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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

COREY JONES, EDDIE FAIRLEY,
DEMETREIA GRAY, individually, and on
behalf of other members of the general
public similarly situated and all "aggrieved
employees" pursuant to Labor Code § 2698
et seq.,

Plaintiffs,

v.

DAA DRAEXLMAIER AUTOMOTIVE
OF AMERICA LLC, a South Carolina
limited liability corporation; DAN
DRAEXLMAIER AUTOMOTIVE OF
NORTH AMERICA LLC, a South Carolina
limited liability corporation; and DOES 1
through 10, inclusive,

Defendants.

CASE NO: HG20062125

Assigned to the Hon. Evelio Grillo, Dept. 21

CLASS ACTION

**NOTICE OF MOTION AND UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Date: October 5, 2022

Time: 10:00 a.m.

Dept.: 21

Complaint Filed: May 11, 2020

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1 **PLEASE TAKE NOTICE THAT** on October 5, 2022 at 10:00 a.m., or as soon thereafter
2 as the matter may be heard, in Department 21 of the above-entitled Court, located at 1221 Oak
3 Street, Oakland, CA 94612, Plaintiff Corey Jones will and hereby does move unopposed for an
4 Order (1) granting preliminarily approval of the Settlement Agreement of Class Action and Private
5 Attorneys General Act Claims, (2) provisionally certifying the class for settlement purposes, (3)
6 provisionally approving the appointment of Plaintiffs Corey Jones, Demetreia Gray, and Eddie
7 Fairley as Class Representatives, (4) provisionally approving the appointment of Daniel F. Gaines
8 and Alex P. Katofsky, of Gaines & Gaines, APLC; Edwin Aiwazian, Arby Aiwazian, and Joanna
9 Ghosh, of Lawyers *for* Justice, PC; and Matthew Matern, Launa Adolph, and Kayvon Sabourian,
10 of Matern Law Group, PC as Class Counsel, (5) approving the appointment of ILYM Group, Inc.
11 as settlement administrator, (6) approving the Notice of Proposed Settlement of Class Action
12 (“Class Notice”) and the plan for providing notice to the Class Members, and (8) setting a final
13 fairness and approval hearing.

14 This unopposed Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California
15 Rules of Court, which provides for court approval of the settlement of a class action and allows the
16 Court to preliminarily certify a class for settlement purposes only and permit the Court to extend
17 the page limit for memoranda.

18 The basis for this unopposed Motion is that the proposed settlement is fair, adequate, and
19 reasonable and in the best interests of the settlement class as a whole, and that the procedures
20 proposed by the Parties are adequate to ensure the opportunity of class members to participate in,
21 opt out of, or object to the settlement.

22 This Motion will be based on the Memorandum of Points and Authorities set forth herein,
23 the Settlement Agreement of Class Action and Private Attorneys General Act Claims, the
24 Declarations of Daniel F. Gaines, Edwin Aiwazian, and Matthew Matern, such evidence or oral
25 argument as may be presented at the hearing, and on the complete record and file herein.

1 DATED: September 9, 2022

Respectfully submitted,

2 GAINES & GAINES,
3 A Professional Law Corporation

4
5 By: Alex P. Katofsky
6 DANIEL F. GAINES
7 ALEX P. KATOFISKY
8 Attorneys for Plaintiff Corey Jones
9 and Proposed Class Counsel
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 IV. INTRODUCTION

3 The Parties have reached a resolution of this class action and hereby submit their Settlement
4 Agreement of Class Action and Private Attorneys General Act Claims (the "Settlement,"
5 "Settlement Agreement," "Stipulation," or "Stip.") for the Court's approval. See **Exhibit B** to the
6 Declaration of Daniel F. Gaines ("Gaines Decl."). The Settlement is made and entered into by and
7 between Plaintiffs Corey Jones, Demetreia Gray, and Eddie Fairley (collectively "Plaintiffs") as
8 individuals and on behalf of all others similarly situated and on behalf of the State of California
9 and other alleged aggrieved employees pursuant to the Private Attorneys General Act, on the one
10 hand, and Defendants DAA Draexlmaier Automotive of America LLC and DAN Draexlmaier
11 Automotive North America LLC ("Defendants") (together with Plaintiffs, the "Parties").

12 The Settlement occurred as a result of extensive arm's-length negotiations by experienced
13 counsel in an adversarial position and with the assistance of a respected mediator experienced in
14 mediating complex labor and employment matters. Most importantly, the Settlement, if approved,
15 will result in significant financial benefit to the participating claimants, on terms that are by any
16 measure fair, reasonable and adequate. See *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794,
17 1801-02.

18 For the foregoing reasons, the Parties respectfully request that the Court: (a) grant
19 preliminary approval of the Settlement Agreement, (b) conditionally certify the proposed
20 Settlement Class, (c) provisionally approve the appointment of Plaintiffs Corey Jones, Demetreia
21 Gray, and Eddie Fairley as Class Representatives, (d) provisionally approve the appointment of
22 Daniel F. Gaines and Alex P. Katofsky, of Gaines & Gaines, APLC; Edwin Aiwazian, Arby
23 Aiwazian, and Joanna Ghosh, of Lawyers for Justice, PC; and Matthew Matern, Launa Adolph,
24 and Kayvon Sabourian, of Matern Law Group, PC as Class Counsel, (e) approve appointment of
25 the proposed settlement administrator, (g) authorize the mailing of the proposed class action notice
26 packet; and (h) schedule a final fairness and approval hearing.

27 \\\

28 \\\

1 **V. BACKGROUND AND PROCEDURAL HISTORY**

2 On February 27, 2020, Plaintiff Corey Jones sent letters, by online submission to the LWDA
3 and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of
4 the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* On May 11,
5 2020, Plaintiff Corey Jones filed in the Superior Court of California, County of Alameda, a
6 representative action Complaint for Penalties against Defendant DAA Draexlmaier Automotive of
7 America, LLC, pursuant to California Labor Code § 2699(f) and for Violations of Labor Code §§
8 201-202, 226(a), 226.7, 246, 510, 512 and 1194, and pursuant to Labor Code § 2699(a) for
9 violations of Labor Code §226.3. (Alameda County case number HG20062125) (“*Jones Action*”).
10 Gaines Decl. at ¶ 6; Stip. at ¶ II(A)(1).

