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Attorneys for Plaintiff Yolanda Gonzalez

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

YOLANDA GONZALEZ, individually, and on behalf of all others similarly situated,

Plaintiff,

vs.

BROWNING CONTRACTORS, INC., a California corporation; and DOES 1 through 10, inclusive,

Defendants

Case No. 24CECG05339

CLASS AND REPRESENTATIVE ACTION

[Assigned for all purposes to the Hon. Jon M Skiles, Dept. 503]

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

[*Filed with the Declaration of Kane Moon, the Declaration of Plaintiff, the Declaration of Alex Alvarez, the Declaration of David Litman, the Declaration of Lisa Mullins, and [Proposed] Preliminary Approval Order*]

PRELIMINARY APPROVAL HEARING
Date: April 8, 2026
Time: 3:30 PM
Dept. 503

Complaint filed: December 6, 2024
Trial date: Not set

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

PLEASE TAKE NOTICE that on DATE at TIME, in Department 503 of this Court located at the B. F. Sisk Courthouse 1130 O Street, Fresno, California 93721, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769 *et seq* Plaintiff Yolanda Gonzalez ("Plaintiff") will move the Court for an Order granting preliminary approval of the proposed class action settlement between Plaintiff and Defendant Browning Contractors, Inc. Plaintiff further moves the Court for an Order:

1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement" or "Settlement Agreement");
2. Certifying a Class for settlement purposes;
3. Approving the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval and plan for its distribution;
4. Appointing Plaintiff as Class Representative for settlement purposes;
5. Appointing Plaintiff's Counsel, Moon Law Group, PC, as Class Counsel for settlement purposes;
6. Appointing ILYM Group, Inc. as the Administrator; and
7. Setting a final approval hearing no earlier than 120 days from preliminary approval.

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

Respectfully submitted,

Dated: December 17, 2025 MOON LAW GROUP, PC

By:__________________________________
Kane Moon
Allen Feghali
S. Phillip Song
Morgan Simpson

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. <u>INTRODUCTION</u>

Plaintiff Yolanda Gonzalez ("Plaintiff") seeks preliminary approval of a proposed $1,300,000.00 non-reversionary, wage and hour class action settlement with Defendant Browning Contractors, Inc. ("Defendant" and together with Plaintiff, the "Parties"). The Settlement will provide substantial monetary payments to approximately 1,263 Class Members. 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, discovery, and negotiations. The negotiations were at arm's-length and were facilitated by experienced neutral mediator, Brandon McKelvey, Esq., through a mediation session. Accordingly, Plaintiff requests that the Court preliminarily approve the proposed Settlement, certify the proposed settlement class, approve the proposed notice, and set a final approval hearing.

II. <u>SUMMARY OF THE LITIGATION AND SETTLEMENT</u>

A. <u>Plaintiff's Claims</u>

Defendant is a private contractor that specializes in underground utilities in the State of California. (Declaration of Kane Moon in Support of Preliminary Approval ["Moon Decl."] ¶ 4.) Plaintiff worked for Defendant from approximately February 14, 2022 to November 12, 2024 as an executive assistant. (Declaration of Plaintiff Yolanda Gonzalez in Support of Approval of Class Action and PAGA Settlement ["Plaintiff Decl."], ¶ 2.) Plaintiff was classified as non-exempt during the entirety of her employment and was subjected to the same unlawful labor practices as her coworkers. (Moon Decl., ¶ 4.)

Plaintiff's claim for unpaid wages stems from Defendant's failure to pay employees for off-the-clock work and Defendant's failure to incorporate all non-discretionary bonuses into employees' regular rate of pay. (*Id.* at ¶ 5.) Moreover, Plaintiff alleges that Defendant systematically failed to provide meal periods and rest breaks. (*Id.*) In addition to the foregoing claims, Plaintiff brings claims for reimbursement of necessary business expenses, and derivative claims against Defendant for waiting time penalties, wage statement violations, unfair business practices, and civil penalties under the California Private Attorneys General Act, Labor Code sections 2698, *et seq.* ("PAGA"). (*Id.*)

Because of Defendant's alleged violations of various provisions of the Labor Code, Plaintiff filed this class and representative action on December 6, 2024, which, in its amended form, alleges that Defendant systematically: (1) failed to pay minimum wages, (2) failed to pay overtime compensation, (3) failed to provide meal periods, (4) failed to authorize and permit rest breaks, (5) failed to indemnify necessary business expenses; (6) failed to timely pay final wages at termination, (7) failed to provide accurate itemized wage statements, (8) engaged in unfair business practices and (9) violated civil penalty provisions recoverable as PAGA penalties pursuant to Labor Code section 2698 *et seq*. (*Id.* at ¶ 6.)

