintiffs obtained from Defendant, through informal discovery, voluminous documents and data that were necessary and helpful to evaluate the claims asserted in this action. (*Id.* at ¶ 7.) Defendant produced its employee handbook and a sample size of time records and payroll data which were reviewed, investigated, and analyzed by Class Counsel and Plaintiffs' expert. (*Id.*) Defendant further provided crucial information regarding the total approximate Class size, the estimated number of current and former putative Class Members and Aggrieved Employees, and the estimated number of Workweeks and Pay Periods. (*Id.*)

In preparation for mediation, Class Counsel reviewed and analyzed all the information and documents Defendant had produced. (*Id.* at ¶ 8.) Class Counsel retained a statistics expert to analyze the sample records produced and prepare a damage analysis prior to mediation. (*Id.*) After reviewing the data and documents Defendant produced, which included the time and payroll records of 505 employees (approximately 88% of the Class), Plaintiffs' expert was able to prepare an analysis with a high degree of certainty. (*Id.*) In conjunction with their extensive factual investigation, Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly, Class Counsel were able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. (*Id.*) Thus, Plaintiffs and Class Counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement Agreement. (*Id.*)

Furthermore, Class Counsel also have considerable experience and have demonstrated competence with litigating wage-and-hour class actions. (Moon Decl., ¶¶ 44–57; (Declaration of

Paul K. Haines in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ["Haines Decl."], ¶¶ 2–17.) The experience of Class Counsel was helpful in assessing the reasonableness of the Settlement at issue here, and from this experience Class Counsel concluded that this litigation could not have been settled on better terms than provided under the proposed Settlement Agreement. (Moon Decl., ¶ 58.) Again, this supports the conclusion that the terms of the Settlement Agreement are based on objective evidence that has been considered and weighed against the risks, expenses, and time consumption to both sides of continued litigation of this action.

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

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

Here, the Settlement obviates the significant risk that this Court may deny certification of all or some of Plaintiffs' claims. (Moon Decl., ¶ 36.) Furthermore, even if Plaintiffs were able to pursue their claims on a class-wide basis and obtain certification of all or some of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the Class. (*Id.*) While Plaintiffs are confident in the merits of their claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 34.) Plaintiffs also recognize that proving the amount of wages owed to each Class Member would be an expensive, time-consuming, and uncertain proposition. (*Id.*) Class Counsel are also of the opinion that because the issues here are fairly contested, there is a possibility of the Court not awarding PAGA penalties even if Plaintiffs prevailed on the merits. (Moon Decl., ¶ 35.) Because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of not being able to recover anything. (Moon Decl., ¶ 33.)

The proposed settlement of $690,000.00 therefore represents a substantial recovery when compared to Plaintiffs' reasonably forecasted recovery. (Moon Decl., ¶ 39.) When considering the risks of litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to establish liability, and the probability of appeal, it is clear the Gross Settlement Amount is within the "ballpark" of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*) Indeed, the Net Settlement Amount available for settlement payments is currently estimated to be $342,100.00 for an estimated Class size of 531 individuals.[1] (*Id.* at ¶ 38.) **As a result, it is estimated each Participating Class Member is eligible to receive an average benefit of approximately $644.26 prior to tax withholdings on the wage portion of payments ($342,100.00 / 531)**. (*Id.*) **Furthermore, it is estimated there are 505 Aggrieved Employees who will receive an estimated average of $47.82 from the 35% share of the PAGA Penalties ($24,150.00 / 505).** (*Id.*) The amounts to Participating Class Members and/or Aggrieved Employees will vary based on each Participating Class Member's and/or Aggrieved Employee's duration of employment during the Class Period or PAGA Period, respectively. (*Id.*) Thus, those who worked longer for Defendant will receive a benefit greater than the average estimated amount. (*Id.*) Based on an estimated 38,333 Workweeks, the average Workweek value is $8.92 ($342,100.00 / 38,333 Workweeks). (*Id.*) Based on an estimated 28,618 Pay Periods during the PAGA Period, the average pay period value is $0.84 ($24,150.00 / 28,618 Pay Periods). (*Id.*) The Settlement Administrator will calculate the high and low range of payments to Class Members and Aggrieved Employees following preliminary approval and receipt and processing of the Class Data. (*Id.*) Class Counsel will provide more accurate estimates to the Court in Plaintiffs' motion for final approval. (*Id.*)

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[1] The Net Settlement Amount is $1,300,000.00 less the following: $18,750.00 for Individual PAGA Payments to the Aggrieved Employees, $56,250.00 for the LWDA PAGA Payment, $20,000.00 for the Class Representative Enhancement Payments to Plaintiffs ($10,000.00 each), up to $433,333.33 for the Class Counsel Fees Payment, up to $30,000.00 for the Class Counsel Litigation Expenses Payment, and up to $8,900.00 for the Administration Expenses Payment. (Settlement Agreement, ¶¶ 1.26, 3.2.)