11 On May 28, 2020, Plaintiff Demetreia Gray sent a letter, by online submission to the LWDA
12 and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of
13 the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* On August
14 24, 2020, Plaintiff Demetreia Gray filed in the Superior Court of California, County of Alameda, a
15 class action and PAGA action Complaint against Defendant DAA Draexlmaier Automotive of
16 America, LLC, alleging causes of action for: (1) failure to provide meal periods (Labor Code §§
17 226.7 and 512; IWC Wage Order No. 1-2001 § 11); (2) failure to authorize and permit rest periods
18 (Labor Code §§ 226.7; IWC Wage Order No. 1-2001 § 12); (3) failure to pay minimum wages
19 (Labor Code §§ 1194, 1197; IWC Wage Order No. 1-2001 § 4); (4) failure to pay overtime wages
20 (Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 1-2001 § 3); (5) failure to pay all wages
21 due to discharged and quitting employees (Labor Code §§ 201-203); (6) failure to maintain required
22 records (Labor Code §§ 226, 1174; IWC Wage Order No. 1-2001 § 7); (7) failure to furnish accurate
23 itemized wage statements (Labor Code § 226; IWC Wage Order No. 1-2001 § 7); (8) unfair and
24 unlawful business practices (Business & Professions Code §§ 17200, *et seq.*); (9) representative
25 action for penalties under the PAGA. (Alameda County case number HG20072329) (“*Gray*
26 Action”). Gaines Decl. at ¶ 7; Stip. at ¶ II(A)(2).

27 On June 17, 2020, Plaintiff Eddie Fairley sent a letter, by online submission to the LWDA
28 and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of

1 the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* On
2 September 3, 2020, Plaintiff Eddie Fairley filed in the Superior Court of California, County of
3 Alameda, a class action and PAGA action Complaint against Defendants DAA Draexlmaier of
4 America LLC, and DAN Draexlmaier Automotive North America LLC, alleging causes of action
5 for: (1) failure to pay overtime wages (Labor Code §§ 510 and 1198); (2) failure to provide meal
6 breaks (Labor Code §§ 226.7 and 512(a)) ; (3) failure to provide rest periods (Labor Code § 226.7);
7 (4) failure to pay minimum wages (Labor Code §§ 1194, 1197, and 1197.1); (5) failure to timely
8 pay wages (Labor Code §§ 201 and 202); (6) failure to timely pay wages during employment (Labor
9 Code §§ 204); (7) failure to provide accurate itemized wage statements (Labor Code §§ 226(a));
10 (8) failure to keep requisite payroll records (Labor Code §§ 1174); (9) failure to reimburse for
11 business expenses (Labor Code §§ 2800 and 2802); (10) unfair competition (Business &
12 Professions Code §§ 17200, *et seq.*); and (11) Violation of the California Labor Code section 2698,
13 *et seq.* (PAGA). (Alameda County case number RG20073122) (“*Fairley Action*”) (together, the
14 *Jones Action*, *Gray Action*, and *Fairley Action* are referred to as the “*Lawsuits*”). Gaines Decl. at
15 ¶ 8; Stip. at ¶ II(A)(3).

16 The Parties have resolved all three of these actions together, and their global resolution is
17 set forth in the Settlement. The consolidated complaint that Plaintiffs’ filed on August 4, 2022
18 includes all claims and all parties from each of these pending lawsuits. Gaines Decl. at ¶ 9.

19 **VI. INVESTIGATION AND SETTLEMENT DISCUSSIONS**

20 On April 20, 2021, Defendants and Plaintiffs attended a full-day mediation with mediator
21 Hon. Louis M. Meisinger (Ret.), but were not able to reach a settlement on that date. The Hon.
22 Louis M. Meisinger provided a mediator’s proposal on that date, and the Parties accepted the
23 mediator’s proposal on April 27, 2021. Gaines Decl. at ¶ 10; Stip. at ¶ II(A)(4).

24 Throughout the pendency of the Lawsuits, the Parties engaged in informal discovery,
25 including depositions and an informal exchange of documents and information, expanding
26 thousands of pages, for settlement purposes in connection with the April 20, 2021 mediation.
27 Pursuant to a material term of the Hon. Louis M. Meisinger’s mediation proposal, the Parties further
28 engaged in confirmatory discovery as to the merits of the Lawsuits and the class size. Based on a

1 thorough investigation and evaluation of these matters, Class Counsel and Plaintiffs have concluded
2 that the Settlement with Defendants for the consideration and on the terms set forth in the
3 Settlement Agreement, is fair, reasonable, adequate, and is in the best interest of the putative class
4 members and aggrieved employees in light of all known facts and circumstances, including the risk
5 of significant delay, and the defenses asserted by Defendants. Gaines Decl. at ¶ 11; Stip. at ¶ II(B).

6 Plaintiffs have fully investigated the factual and legal bases for the causes of action asserted
7 in the Lawsuits. As a result of their investigation, Plaintiffs continue to believe their claims are
8 viable and that Defendants violated the California Labor Code and IWC Wage Orders. Defendants
9 have denied all allegations and contend that the claims asserted in the Lawsuits have no merit and
10 cannot give rise to liability on behalf of Defendants. Given the disagreement between the Parties
11 as to the viability of these claims, the Parties believe the Settlement provided for herein is a fair,
12 adequate, and reasonable settlement. Gaines Decl. at ¶ 12; Stip. at ¶ II(C).

13 Plaintiffs recognize the expense and length of continued proceedings necessary to continue
14 the litigation against Defendants through trial and through any possible appeals. Plaintiffs have
15 also taken into account the uncertainty and risk of the outcome of further litigation, and the
16 difficulties and delays inherent in such litigation. Plaintiffs are also aware of the burdens of proof
17 necessary to establish liability for the claims asserted in the Lawsuits, Defendants' defenses thereto,
18 and the difficulties in establishing damages and entitlement to monetary recovery for Employees.
19 Plaintiffs have also taken into account the discovery undertaken and settlement negotiations
20 conducted, which negotiations resulted in the material settlement terms set forth herein. Based on
21 the foregoing, Plaintiffs have determined that the Settlement set forth in the Settlement Agreement
22 is a fair, adequate, and reasonable settlement, and is in the best interests of putative class members
23 and aggrieved employees. Gaines Decl. at ¶ 13; Stip. at ¶ II(D).