Pursuant to PAGA, on December 4, 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 ¶ 7, Ex. 2.) On February 10, 2025, Plaintiff timely filed a First Amended Class and Representative Action Complaint to add a ninth cause of action for civil penalties under PAGA (the "Operative Complaint"). (*Id.* at ¶ 7.) Pursuant to Labor Code section 2699(s)(1), Plaintiff subsequently submitted to the LWDA a file-stamped copy of the Operative Complaint containing the Court-assigned case number. (*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 and denies Plaintiff's factual allegations. (*Id.* at ¶ 8.) Defendant contends, among other things, that Plaintiff and the Class Members have been paid proper wages, that it does not permit its employees to work off-the-clock, and that it did not fail to incorporate any bonuses into the regular rate of pay as such bonuses were discretionary. (*Id.*) Moreover, Defendant argues that it met its meal and rest period obligations, and that Plaintiff and the putative class members were provided with the opportunity to take code-compliant meal and rest periods to which they were entitled. (*Id.*)

Furthermore, to the extent that Plaintiff received wage statements that were allegedly inaccurate, Defendant asserts that Plaintiff suffered no actual damage or harm as a result. (*Id.*

at ¶ 9; *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., ¶ 9; *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., ¶ 9.) Finally, Defendant disputes the certifiability of the class, due to the individualized and testimony-intensive nature of the wage claims that could bar class certification or significantly reduce Defendant's overall liability. (*Id.*)

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

Following the filing of the complaint, the Parties met and conferred regarding an agreement to mediate the claims. (*Id.* at ¶ 10.) Thereafter, the Parties agreed to a protocol for exchanging documents and information before the mediation. (*Id.*) Plaintiff obtained from Defendant, through informal but extensive discovery, information sufficient to meaningfully evaluate the claims at issue in the action, including applicable written policies, the employee handbook in effect during the Class Period, Plaintiff's complete personnel file, a sample of time and corresponding payroll records for Class Members, and information regarding the estimated number of current and former Class Members, Workweeks, Aggrieved Employees, PAGA Pay Periods, and average hourly pay. (*Id.*)

In preparation for mediation, Plaintiff's Counsel reviewed and analyzed all the information Defendant provided, including the sample time and pay records and documents regarding Defendant's wage and hour policies. (*Id.* at ¶ 11.) Plaintiff's Counsel retained a statistics expert to analyze the sample records and prepare a damage analysis prior to mediation. (*Id.*) The records analyzed contained 87,217 shifts that Class Members worked (representing approximately 31.8%

of total shifts worked in the Class Period), which allowed Plaintiff's expert to prepare an analysis with a high degree of certainty. (*Id.*) In conjunction with their extensive factual investigation, Plaintiff's Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Accordingly, Plaintiff's Counsel were able to evaluate the probability of class certification, success on the merits, and Defendant's maximum and realistic monetary exposure for all claims. (*Id.*) Thus, Plaintiff's and her 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.*)

After a reasonable inquiry and review of the LWDA's PAGA Case Search website, this Court's case search website, and other information reasonably available online, Plaintiff's Counsel aver that they are not aware of any individual, representative, or class action in this jurisdiction, or any other court or jurisdiction, asserting claims similar to those asserted in this action on behalf of a class or group of individuals who would also be members of the putative Class, as defined in this matter, or would otherwise be extinguished or adversely affected by approval of this Settlement. (*Id.* at ¶ 12.)

C. Settlement Negotiations

On September 9, 2025, the Parties participated in a full-day mediation with Brandon McKelvey, Esq., a professional and neutral class and PAGA action mediator. (*Id.* at ¶ 13.) The settlement negotiations were at arm's length and, although conducted in a professional manner, 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 discussion regarding the merits and certifiability of Plaintiff's claims and Defendant's defenses, a settlement was reached by the parties, the material terms of which are encompassed within the Class Action and PAGA Settlement Agreement and Class Notice (*Id.* at ¶ 13, Ex. 1 ["Settlement" or "Settlement Agreement"].)