3. Class Counsel Have Extensive Experience in Class Action Litigation

The Settlement negotiations were conducted by highly capable and experienced counsel. (Moon Decl., ¶¶ 44–58; Haines Decl., ¶¶ 2–17.) 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 Plaintiffs and their counsel were prepared to try the claims alleged in the litigation, they support the proposed Settlement as being in the best interest of the Class. (Moon Decl., ¶¶ 9, 25.)

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

The proposed Class Notice, in the form attached to the Settlement Agreement as Exhibit A, should be approved for dissemination to the Class. The Class Notice informs the Class of the terms of the Settlement and of their rights to be excluded from the Settlement. (Settlement Agreement, Exh. A.) If there are Class Members who wish to object to this proposed class action Settlement, they will have the opportunity to submit written objections and be heard at the Final Approval Hearing. (*Id.*) Accordingly, the proposed Class Notice meets all the requirements of Rule 3.769(f) of the California Rules of Court. (Cal. Rules of Court, rule 3.769(f).)

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

Under the Settlement, subject to the Court's approval, Defendant will not oppose a fee application of up to one-third of the Gross Settlement Amount or $230,000.00 for Class Counsel's attorneys' fees, plus reimbursement for out-of-pocket litigation costs not to exceed $30,000.00. (Settlement Agreement, ¶ 3.2.2.) These amounts are disclosed to Class Members in the proposed Class Notice and are reasonable. (Settlement Agreement, Exh. A.)

Pursuant to a Joint Prosecution and Fee-Sharing Agreement between Moon Law Group, PC and Haines Law Group, APC, and as consented to in a signed writing by Plaintiffs (the "JPA"), the firms will split the award for attorneys' fees with 75% to Moon Law Group, PC and 25% to Haines Law Group, APC, regardless of whether the award is based on a common fund or lodestar analysis. (Moon Decl., ¶ 63.) As to costs, the JPA states that the firms will be reimbursed in full to the extent possible for their respective costs actually incurred. (*Id.*)

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

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

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

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

Here, Plaintiffs request attorneys' fees equal to one-third of the Gross Settlement Amount or $230,000.00, which is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. (*Compare* Settlement Agreement, ¶ 3.2.2. *with Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].) Accordingly, Plaintiffs respectfully request that the Court preliminarily approve Class Counsel's ability to request attorneys' fees as negotiated by the Parties and requested herein.

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

Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(k)(1), 2802(d).) Under these sections, Plaintiffs would be permitted to recover their actual attorneys' fees, even if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) This Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Class Counsel for their decision to assume risk by taking on this matter. (Moon Decl., ¶¶ 33–37.)

In fact, prosecution of this action involved significant financial risk for Class Counsel. (Moon Decl., ¶¶ 66-69.) Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once Class Counsel undertook this litigation on behalf of the Class, they committed to pursue it to its conclusion, placing its fiduciary duty to the Class ahead of all other concerns. (Moon Decl., ¶ 67.)

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

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possess considerable expertise in litigating class actions. (Moon Decl., ¶¶ 44-57; Haines Decl., ¶¶ 2–17.) Class Counsel have been involved as lead counsel or co-counsel in numerous class actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate Class Counsel commensurate with their skill, reputation, and experience, Class Counsel's requested fee award is supported here.

Class Counsel's experience in wage-and-hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. (Moon Decl., ¶ 59.) 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 ¶ 58.) 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 ¶¶ 48, 52, 57.) Therefore, the requested fee award is fair, reasonable, and adequate.

D. <u>The Class Representative Enhancement Payments to Plaintiffs 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 Agreement here, subject to the Court's approval, Defendant agrees to pay Class Representative Enhancement Award to Plaintiffs in the amount of $5,000.00 each. (Settlement Agreement, ¶ 3.2.1.) This award is in recognition of Plaintiffs' time and effort, as well as their exposure to substantial risk, in bringing and presenting the action. (Settlement Agreement, ¶ 1.14.) Class Counsel represent that Plaintiffs 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., ¶¶ 40–43.) This amount is fair and reasonable, particularly in light of the substantial benefits Plaintiffs generated for all Class Members. (Moon Decl., ¶¶ 33–39.)