24 Defendants deny all claims in the lawsuits but have concluded that any further defense of
25 this litigation would be protracted and expensive for all Parties. Defendants have devoted
26 substantial amounts of time, energy and resources to the defense of the claims asserted in the
27 Lawsuits and, unless the Settlement is made, will continue to do so for the foreseeable future. For
28 these reasons, Defendants have agreed to settle the matter upon the terms set forth in the Settlement

1 Agreement, to put to rest the claims as set forth in the Lawsuits. Gaines Decl. at ¶ 14; Stip. at ¶
2 II(E).

3 Defendants have denied and continue to deny each of the claims and contentions alleged in
4 the Lawsuits. Defendants have repeatedly asserted and continue to assert defenses thereto, and
5 have expressly denied and continue to deny any wrongdoing or legal liability arising out of any of
6 the facts or conduct alleged in the Lawsuits. Defendants also have denied and continue to deny,
7 *inter alia*, the Plaintiffs allegations in their respective lawsuits, including related to Plaintiffs'
8 allegations that putative class members and aggrieved employees have suffered damages; that
9 Defendants improperly failed to pay putative class members and aggrieved employees all wages
10 owed; that Defendants failed to pay minimum wages; that Defendants failed to pay all overtime;
11 that Defendants failed to properly provide meal and rest periods; that Defendants caused employees
12 to work more than six days in seven; that Defendants provided Employees with inaccurate wage
13 statements; that Defendants failed to timely pay all wages due during employment or at the
14 separation of employment; that Defendants failed to properly pay sick time; that Defendants failed
15 to pay wages twice per calendar month; that Defendants failed to reimburse business expenses; that
16 Defendants failed to maintain requisite payroll records; that Defendants violated any provisions of
17 the California Labor Code or any IWC Wage Order; that Defendants engaged in any unlawful,
18 unfair or fraudulent business practices; that Defendants engaged in any other wrongful conduct as
19 alleged in the Lawsuits; or that Employees were harmed by the conduct alleged in the Lawsuits.
20 Neither the Settlement Agreement, nor any document referred to or contemplated herein, nor any
21 action taken to carry out the Settlement Agreement, is, may be construed as, or may be used as an
22 admission, concession or indication by or against Defendants of any fault, wrongdoing, or liability
23 whatsoever. Gaines Decl. at ¶ 15; Stip. at ¶ II(F).

24 Plaintiffs claim and continue to claim that the claims released by the Settlement Agreement
25 have merit and give rise to liability on the part of Defendants. Neither the Settlement Agreement
26 nor any documents referred to herein, or any action taken to carry out the Settlement Agreement is
27 or may be construed as or may be used as an admission by or against Employees or Class Counsel
28

1 as to class suitability and/or the merits or lack thereof of the claims asserted. Gaines Decl. at ¶ 16;
2 Stip. at ¶ II(G).

3 The Parties stipulate, subject to the approval of the Court, that the Lawsuits are being
4 compromised and settled pursuant to the terms and conditions set forth in the Settlement
5 Agreement. Gaines Decl. at ¶ 17; Stip. at ¶ II(I).

6 **VII. LEGAL ANALYSIS**

7 **D. The Proposed Settlement Terms**

8 **4. The Settlement Class**

9 The Parties have agreed to a Settlement Class composed of all current and/or former direct
10 employees of Defendants employed in California in non-exempt or hourly-paid positions from May
11 11, 2016 through June 26, 2021 (“Class” or “Class Members”). Stip. at ¶ I(D). Defendant
12 represents that the class includes approximately 442 members who worked approximately 30,584
13 Workweeks, and should the number of Workweeks increase beyond this representation in excess
14 of 5%, the Gross Settlement Amount shall increase proportionally with the increase above the 5%
15 threshold. Stip. at ¶ II(J)(6)(b)).

16 **5. Allocations to be Paid from the Gross Settlement Amount**

17 The Stipulation provides that Defendant shall pay an amount not to exceed \$1,475,000 to
18 resolve the three pending Actions on a class-wide basis (the “Gross Settlement Amount”). The
19 Gross Settlement Amount means a non-reversionary common fund to be paid jointly and severally
20 by the Defendants in the amount of \$1,475,000, and includes without limitation any and all
21 payments Defendants may be responsible for under the Settlement including Class Counsel Fees
22 Award, Class Counsel Costs Award, Named Plaintiff Enhancement Payments, Class Member
23 Payments, Settlement Administration Costs, employee-side payroll taxes, and the PAGA Amount,
24 of which 75% will be paid to the California Labor and Workforce Development Agency (“LWDA”)
25 and 25% of will be distributed to all current and/or former direct employees of Defendants
26 employed in California in non-exempt or hourly-paid positions from May 11, 2019 through June
27 26, 2021 (“PAGA Employees”). Defendants will be required to separately pay, in addition to the
28 Gross Settlement Amount, the employer’s share of any payroll taxes and contributions due and

1 owing on the wages portion of Class Member Payments as a result of the Settlement. Stip. at ¶
2 I(Q).

3 From the Gross Settlement Amount, Defendant will not oppose Plaintiffs' counsel's
4 application to the Court for up to 35% of the Gross Settlement Amount (i.e. approximately
5 \$516,250) for attorneys' fees. Stip. at ¶ III(D)(2).

6 From the Gross Settlement Amount, Defendant will not oppose Plaintiffs' counsel's
7 application to the Court for up to \$60,000 in reimbursement of litigation costs and expenses. Stip.
8 at ¶ III(D)(2).

9 From the Gross Settlement Amount, Defendant will not oppose Plaintiffs' counsel's
10 application to the Court for a Named Plaintiff Enhancement Payment to each of the Class
11 Representatives in the gross amount of \$10,000 each (for a combined total of \$30,000) in
12 consideration for their efforts in instituting and participating in the Actions and in exchange for
13 their general release of all claims. Stip. at ¶ I(V).

14 From the Gross Settlement Amount, settlement administration fees paid to ILYM Group,
15 Inc. will be no more than \$12,050. Stip. at ¶ I(EE). ILYM was selected based on a competitive
16 bidding process. Gaines Decl. at ¶ 18; Exhibits C and D.