Plaintiff's Counsel have conducted a thorough investigation into the facts of this case. (*Id.* at ¶ 27.) Based on the foregoing discovery and their own independent investigation and evaluation, Plaintiff's Counsel are of the opinion that the Settlement is fair, reasonable, and adequate. (*Id.*) Furthermore, in light of all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, the defenses that could be asserted by Defendant both to certification and on the merits, the settlement is in the best interests of the Class Members. (*Id.*) **Indeed, $1,300,000.00 settlement figure represents approximately 71.36% of the realistic recovery estimated to be $1,821,635.67.** (Moon Decl., ¶ 35.)

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

The Settlement's key terms include:

1. <u>Gross Settlement Amount and Funding</u>: The Gross Settlement Amount is $1,300,000.00, subject to potential increase under an escalator clause, and is non-reversionary. (Settlement, ¶¶ 3.1, 8) Defendant will separately pay its employer-side payroll taxes owed on the Wage Portion of Individual Class Payments. (*Id.*) Defendant shall fully fund the Gross Settlement Amount twenty-one (21) days after the Effective Date of the Settlement. (*Id.* at ¶ 4.3.) Disbursement will occur within 14 days of completed funding. (*Id.* at ¶ 4.4.) Class Members will not need to submit any claim form as a condition of receiving individual settlement payments. (*Id.* at ¶ 3.1.) For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date (180 days after the date of mailing), the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (*Id.* at ¶¶ 4.4.1, 4.4.3.)

2. <u>Escalator Clause</u>: Should the number of Class Period Workweeks exceed the estimated count of 58,014 by more than 10%, then Defendant has the option to either: (1) increase the Gross Settlement Amount by the percentage that the actual number of Workweeks exceeds 63,815; or (2) cut-off the Class Period to end on the date when the total Workweeks reach 63,815 (e.g. 10 percent greater than 58,014). (*Id.* at ¶ 8.)

3. <u>Class or Class Members</u>: The proposed Class for purposes of the Settlement contains approximately 1,263 members who worked an estimated 58,014 Workweeks, defined as: all

individuals who worked for Defendant as hourly and/or non-exempt employees in California at any time during the Class Period. (Settlement, ¶¶ 1.5, 8; Moon Decl., ¶ 28.)

4. Class Period: The "Class Period" is the period between December 6, 2020 to November 8, 2025. (Settlement, ¶ 1.12.)

5. Aggrieved Employees: There are approximately 715 Aggrieved Employees who worked an estimated 21,783 PAGA Pay Periods, defined as: all persons who were worked for Defendant as an hourly, non-exempt employee at any time during the PAGA Period. (*Id.* at ¶ 1.4.; Moon Decl., ¶ 28.)

6. PAGA Period: The "PAGA Period" is the period between December 4, 2023 to November 8. 2025. (Settlement, ¶ 1.31.)

7. Workweek: "Workweek" means any week during which a Class Member worked for Defendant for at least one day, during the Class Period. (*Id.* at ¶ 1.45.)

8. PAGA Pay Period: "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period. (*Id.* at ¶ 1.30.)

9. PAGA Penalties: "PAGA Penalties" means means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 35% to the Aggrieved Employees ($35,000.00) and the 65% to LWDA ($65,000.00) in settlement of PAGA claims. (*Id.* at ¶ 1.33.) Plaintiff's Counsel submitted the proposed settlement to the LWDA. (Moon Decl., ¶ 14, Ex. 3.)

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

Payments is estimated to be no less than **$721,316.67**[1] for an estimated Class size of **1,263 individuals**. (Moon Decl., ¶ 19.)

11. Individual Class Payment: "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked by each Participating Class Member during the Class Period. (Settlement, ¶ 1.23.) An Individual Class Payment will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (*Id.* at ¶ 3.2.4.) It is estimated each Participating Class Member is eligible to receive an average benefit of approximately **$571.11** ($721,316.67 / 1,263) prior to tax withholdings on the wage portion of payments. (Moon Decl., ¶ 19.) Considering Class Members' estimated average hourly rate is $26.71, the average benefit is approximately **21 hours of work** ($571.11 / $26.71). (*Id.*) Based on an estimated 58,014 Workweeks, **the estimated Workweek value is $12.43** ($721,316.67 / 58,014). (*Id.*) The actual amounts to Participating Class Members will vary based on each individual's duration of work during the Class Period; thus, those who worked longer for Defendant during the relevant period will receive a benefit greater than the average estimated amount.[2] (*Id.*)

12. Individual PAGA Payment: "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 35% of the PAGA Penalties calculated according to the number of pay periods worked by each Aggrieved Employee during the PAGA Period. (Settlement, ¶ 1.24.) The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 35% share of PAGA Penalties (i.e., $35,000.00) by the total number of

[1] The Net Settlement Amount is estimated to be at least $1,300,000 less the following: $7,500 for the Class Representative Service Payment, $11,850 for the Administration Expenses Payment, $100,000 for the PAGA Penalties payments to the LWDA and to Aggrieved Employees, $433,333.33 for Class Counsel's attorneys' fees, and up to $26,000.00 for Class Counsel's litigation costs. (Moon Decl., ¶ 19, n.1; Settlement Agreement, ¶¶ 1.28, 3.2.)