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

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

A. <u>Legal Standard</u>

The proposed Settlement Class is well suited for class certification. All of the claims derive from a core set of alleged violations of California's wage-and-hour laws and regulations. (Moon Decl., ¶ 5.) 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 Maintains 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, the proposed Class that Plaintiffs seek to represent is ascertainable because (1) the Class definition is sufficiently precise, (2) the Class consists of about 531 Class Members, and (3) Class Members can be readily identified by looking at Defendant's records. (Settlement Agreement, ¶¶ 1.5, 1.9, 1.12.)

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

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

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

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

Here, Plaintiffs' claims satisfy all three requirements. The employment practices at issue include as follows: whether Defendant had legally compliant policies and practices to pay employees all minimum and overtime wages owed; whether Defendant had legally compliant policies and practices to provide employees with meal and rest periods; whether Defendant had legally compliant policies to reimburse employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge of their duties; whether final payment of wages excluded unpaid wages, including meal period premiums and rest period premiums; whether all wages were paid to employees at the time of termination of the employment relationship; whether Defendant's failure to pay all final wages was intentional; whether the wage statements were consequently non-compliant; whether Defendant engaged in unfair business practices; and whether Defendant violated civil penalty provisions recoverable under PAGA. (Moon Decl., ¶ 5.) Plaintiffs contend that the factual and legal issues are the same for all identified Class Members, including Plaintiffs, and further, that all Class Members suffered from and seek redress for the same alleged injuries. (*Id*. at ¶ 3.) Considering Class Members would need to prove the same issues of law and fact to prevail, and their legal remedies are identical, it would be preferable to resolve all claims through a settlement agreement than to force each Class Member to litigate their own individual claims. Thus, the Court should grant conditional class certification for settlement purposes because common questions of law and fact predominate over any individual questions within the Class.

3. Plaintiffs' 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 are [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. Plaintiffs are former employees of Defendant; as such, they allege that they were subject to the same policies and practices as other similarly situated employees. (Clayton Decl., ¶¶ 2–8; Ordaz Decl., ¶¶ 2–4.)

4. Plaintiffs and Their 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. Plaintiffs retained counsel with extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Moon Decl., ¶¶ 44–57; Haines Decl., ¶¶ 2–17.) 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, Plaintiffs have no conflicts, and Plaintiffs have, with counsel, litigated this case and diligently reviewed the settlement terms, showing their dedication. (Clayton Decl., ¶¶ 9–24; Ordaz Decl., ¶¶ 5–7.) Plaintiffs' willingness to serve as a representative demonstrates their serious commitment to bringing about the best results possible for the Class. (Clayton Decl., ¶¶ 11–24; Ordaz Decl., ¶¶ 5–7.)

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 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 Agreement, ¶ 7.4.2.) As the Court of Appeals has explained, "[t]he notice given should have a reasonable chance of reaching a substantial percentage of the Class Members . . ." (*Cartt*, 50 Cal.App.3d at p. 974.) In this case, notice of the proposed Settlement will be provided by direct mailing, the best possible form of notice under the circumstances. (Settlement Agreement, ¶ 7.4.2.)

B. The Notice Is Accurate and Informative

The proposed Class Notice should be approved. It will be disseminated in English and Spanish through first-class USPS mail to the last known address for each Class Member. (Settlement Agreement, ¶ 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 ¶ 7.5.) 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.)

The Class Notice also fulfills the requirement of neutrality in class notices. (Newberg, Newberg on Class Actions (3rd ed. 1992) § 8.39.) It summarizes the proceedings to date and the terms and conditions of the Settlement Agreement in an informative and coherent manner. (Settlement Agreement, Exh. A.) It makes clear the Settlement does not constitute an admission of liability by the Defendant, who denies all liability, and it recognizes that this Court has not ruled on the merits of the action. (*Id.*) It also states that the final approval decision has yet to be made and will provide the date, time, and location of the Final Approval Hearing (*Id.*) Accordingly, the Class Notice complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the proposed Settlement and set a Final Approval Hearing no earlier than 130 days from the date of the order granting Preliminary Approval of the Settlement.

Respectfully submitted,

Dated: March 24, 2026 **MOON LAW GROUP, PC**

By: ______________________________

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