17 From the Gross Settlement Amount, the portion to be allocated for settlement of any and all
18 claims for penalties under the PAGA is \$120,000, 75% of which shall be paid to the LWDA and
19 25% of which shall be distributed to all PAGA Employees, with each receiving a *pro rata* share
20 based on the number of Pay Periods worked during the period from May 11, 2019 through June 26,
21 2021 ("PAGA Period"). Stip. at ¶ III(D)(3).

22 All Class Members who do not validly exclude themselves from the Class Settlement
23 ("Settlement Class Members") will receive a Class Member Payment, paid from the Class Payout
24 Fund. The amount of each Class Member Payment will be calculated on a *pro rata* basis, based on
25 the number of Workweeks each Settlement Class Member worked during the period from May 11,
26 2016 through June 26, 2021 ("Settlement Period"). To establish the Workweek Value (as defined
27 below), the Settlement Administrator will first determine the total number of Workweeks worked
28 by the Settlement Class Members during the Settlement Period. The "Workweek Value" means

1 the Class Payout Fund divided by the total number of Workweeks worked by Settlement Class
2 Members during the Settlement Period. The Workweek Value will be rounded to the nearest cent.
3 The Class Member Payment to each Settlement Class Member will be determined by multiplying
4 the Workweek Value by the total number of Workweeks each Settlement Class Member worked
5 during the Settlement Period. The total of all Class Member Payments to all Settlement Class
6 Members shall equal the Class Payout Fund. There is no need for a Settlement Class Member to
7 submit a claim form in order to be eligible for and to receive a Class Member Payment. Class
8 Member Payments will be reduced by any required deductions for each Settlement Class Member,
9 including employee-side tax withholdings and/or deductions. Stip. at ¶ III(D)(5).

10 The amount of the Individual PAGA Payment to be paid to each PAGA Employee will be
11 determined by multiplying the Pay Period Value by the total number of Pay Periods each PAGA
12 Employee worked during the PAGA Period. There is no need for a PAGA Employee to submit a
13 claim form in order to be eligible for and to receive an Individual PAGA Payment. Stip. at ¶
14 III(D)(3)(b).

15 **6. Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)**

16 Pursuant to PAGA, the Parties have agreed that \$120,000 of the Gross Settlement Amount
17 will be allocated to settle the claims brought under Labor Code § 2699 et seq. Pursuant to Labor
18 Code § 2699(i), “civil penalties recovered by aggrieved employees shall be distributed as follows:
19 75 percent to the Labor and Workforce Development Agency and 25 percent to the aggrieved
20 employees.” As such, 75 percent of the apportioned PAGA settlement amount – or \$90,000 – shall
21 be payable to the Labor and Workforce Development Agency. The remaining 25 percent, or
22 \$30,000, shall be distributed to all PAGA Employees, with each receiving a *pro rata* share based
23 on the number of Pay Periods worked during the PAGA Period. Stip. at ¶ III(D)(3).

24 As required by Labor Code § 2699(l)(2), concurrent with Plaintiffs’ submission of the
25 Settlement Agreement to the Court, they are transmitting it, together with this Motion, to the
26 LWDA. Gaines Decl. at ¶ 36.

27 **E. Two-Step Approval Process**

28 Any settlement of class litigation must be reviewed and approved by the Court. Cal. R. Ct.

1 3.769; Fed. R. Civ. P. 23(e).¹ This is done in two steps: (1) an early (preliminary) review by the
2 trial court, and (2) a final review after notice has been distributed to the Class Members informing
3 them of the terms of the settlement and allowing them to exclude themselves from, participate in
4 and/or object to the settlement. The Manual for Complex Litigation (Third) § 30.41 states:

5 Approval of class action settlements involves a two-step process.
6 First, counsel submit the proposed terms of settlement and the court
7 makes a preliminary fairness evaluation. If the preliminary
8 evaluation of the proposed settlement does not disclose grounds to
9 doubt its fairness or other obvious deficiencies, such as unduly
10 preferential treatment of class representatives or of segments of the
11 class, or excessive compensation for attorneys, and appears to fall
12 within the range of possible approval, the court should direct that
13 notice ... be given to the class members of a formal fairness hearing,
14 at which arguments and evidence may be presented in support of and
15 in opposition to the settlement.

16 Thus, the preliminary approval by the trial court is simply a conditional finding that the
17 settlement appears to be within the range of acceptable settlements. *See Wershba v. Apple*
18 *Computer* (2001) 91 Cal.App.4th 224, 234-35. "The strength of the findings made by a judge at a
19 preliminary hearing or conference concerning a tentative settlement proposal may vary. The court
20 may find that the settlement proposal contains some merit, is within the range of reasonableness
21 required for a settlement offer, or is presumptively valid subject only to any objections that may be
22 raised at a final hearing." 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26
23 (4th ed. 2002).

24 The procedures for the Parties' submission of a proposed settlement for preliminary
25 approval by the Court also are discussed in 4 *Newberg on Class Actions*:

26 When the parties to an action reach a monetary settlement, they will
27 usually prepare and execute a joint stipulation of settlement, which
28 is submitted to the court for preliminary approval. The stipulation
should set forth the essential terms of the agreement, including but
not limited to, the amount of settlement, form of payment, manner of
determining the effective date of settlement and any recapture clause.

Id. at § 11.24.

Here, the Parties have reached such an agreement and have submitted the Settlement

¹ The California Supreme Court has authorized California's trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore, Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

1 Agreement herewith. See Gaines Decl., **Exhibit B**; Gaines Decl. ¶ 9.

2 **F. Procedures for Settlement Before Class Certification.**

3 Pursuant to California Rules of Court, Rule 3.769(d), parties also may, at the preliminary
4 approval stage, request that the court provisionally approve certification of the class – conditioned
5 upon final approval of the settlement. “[P]re-certification settlements are routinely approved if
6 found to be fair and reasonable.” *Wershba, supra*, 91 Cal. App. 4th at 240. *Accord Dunk, supra*,
7 48 Cal. App. 4th at 1803 (although the settlement was reached before any “adversary certification,”
8 the court was satisfied that it was “fair, adequate and reasonable.”). See also *In re Baldwin-United*
9 *Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 478² (“many courts have employed this practice in the
10 name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.”)