[2] The high and low range of payments to Class Members and Aggrieved Employees will be calculated by the Administrator following preliminary approval and receipt and processing of the Class Data and will be provided to the Court in Plaintiff's motion for final approval. (Moon Decl., ¶ 19, n.2.)

PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. (*Id.* at ¶ 3.2.5.1.) Based on an estimated 715 Aggrieved Employees, Aggrieved Employees will each receive an **estimated average of $48.95** from the total $35,000 Individual PAGA Payments ($35,000 / 715). (Moon Decl., ¶ 20.) Based on the total 21,783 PAGA Pay Periods, **the estimated Pay Period value is $1.61** ($35,000 / 21,783). (*Id.*) The actual amounts to Aggrieved Employees will vary based on each individual's duration of work during the PAGA Period; thus, those who worked longer for Defendant during the relevant period will receive a benefit greater than the average estimated amount. (*Id.*)

13. Tax Allocation of Settlement Payments: Individual Class Payments will be allocated as 10% as wages and 90% as penalties and interest for tax purposes. (Settlement, ¶ 3.2.4.1.) Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (*Id.* at ¶ 3.2.5.1.)

14. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment: "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment" mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action. (*Id.* at ¶ 1.7.) The Settlement Agreement provides for a Class Counsel Fees Payment of not more than 1/3 of the Gross Settlement Amount, which is currently estimated to be $433,333.33 and a Class Counsel Litigation Expenses Payment of not more than $26,000.00. (*Id.* at ¶ 3.2.2.) If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. (*Id.*) At this time, Plaintiff's Counsel has incurred $23,474.83 in costs. (Moon Decl., ¶ 22, Ex. 4.) Plaintiff's Counsel expect to incur additional expenses following preliminary approval, including for filing and service fees of Plaintiff's motion for final approval. (*Id.* at ¶ 22.)

15. Class Representative Service Payment: "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action and providing services in support of the Action. (*Id.* at ¶ 1.14.) The Settlement provides a Class Representative Service Payment to

Plaintiff of not more than $7,500.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as Participating Class Members). (*Id.* at ¶ 3.2.1.) If the Court approves Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. (*Id.* at ¶ 3.2.1.)

16. Administrator and Administration Expenses: The Parties jointly appoint ILYM Group, Inc. as the neutral entity to administer this Settlement. (*Id.* at ¶ 1.2.) ILYM Group, Inc. submitted a flat-fee bid of $11,850.00 (Moon Decl., ¶ 24, Ex. 5.) The Settlement Agreement provides the Administrator will be paid an Administration Expenses Payment from the Gross Settlement Amount, in an amount up to $11,850.00, for its fees and expenses in administering this Settlement. (Settlement, ¶ 3.2.3.) To the extent the Administration Expenses are less or the Court approves payment less than $11.850.00, the Administrator will retain the remainder in the Net Settlement Amount. (*Id.*)

17. Notice of Proposed Settlement: The Class Notice will be mailed in English and Spanish via first-class U.S. mail to the current address of each Class Member. (*Id.* at ¶¶ 1.11, 7.4.2.) 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 Penalties, and service award being sought, an explanation of how the individual payments are calculated, the Final Approval Hearing information, the procedure for disputing the number of Workweeks and/or Pay Periods credited to each Class Members, and how Class Members may, should they choose, opt-out or otherwise object to the Settlement. (*Id.* at ¶¶ 7.4–7.7, Ex. A.) ILYM Group, Inc., the proposed Administrator, will undertake its best efforts to ensure that the notice is provided to the current addresses of class members, including conducting a cross-check against the U.S. Postal Services' National Change of Address List. (*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, as defined in the Settlement at paragraph 1.10, and re-mail the Class Notice to the most current address obtained. (*Id.* at ¶ 7.4.3.)