11 The strength of the findings made by a judge at a preliminary hearing
12 or conference concerning a tentative settlement proposal . . . may be
13 set out in conditional orders granting tentative approval to the various
14 items submitted to the court. Three basic rulings are often
conditionally entered at this preliminary hearing. These conditional
rulings may approve a temporary settlement class, the proposed
settlement, and the class counsel’s application for fees and expenses.

15 4 *Newberg on Class Actions*, at §11.26.

16 **4. The Class Should Be Certified for Settlement Purposes**

17 It is well established that trial courts should use a lower standard for determining the
18 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk, supra*, 48 Cal.
19 App. 4th at 1807, n. 19. The reason for this is that no trial is anticipated in a settlement class, so
20 the case management issues inherent in determining if the class should be certified need not be
21 confronted. *Amchem Products, Inc. v. Windsor* (1987) 521 U.S. 591, 620. The proposed
22 Settlement Class meets all requirements for certification, as discussed below.

23 **a. The Class is Ascertainable**

24 The proposed Class is ascertainable. The class definition, the size of the Class, and the
25 means for identifying the members of the class determine whether the class is ascertainable.
26 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members

27
28 ² In determining the fairness and reasonableness of a proposed settlement, California courts may
look to federal cases for guidance. See *Wershba*, 91 Cal. App. 4th at 239-40.

1 are identifiable from Defendant's employment and payroll records. Further, the Class is
2 sufficiently numerous to warrant certification. According to Defendant's records, the Class
3 comprises approximately 442 employees. Gaines Decl. ¶ 32.

4 b. **Questions of Law or Fact Common to Members of the Settlement**
5 **Class Predominate**

6 The Class Members' claims all stem from a common source: members of the Class allege
7 that Defendant violated the same Labor Code provisions in connection with their employment. All
8 members of the Class seek the same relief under the same California laws (related to unpaid wages,
9 including, but not limited to, failure to pay minimum wages, straight time compensation, overtime
10 compensation, double-time compensation, vacation or paid time off, reporting time compensation,
11 for time spent donning and doffing work uniforms, for time spent waiting for and/or undergoing
12 security checks, and to pay any such compensation at the regular rate of compensation, and/or
13 interest; for missed, late, short or interrupted meal and/or rest periods or any allegation that meal
14 or rest periods were not provided, including any claim for any alleged failure to pay premiums for
15 missed, late, short or interrupted meal or rest periods, or to pay such premiums at the regular rate
16 of compensation; for reimbursement for business expenses or any other claim that Defendants
17 allowed or required employees to bear any of the costs associated with the operation of Defendants'
18 business, including without limitation the use of personal cell phones, tools, remote working
19 expenses, and electrical or other costs incurred in charging company property; for inaccurate or
20 otherwise improper wage statements and/or failure to keep or maintain accurate records; for secret
21 underpayment of wages; for failure to pay sick leave, including that sick leave was calculated at an
22 incorrect rate of pay, and derivative claims including without limitation claims of unfair business
23 practices and for penalties). Under these circumstances, the commonality requirement is satisfied
24 for purposes of certifying the Class for settlement purposes. Gaines Decl. ¶ 33.

25 c. **The Proposed Class Representatives' Claims are Typical of the**
26 **Class Members' Claims**

27 A class representative's claims are typical when they arise from the same event or course
28 of conduct that gives rise to the claims of the class, and are based on the same legal theory.

1 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, named Plaintiffs and proposed
2 Class Representatives Corey Jones, Demetreia Gray, and Eddie Fairley are former non-exempt
3 employees who worked for Defendant in the State of California during the Settlement Period. They
4 contend that Defendant failed to pay all wages, failed to provide meal and rest periods, failed to
5 comply with itemized employee wage statement provisions, failed to reimburse business expenses,
6 and failed to timely pay wages at the separation of employment, in violation of Labor Code §§ 200,
7 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 222.5, 223, 226, 226.3, 226.7, 226.8, 227.3, 246,
8 246.5, 510, 511, 512, 551, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198,
9 1199, 2698 *et seq.*, 2800, 2802, and 2699, among other Labor Code provisions. They have the
10 same claims as those that the members of the Class would reasonably be expected to bring based
11 on the course of conduct alleged herein. Gaines Decl. ¶ 34.

12 Plaintiffs Corey Jones, Demetreia Gray, and Eddie Fairley have also demonstrated that they
13 will aggressively and competently assert the interests of the proposed Class; they have taken active
14 roles in this litigation and have no apparent conflicts with other class members. Gaines Decl. ¶ 35.
15 Furthermore, Plaintiffs have retained competent counsel, experienced in litigating class action
16 claims in the employment context. *See* Gaines Decl. ¶¶ 2-5.

17 **G. The Settlement Is Fair and Reasonable and Not the Result of Fraud or**
18 **Collusion**

19 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
20 evidence to the contrary is offered. *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars*
21 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re*
22 *Chicken Antitrust Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962. Courts do not substitute their
23 judgment for that of the proponents, particularly where, as here, settlement has been reached with
24 the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*
25 *Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990)
26 752 F. Supp. 1087, 1093; *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored*
27 *Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp. 1357, 1368; *Sommers v. Abraham Lincoln*
28 *Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.

1 While the recommendations of counsel proposing the settlement are not conclusive, the
2 Court can properly take them into account, particularly where, as here, such counsel have been
3 involved in informal discovery and negotiations for some period of time, appear to be competent,
4 have experience with this type of litigation, and have exchanged substantial evidence with the
5 opposing party. *See Newberg on Class Actions, supra*, § 11.47; *In re Paine Webber Ltd. P'ships*
6 *Litig.* (S.D.N.Y. 1997) 171 F.R.D. 104, 125 (“[s]o long as the integrity of the arm’s-length
7 negotiation process is preserved, however, a strong initial presumption of fairness attaches to the
8 proposed settlement . . . [citations] and ‘great weight’ is accorded to the recommendations of
9 counsel, who are most closely acquainted with the facts of the underlying litigation”); *see* Gaines
10 Decl. ¶¶ 2-5, 10-17.