18. Response Deadline: "Response Deadline" means sixty (60) days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. (*Id.* at ¶ 1.43.) Class Members to whom Class Notices are resent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) calendar days beyond the Response Deadline has expired. (*Id.*)

19. Released Class Claims: The "Released Class Claims" are limited to all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and ascertained in the course of the Action for the Class Period. (*Id.* at ¶ 5.2.) The release excludes any claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (*Id.*)

20. Released PAGA Claims: The "Released PAGA Claims" are limited to all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, the PAGA Notices, and ascertained in the course of the Action for the PAGA Period. (*Id.* at ¶ 5.3.)

21. Plaintiff's Release: Under the Settlement, Plaintiff has agreed to a general release of any and all claims against the Released Parties, including a release of rights pursuant to California Civil Code section 1542. (*Id.* at ¶ 5.1.)

22. Effective Date of Releases: The release of all claims will be effective only upon entry of the Court's final approval order. (*Id.* at ¶ 5.)

23. Released Parties The "Released Parties" are Defendant, and each of its past, present and future subsidiaries, parents, affiliated and related companies, divisions, successors, predecessors or assigns; and their past, present, and future officers, directors, shareholders, partners, agents, insurers, employee, advisors, accountants, representatives, trustees, heirs, executors, administrators, predecessors, successors or assigns. (*Id.* at ¶ 1.41.)

III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL

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

In evaluating a settlement, the trial court considers 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 amount offered in settlement; 5) the extent of discovery completed and the stage of the proceedings; 6) the experience and views of counsel; 7) the presence of a governmental participant; and 8) the reaction of the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc*., (2008) 168 Cal.App.4th 116, 128.) 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 Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not require "an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims", but instead, only an "understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."].)

As discussed, Plaintiff's 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.

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

The Settlement was reached following extensive negotiations following an in-person mediation session with experienced employment mediator Brandon McKelvey, Esq. (Moon Decl. ¶ 13.) 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 or its position through trial and appeal if a settlement had not been reached. (*Id.*)

Prior to reaching this Settlement, Plaintiff's Counsel conducted informal discovery and investigation into the claims alleged by Plaintiff, including, among other things, reviewing the sample time and pay records and documents regarding Defendant's wage and hour policies and preparing a damage analysis. (Moon Decl., ¶¶ 10-13, 27-28.) Significantly, Plaintiff's Counsel's calculations are based on the analysis of a statistics expert retained by Plaintiff's Counsel to analyze the records produced by Defendant. (*Id*. at ¶¶ 11, 28.) In conjunction with their extensive factual investigation, Plaintiff's Counsel investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id*. at ¶ 11.) Thus, Plaintiff's and her 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*. at ¶ 11.)

Plaintiff's Counsel also have considerable experience and has demonstrated competence with litigating wage and hour class actions. (Moon Decl., ¶¶ 45-65.) Again, this supports that the terms of the Settlement are based on objective evidence that has been considered and weighed against the risks, expenses, and time consumption to both sides of continued litigation of this action.

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

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

The settlement obviates the significant risk that this Court may deny certification of all or some of Plaintiff's claims. (Moon Decl., ¶ 38.) While Plaintiff is confident in the merits of her claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 36.) Plaintiff also recognizes that proving the amount of wages due to each class member would be an expensive, time-consuming, and uncertain proposition. (*Id.*) Furthermore, even if Plaintiff was able to pursue her claims on a class-wide basis and thereafter obtained certification of all or some of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the Class Members. (*Id.* at ¶ 38.)

The proposed settlement of $1,300,000.00 therefore represents a substantial recovery when compared to Plaintiff's reasonably forecasted recovery. (*Id.* at ¶ 40.) When considering the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement amount of $1,300,000.00 is within the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id.*)

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

The settlement negotiations were conducted by highly capable and experienced counsel. 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.* at ¶¶ 45-65.) Although Plaintiff and her counsel were prepared to litigate the claims alleged in the litigation, they support the proposed Settlement as being in the best interest of the class. (*Id.* at ¶ 27.)

B. The Proposed Class Notice of Settlement Should Be Approved

The proposed Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval ("Notice"), in the form attached to the Settlement as Exhibit A, should be approved for dissemination to the class. The Notice informs the class of the terms of the Settlement and of their rights to be excluded from the Settlement. (Settlement, Ex. A.) Additionally, if there are Class Members who wish to object to this proposed Settlement, they will have the opportunity to file their objections and be heard at the Final Approval Hearing. (*Id.*) Accordingly, the proposed Notice meets all the requirements of Rule 3.769(f) of the California Rules of Court.

C. The Proposed Attorneys' Fees and Costs Are Reasonable

Subject to the Court's approval, the Settlement provides a fee application of 1/3 of the Gross Settlement Amount for Class Counsel's attorneys' fees, plus reimbursement for out-of-pocket litigation costs not to exceed $26,000.00. (Settlement, ¶ 3.2.2.) These amounts are disclosed to Class Members in the proposed Notice and are reasonable. (*Id.* at Ex. A.).

1. Counsel 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 seek an award of attorneys' fees on the percentage of recovery/common fund theory. (Moon Decl., ¶ 68.) 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 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.

a) *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's fee request of 1/3 of the Gross Settlement Amount is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. (*Compare* Settlement, ¶ 3.2.2, *with Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].) Accordingly, Plaintiff requests the Court preliminarily approve the attorneys' fees as negotiated by the Parties.

b) *This Matter Involves A "Fee-Shifting" Provision of the Labor Code*

Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable fees and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(k)(1), 2802(d).) Under these sections, Plaintiff would be permitted to recover her actual attorneys' fees, even if those fees were larger than the total class recovery at the conclusion of this case. (*Id.*) This Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Plaintiff's Counsel for their decision to assume risk by taking on this matter on a contingent basis with no guarantee of recovery. (Moon Decl., ¶ 72.) In fact, prosecution of this action involved significant financial risk for Plaintiff's Counsel. (*Id.* at ¶ 73.) Once Plaintiff's Counsel undertook this litigation, they committed to pursue it to its conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.*)

c) *Counsel's Experience, Reputation, and Ability Support the Fees Request*

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. (Moon Decl., ¶¶ 45-65.) Plaintiff's Counsel have been involved as lead counsel or co-counsel in several class actions that resulted in millions in recovery. (*Id.* at ¶¶ 49, 54, 59, 63.) Because it is reasonable to compensate class counsel commensurate with their skill, reputation and experience, Plaintiff's Counsel's requested fee award is supported here.

Plaintiff's Counsel's experience in wage and hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. (*Id.* at ¶ 66.) 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 ¶ 64.) 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 e.g., id*. at ¶¶ 49, 54, 59, 63.) Therefore, the requested fee award is reasonable and fair.

D. While the Lodestar Method Is Not Necessary in Common Fund Cases, Courts May Perform a Cross-Check to Award Fees

"Despite its primacy, the lodestar method is not necessarily utilized in common fund cases." (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 27.) Courts have criticized the lodestar method as a drain on the judicial system and a disincentive on attorneys to take on high-risk, challenging cases. (*Id.* at p. 29.) Indeed, the lodestar approach: "(1) 'increases the workload of an already overtaxed judicial system,' (2) is 'insufficiently objective and produce[s] results that are far from homogenous,' (3) 'creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law,' (4) 'is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the plaintiffs or of an overall dollar amount,' (5) 'encourages lawyers to expend excessive hours, and . . . engage in duplicative and unjustified work,' (6) 'creates a disincentive for the early settlement of cases,' (7) deprives trial courts of 'flexibility to reward or deter lawyers so that desirable objectives, such as early settlement, will be fostered,' (8) 'works to the particular disadvantage of the public interest bar,' and (9) results in 'confusion and lack of predictability.'" (*Id.* [quoting Third Circuit Task Force, *Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 246–49].)

Although California Courts support the common fund doctrine, the lodestar method can be used to cross-check fee awards. "It may be appropriate in some cases, assuming the class benefit can be monetized with a reasonable degree of certainty, to 'cross-check' or adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 [quoting *Lealao*, *supra*, 82 Cal.App.4th at pp. 49–50].) Applying the lodestar method is a two-step process. The first step is to multiply the number of hours reasonably expended by a reasonable hourly rate, and the second step is to apply a multiplier to the lodestar to account for various factors. (*Id.* at p. 556.) "The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." (*Id.*) "Under certain circumstances, a lodestar calculation may be enhanced on the basis of a percentage-of-the-benefit analysis." (*Id.* at pp. 556–57.) Further, "California case law permits fee awards in the absence of detailed time sheets." (*Wershba*, *supra*, 91 Cal.App.4th at p. 255.)