11 Here, the Parties’ counsel have a great deal of experience in class action litigation and
12 specialize in employment wage and hour matters. Moreover, counsel for both Parties conducted
13 an extensive investigation and discovery of the factual allegations involved in this case sufficient
14 to allow counsel and the court to act intelligently. The Parties have engaged in a broad exchange
15 of documents, statistics, records and other information. Each side has apprised the other, informally
16 and at a formal mediation, of their respective factual contentions, legal theories and defenses,
17 resulting in extensive arms-length negotiations taking place among the Parties. *See* Gaines Decl.
18 ¶¶ 2-5, 10-17.

19 **4. The Settlement Falls Within The “Ballpark” of Reasonableness**

20 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
21 conducted significant formal and informal discovery and exchanged thousands of pages of
22 documents, data, and information prior to mediation. The documents and information that
23 Plaintiffs’ counsel obtained from Defendants and through other sources allowed Plaintiffs’ counsel
24 to develop valuation models in order to evaluate the potential value and merit of the claims, and
25 perform a complete evaluation of Defendants’ defenses thereto. As outlined below, Plaintiffs’
26 counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to
27 entering into the Settlement.

28 \\\

1 The Court must make an “independent assessment of the reasonableness of the terms of the
2 settlement” prior to granting preliminary and final approval. *Clark v. American Residential*
3 *Services LLC* (2009) 175 Cal.App.4th 785, 799; *Kullar v. Foot Locker Retail, Inc.* (2008) 168
4 Cal.App.4th 116, 127-28, 130, 133. To do so requires the Parties to submit “basic information
5 about the nature and magnitude of the claims in question and the basis for concluding that the
6 consideration being paid for the release of those claims represents a reasonable compromise.”
7 *Clark, supra*, 175 Cal.App.4th at 800. However, the Court should *not* “attempt to decide the merits
8 of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys.”
9 *Kullar, supra*, 168 Cal.App.4th at 133.

10 Plaintiffs engaged in substantial formal and informal discovery, including a deposition and
11 the review of extensive time and wage data, and with the assistance of their expert, created a
12 comprehensive damage analysis. This damage analysis reveals that the negotiated settlement falls
13 within a realistic range of recovery on class members’ claims. Gaines Decl. ¶ 20.

14 Plaintiffs allege that Defendants regularly required Plaintiffs and other hourly-paid
15 employees to perform job duties off-the-clock: during meal periods; before clocking in; and after
16 clocking out of their shifts. They also contend that Defendants failed to pay all wages due by
17 incorrectly calculating the regular rate of pay used to pay overtime, meal, rest, and sick pay wages.
18 Defendants allegedly implemented a policy and practice that only permitted putative class members
19 to record their scheduled hours instead of all actual time worked and failed to compensate the
20 putative class members for time worked off-the-clock. Further exacerbating off-the-clock work
21 was Defendants’ requirement that employees be work-ready at the start of their scheduled shift.
22 But Defendants failed to account for the time that it took employees to don and doff their uniforms
23 and required safety gear. Indeed, Defendants’ handbook states that non-exempt employees are
24 prohibited from clocking in more than five minutes before scheduled shift times. Defendants’
25 heightened efficiency expectations also led to off-the-clock work. Employees were required to
26 work off-the-clock to meet productivity targets. Defendants exerted class-wide pressure on
27 putative class members to reduce the amount of recorded overtime, requiring them to complete
28 unreasonable workloads within scheduled hours only, obtain pre-approval prior to working

1 overtime or in excess of scheduled work hours, and subjecting those who recorded overtime without
2 preapproval to discipline. *See Brinker v. Superior Court* (2012) 53 Cal. 4th 1004 (off-the-clock
3 claims are susceptible to class treatment where “substantial evidence of systematic company policy
4 to pressure or require employees to work off-the-clock” exists). The maximum value of this claim
5 required a discount for settlement purposes in light of the exhaustive list of defenses asserted by
6 Defendants, including that Plaintiffs would be unable to certify a class, including because
7 Defendants maintained a uniform, facially valid policy, that employees were always paid for all
8 time worked, and that any unpaid time was *de minimis*. Litigation risks, including the class
9 certification risk, justify the compromised settlement amount. Gaines Decl. ¶ 21.

10 Plaintiffs also contend that, throughout the class period, Defendants have had a policy and
11 practice of failing to provide timely, full, and complete meal and rest periods. Plaintiffs and other
12 putative class members allege that they regularly suffered short, late, or missed meal and rest
13 periods due to understaffing and unreasonable workloads. Both meal and rest breaks were regularly
14 interrupted by questions and instructions regarding work tasks from supervisors and other
15 employees and cut short by the workflow in Defendants’ facility and prioritization of productivity.
16 Despite Defendants’ expectations, Plaintiffs and other putative class members proffered alleged
17 proof that they were still expected to record meal periods as having occurred no later than the
18 beginning of the fifth hour. Plaintiffs’ analysis of Defendants’ timekeeping records reveals that
19 68.5% of recorded meal periods were exactly 30 or 60 minutes in length, and of those, 98.9% were
20 exactly 30 minutes. Plaintiffs contend that such perfection is implausible and indicative of
21 systematic wage abuse. *Donahue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 275 Cal.Rptr.3d
22 422, 430 (“The practice of rounding time punches for meal periods is inconsistent with the purpose
23 of the Labor Code provisions and the IWC wage order.”). Additionally, Plaintiffs allege that
24 Defendants’ employee handbook was facially non-compliant because it prohibits employees from
25 leaving the premises during rest breaks. The maximum value of this claim required a discount for
26 settlement purposes in light of the defense asserted by Defendants, including that Plaintiffs would
27 be unable to certify a class, including because Defendants maintained a uniform, facially valid meal
28 and rest break policies, would be unable to prove that employees did not waive their meal and rest

1 periods, and would be unable to prove that meal and rest periods were not properly taken –
2 especially with respect to rest periods, which California law does not require to be recorded, and
3 because Defendant’s practice was to provide employees with rest periods that were longer than
4 what California law requires. Additionally, Defendants asserted that they paid meal period
5 premiums to employees. Litigation risks, including the class certification risk, justify the
6 compromised settlement amount. Gaines Decl. ¶ 22.