Here, Class Counsel's current lodestar is *no less than* **$109,515.00**, which is based on **138.6 hours** of attorney time at their customary hourly rates. (Moon Decl., ¶ 69.) Additionally, Class Counsel estimate they will devote a minimum of 50, although likely more, additional hours to this litigation that are not reflected in the foregoing lodestar, including time to obtain and monitor final approval of the Settlement and requested awards, oversee the settlement administration process and distribution of funds, respond to Class Member inquiries, and communicate with Plaintiff. (*Id.* at ¶ 70.) Plaintiff's Counsel also bear the risk of taking whatever actions are necessary if Defendant fails to pay. (*Id.*) In comparison to the requested amount of **$433,333.33** for attorneys' fees, the lodestar represents a **multiplier of roughly 3.96**. (*Id.* at ¶ 71(c).) Application of a positive multiplier is reasonable and appropriate based on the contingent risk that Plaintiff's Counsel incurred, the difficulty of the questions involved, the length of the litigation, the substantial benefit conferred on the Class and State of California as a result of the Settlement, and the skill displayed by Plaintiff's Counsel. (*Id.* at ¶ 71.) Accordingly, the request for attorneys' fees satisfies a lodestar analysis.

E. The Request for Reimbursement of Litigation Costs Is Reasonable

Successful counsel are entitled to recover the out-of-pocket litigation expenses reasonably incurred in investigating, prosecuting, and settling the case. (*Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 974.) Here, the Settlement provides for reimbursement of costs of up to $26,000.00. (Settlement, ¶ 3.2.2.) Plaintiff's Counsel has incurred $23,474.83 in unreimbursed out-of-pocket costs litigating this action. (Moon Decl., ¶¶ 22, 75, Ex. 4.) These costs were reasonably and actually incurred in prosecuting this action on behalf of the Class. (*Id.* at ¶ 65.) Moreover, these expenses, including anticipated expenses following preliminary approval, are well below the maximum allocation under the Settlement ($26,000.00), and thus, the remainder will revert to the Net Settlement to be paid to Participating Class Members. (Settlement, ¶ 3.2.2.) Therefore, Plaintiff's Counsel should be reimbursed in full for the litigation costs incurred. (Moon Decl., ¶ 75.)

F. The Service Award To Plaintiff Is Reasonable

Named plaintiffs in class action lawsuits "are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz, supra,* 86 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, "it 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…."). 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.)

The Settlement provides a Class Representative Service Payment to Plaintiff in the amount of $7,500, subject to Court approval. (Settlement, ¶ 3.2.1.) Plaintiff's Counsel represent that Plaintiff devoted a great deal of time and work assisting counsel in the case and communicated with counsel very frequently for litigation and to prepare for mediation. (Moon Decl., ¶¶ 41-44.) Plaintiff also estimates that Plaintiff spent approximately 25 to 30 hours assisting with this litigation. (Plaintiff Decl., ¶ 20.) The Class Representative Service Payment is reasonable particularly in light of the substantial benefits Plaintiff generated for all class members. (*Id*.)

When compared with the amounts awarded in typical class action cases, the amount requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive award given to class action plaintiffs from **1993 to 2002** found that the "average award per class representative was $15,992 and the median award per class representative was $4,357." (Theodore Eisenberg & Jeffrey P. Miller, "Incentive Awards to Class Action Plaintiffs: An Empirical Study", 53 UCLA L. Rev. 1303, 1308 (2006).) That 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. 1334.) 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 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. For the reasons set forth more fully below, for purpose of settlement the Class satisfies the prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides: "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." (Code Civ. Proc., § 382.) 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 [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 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Richmond v. Dart Indus., Inc*. (1981) 29 Cal. 3d 462, 470.)

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

B. <u>Plaintiff Maintains that the Criteria for Class Certification Are Satisfied</u>

1. The Class Is Ascertainable and Numerous

When determining whether a class is ascertainable, California courts focus on the following three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying class members. *See Miller v. Woods*, 148 Cal. App. 3d 862, 873 (1983). Here, the proposed class that Plaintiff seeks to represent is ascertainable because (1) the class definition is sufficiently precise, (2) consists of 1,263 class members, and (3) class members can be readily identified by looking at Defendant's records. (Moon Decl., ¶ 19.; Settlement, ¶¶ 1.5, 1.8, 1.12.)

Plaintiff maintains that there is an easily ascertainable class, defined by objective and precise criteria. Because class members are identified using specific criteria in the regular business records of Defendant, i.e., hourly, non-exempt employees during the Class Period, the class is ascertainable. (*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 35 member class.]) Therefore, Plaintiff contends that numerosity is plainly satisfied.

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

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

In this case, the employment practices at issue are: whether Defendant had legally compliant policies and practices to pay employees all wages owed; whether Defendant had legally compliant policies and practices to provide employees with meal periods; whether Defendant had legally compliant policies and practices authorizing and permitting its employees to take rest periods; whether final payment of wages was untimely and excluded unpaid wages, including meal period premium wages, and rest period premium wages; whether all wages were paid to employees at the time of termination of the employment relationship; and whether the wage statements were consequently non-compliant. Plaintiff contends that the factual and legal issues are the same for all identified class members, including Plaintiff. (Plaintiff Decl., ¶ 7.) Further, all Class Members suffered from and seek redress for the same alleged injuries. (*Id.*) Considering that Class Members would need to prove the same issues of law and fact to prevail and their legal remedies are identical, it would be preferable to resolve all claims through a settlement agreement than to force each Class Member to litigate their own individual claims. Thus, the Court should grant conditional class certification for settlement because common questions of law and fact predominate over any individual questions within the class.

3. Plaintiff's Claims Are Typical of the Claims of the Class

The typicality requirement does not focus on the individual characteristics or circumstances of the representative plaintiffs compared to those of the remainder of the class, but rather upon the typicality of the proposed representative's claims as they relate to the defendant's conduct and activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["[t]he only requirements are that common questions of law and fact predominate and that the class representative be similarly situated" vis-à-vis the class.].) A representative plaintiff's claims are typical of the class if they arise from the same event, practice or course of conduct, and if the claims rest on the same legal theories. (*Id.*) That is precisely the case here. Plaintiff is a former employee of Defendant; as such, she alleges that she was subject to the same policies and practices as other similarly situated employees. (Plaintiff Decl., ¶¶ 6-7.)

4. Plaintiff and Her Counsel Meet the Adequacy Requirement

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

Here, all requirements are met. Plaintiff retained counsel with extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Moon Decl., ¶¶ 45-65.) With their combined experience, Plaintiff's Counsel unquestionably are "qualified, experienced and generally able to conduct the proposed litigation." (*Miller*, *supra*, 148 Cal.App.3d at 875.) In addition, Plaintiff has no conflicts, and Plaintiff has, with counsel, litigated this case and diligently reviewed the settlement terms, showing her dedication. (Plaintiff Decl., ¶¶ 9-11.) Plaintiff's willingness to serve as the Class Representative demonstrates her serious commitment to bringing about the best results possible for the class. (Plaintiff Decl., ¶¶ 9-11; *McGhee*, *supra,* 60 Cal.App.3d at p. 451.)

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

Finally, in making its class certification decision, the Court must determine that a class action would be superior to alternative means for the fair and efficient adjudication of the litigation. By consolidating many potential individual actions into a single proceeding, this Court's use of the class action device enables it to manage this litigation in a manner that serves the economics of time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly situated employees with small but nevertheless meritorious claims for damages would, as a practical matter, have no means of redress because of the time, effort and expense required to prosecute individual actions. (*Gentry v. Super. Ct*. (2007) 42 Cal. 4th 443, 457-62; *Leyva v. Medline Ind.* (9th Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the superiority concerns are essentially non-existent.

V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND

A. The Proposed Notice Plan Satisfies Due Process

Notice requirements are set forth in the California Rules of Court. Cal. Rules of Court, Rule 3.766 (e) and (f). California law vests the Court with broad discretion in fashioning an appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no statutory or due process requirement that all class members receive actual notice, but in this matter, the class members will receive direct mailed notice. (Settlement, ¶ 7.4.2.) As the Court of Appeals has explained, "[t]he notice given should have a reasonable chance of reaching a substantial percentage of the Class Members . . . ." (*Id.* at p. 974.) In this case, notice of the proposed settlement will be provided by direct mailing, the best possible form of notice under the circumstances.

B. The Notice Is Accurate and Informative

The proposed Notice should be approved. It will be disseminated through direct U.S. first-class mail to the last known address for each Class Member and will be provided in both English and Spanish. (Settlement, ¶¶ 1.11, 7.4.2.) It informs the Class Members of the terms of the settlement and their right to be excluded from the Settlement. (*Id.* at Ex. A.) And if there are Class

Members who wish to object to this proposed class action settlement, they will have the opportunity to file their objections and be heard at the Final Approval Hearing. (*Id.*)

The Notice also fulfills the requirement of neutrality in class notices. (Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 8.39.) It summarizes the proceedings to date and the terms and conditions of the settlement agreement, in an informative and coherent manner. (Settlement, Ex. A.) It makes clear that the settlement agreement 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 settlement approval decision has yet to be made. (*Id.*) Accordingly, the Notice complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed settlement and set a Final Approval Hearing no earlier than 120 days from preliminary approval.

Respectfully submitted,

Dated: December 17, 2025 MOON LAW GROUP, PC

By: ______________________________

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