7 Plaintiffs also allege that Defendant failed to reimburse Plaintiffs and other putative class
8 members for necessary business expenses such as the costs for complying with Defendants’ dress
9 code and the usage of cell phones in the performance of their work duties. For instance, Defendants
10 require their employees to wear slip resistant shoes as part of its work uniform. Additionally,
11 Plaintiffs and Class Members argued that they were also required to use their personal cell phones
12 to carry out their job duties, such as responding to questions from supervisors regarding work issues
13 via text and phone calls. The maximum value of this required a discount for settlement purposes
14 in light of the defenses asserted by Defendants, including that Plaintiffs would be unable to certify
15 a class, and that any and all requests for reimbursement for business expenses were promptly
16 honored. Litigation risks, including the class certification risk, justify the compromised settlement
17 amount. Gaines Decl. ¶ 23.

18 Class Members also sought wage statement penalties pursuant to Labor Code § 226(e),
19 waiting time penalties pursuant to Labor Code § 203 for former employees) and PAGA penalties
20 derivative of the underlying violations. The value of these penalties – which are derivative,
21 discretionary, and subject to defenses of their own – is substantial, but their recovery carried
22 substantial risk. Plaintiffs believed it was unlikely that many of these penalties could be recovered
23 because their value would eclipse the value of alleged underpaid premium wages (if such wages
24 were recovered at all), because Plaintiffs’ claims are novel, and because of Defendants’ potential
25 independent defenses to these penalties. The settlement here is a fair compromise of these penalty
26 claims. Gaines Decl. ¶ 24.

27 A discount on the maximum value of Class members’ claims was required (and warranted)
28 to resolve the matter at this junction. Class certification is a substantial risk in any class action

1 case. Here, while Plaintiffs maintain that the requirements of class certification are met, Defendants
2 proffer various arguments why class treatment is not appropriate here, including but not limited to
3 that individualized inquires among class members predominate over common ones, and high
4 documented compliance rates indicating lack of a common unlawful practice. If Defendants were
5 to defeat Plaintiffs' class certification motion, there would be no class wide relief whatsoever, and
6 most class members would likely not file individual claims. Gaines Decl. ¶ 25.

7 Plaintiffs also faced the risk of a loss on the merits on their claims. It is very possible that
8 the Court would agree with Defendants' position that its wage payment, meal and rest period, and
9 expense reimbursement policies and practices complied with the requirements of California law.
10 In such a case, the value of the majority of Plaintiffs' claims would be zero. Gaines Decl. ¶ 26.

11 Finally, Plaintiffs faced the risk that they would not obtain a maximum damage/penalty
12 award on all (or any of) their claims. For example, Plaintiffs all seek discretionary penalties
13 pursuant to the Private Attorneys General Act or that a the Court may find that Plaintiffs' PAGA
14 claims are unmanageable. Even if Plaintiffs did prevail on these claims, it is possible that the Court
15 would not impose all penalties pursuant to its discretionary power to reduce them. Gaines Decl. ¶
16 27.

17 Defendants strongly contend that their policies and practices do not violate any laws. They
18 contend that their wage and hour policies and practices properly provided for all meal and rest
19 periods and fully compensated employees for all time worked. They further contend that the wage
20 statements they provide to their employees are fully compliant with California law. Gaines Decl.
21 ¶ 28.

22 When the costs and risks of non-certification and loss on the merits are considered, Plaintiffs
23 and their counsel are of the opinion that the settlement reached is clearly a favorable one. Gaines
24 Decl. ¶¶ 20-29.

25 The settlement for each participating Class Member (i.e., Settlement Class Members) is fair,
26 reasonable and adequate, given the inherent risk of litigation, the risk relative to class certification
27 and the costs of pursuing such litigation. The settlement shall finally resolve all claims of the
28 Settlement Class Members as alleged in the Actions. Gaines Decl. ¶ 30.

1 **2. The Proposed Attorneys' Fees Are Reasonable**

2 The Stipulation provides for attorneys' fees in an amount not to exceed \$516,250.00, which
3 equals thirty-five percent (35%) of the Maximum Settlement Amount. Gaines Decl. at ¶ 31; Stip.
4 at ¶ III.D.2. The requested fees are reasonable under the common fund theory.

5 As the California Supreme Court recognized in *Laffitte v. Robert Half Int'l Inc.* (2016) 1
6 Cal.5th 480, "when class action litigation establishes a monetary fund for the benefit of the class
7 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
8 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
9 fund created." *Id.* at 503. Here, the requested fees, which represent thirty-five percent of the
10 settlement fund, are well-within the range of fees generally sought and approved in common fund
11 cases. *See* Newberg on Class Actions, 4th Ed. 2002, § 14:6 (noting that historically courts have
12 awarded percentage fees in the range of 20% to 50%); *In re Consumer Privacy Cases*, 175
13 Cal.App.4th at 558 n.13 ("Empirical studies show that, regardless whether the percentage method
14 or the lodestar method is used, fee awards in class actions average around one-third of the
15 recovery."). Thus, the requested fees are reasonable.

16 **3. The Proposed PAGA Allocation Is Fair and Reasonable**

17 The settlement amount allocated for penalties under PAGA is fair and reasonable. As a
18 preliminary matter, courts have discretion to greatly reduce the amount awarded under PAGA. Lab.
19 Code § 2699(2); *Thurgood v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112,
20 1135. This is particularly true where a plaintiff alleges both class claims and a representative action
21 for civil penalties. *Visceral v. Mistral Grp., Inc.* (N.D. Cal. Oct. 11, 2016) No. 15-cv-02198-EMC,
22 2016 WL 5907869, at *9. PAGA was initiated to ensure compliance with the Labor Code in light
23 of the government's limited enforcement resources. *Iskanian v. CLS Transp. Los Angeles, LLC*
24 (2014) 59 Cal.4th 348, 379. Where, as here, the parties reach a substantial settlement providing
25 employees with monetary compensation for underlying Labor Code violations, many of PAGA's
26 underlying policy objectives are satisfied. Accordingly, there exists a substantial likelihood that
27 the Court would exercise its discretion and reduce the amount awarded for PAGA penalties even if
28 Plaintiffs proved successful at trial. Additionally, PAGA's shorter statute of limitations justifies a

1 limited allocation when compared to the amount allocated for Labor Code violations. Here, the
2 \$120,000.00 PAGA allocation is well within the range approved by California courts and therefore
3 should be approved. *See Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589 (finding no abuse
4 of discretion in the trial court's approval of a release that included PAGA claims, but allocated \$0
5 to PAGA penalties).

6 **5. Despite the Asserted Fairness of the Settlement Terms, Class Members**
7 **May Request Exclusion From, Or Object To, The Settlement**

8 Despite the asserted fairness of the settlement terms, any potential Class Member who
9 wishes to exclude themselves from the terms of the Class Settlement (i.e., the non-PAGA portion
10 of the Settlement) set forth in the Stipulation of Settlement has the right to submit a request for
11 exclusion (i.e., opt out) from the Class Settlement, pursuant to which the Class Member would
12 retain any claim he or she may have against Defendant, other than the PAGA portion of the
13 settlement identified in the Settlement Agreement. Class Members who qualify as PAGA
14 Employees may not opt out or otherwise be excluded from the PAGA Settlement. As set forth in
15 the Settlement and Class Notice, Class members who wish to exclude themselves from the Class
16 Settlement must submit a signed, written statement requesting exclusion from the Class Settlement,
17 to the Settlement Administrator by mail, on or before forty-five days from the mailing of the Class
18 Notice ("Opt Out/Objection Period").

19 Moreover, Class Members who do not opt out (i.e., Settlement Class Members) may object
20 to the Settlement by submitting to the Settlement Administrator a written statement objecting to the
21 Settlement, by mail, no later than the last day of the Opt Out/Objection Period. Settlement Class
22 Members may also, upon providing proper notice to the Parties and the Court, attend the final
23 fairness and approval hearing for the purpose of objecting to one or more of the settlement terms
24 set forth in the Stipulation of Settlement.

25 **H. The Proposed Class Notice is an Appropriate Form of Giving Notice to the**
26 **Class and Satisfies Due Process**

27 California statutory and case law vests the Court with broad discretion in fashioning
28 appropriate class notice. See Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50

1 Cal.App.3d 960, 973-74. A class notice is adequate if it “present[s] a fair recital of the subject
2 matter and proposed terms” of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623 F.2d
3 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

4 The Class Notice comports with the requirements of California Rules of Court, Rules 3.769
5 and 3.766. Pursuant to Rule 3.769(f), the class notice must contain an explanation of the proposed
6 settlement and procedures for class members to follow in filing written objections to it and
7 arranging to appear at the hearing and state objections to the proposed settlement. Cal. R. Ct.
8 3.769(f). Rule 3.766 further requires that the class notice include (1) a brief explanation of the
9 case, including the basic contentions and denials of the parties; (2) a procedure for the class
10 member to follow in requesting exclusion, and a statement that the Court will exclude the class
11 member from the class if he or she so requests by the specified deadline; (3) a statement that the
12 judgment, whether favorable or not, will bind all class members who do not request exclusion; (4)
13 a statement that any class member who does not request exclusion may, if the class member so
14 desires, object and enter an appearance through counsel. The proposed Class Notice satisfies each
15 of these requirements. The proposed Class Notice describes the Settlement, the deadlines and
16 procedures to submit an objection to the Settlement, mail a request for exclusion from the
17 Settlement, and/or mail a dispute regarding Workweeks, and the date and time set for the Final
18 Approval Hearing. Stip. at Exh. 2.

19 The Class Notice also fulfills the requirement of neutrality in notice procedure. *Newberg*,
20 at § 8.39. “Sufficient information about the case should be provided to enable class members to
21 make an informed decision about their participation.” *Manual for Complex Litigation* § 21.311 at
22 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms
23 and conditions of the Settlement in an informative and coherent manner. The proposed Class
24 Notice recognizes that the Court has not yet granted final approval of the settlement. The proposed
25 Class Notice also apprises the Class Members of, *inter alia*, how their Class Member Payments and
26 Individual PAGA Payments are calculated and the number of Workweeks and/or Pay Periods
27 credited to them.

28 \\\

1 The Class Notice also satisfies all due process requirements and complies with the standards
2 of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*, §§ 8.21,
3 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960 (“The essentials of
4 due process of law in class suits would appear to be afforded by fair representation in the assertion
5 of claims of class members against the opposing parties in any lawsuit, and notice of the pending
6 suit.”).

7 Additionally, the proposed notice plan is designed to reach a substantial percentage of the
8 Class Members. The Settlement Administrator will send each Class member the Notice Packet via
9 first-class United States mail. Stip. at ¶ III.J.3.b. Prior to mailing, the Settlement Administrator
10 will perform a search using the National Change of Address Database to update and correct any
11 known or identifiable address changes. Stip. at ¶ III.J.3.b. Direct mail notice to Class Members’
12 last known addresses is the best possible notice under the circumstances. See *Mullane v. Central*
13 *Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 319; *Eisen v. Carlisle & Jacquelin* (1974) 417
14 U.S. 156, 173-176.

15 Accordingly, the Court should approve the Class Notice and the plan for providing notice
16 to the Class Members.

17 **VIII. CONCLUSION**

18 Based on the foregoing, as part of its preliminary approval of the settlement, the Parties
19 request that the Court:

- 20 1. Review the proposed Settlement Agreement setting forth the settlement terms.
- 21 2. Consider whether the proposed settlement preliminarily appears to be fair,
22 reasonable and adequate, and whether the proposed Settlement Class preliminarily appears to meet
23 the applicable certification criteria.
- 24 3. Appoint Plaintiffs Corey Jones, Demetreia Gray, and Eddie Fairley as Class
25 Representatives.
- 26 4. Appoint Daniel F. Gaines and Alex P. Katofsky, of Gaines & Gaines, APLC; Edwin
27 Aiwazian, Arby Aiwazian, and Joanna Ghosh, of Lawyers for Justice, PC; and Matthew Matern,
28 Launa Adolph, and Kayvon Sabourian, of Matern Law Group, PC as Class Counsel.

5. Approve ILYM Group, Inc. as Settlement Administrator with regard to handling the notice procedure as set forth more particularly in the Stipulation of Settlement.

6. Enter an Order provisionally approving the proposed Settlement Class on a non-mandatory basis, approve forms to be distributed to the Settlement Class, direct notice to be given to the Settlement Class, and set the following schedule of settlement proceedings:

<u>EVENT</u>	<u>TIMING</u>
Last day for Defendant to provide the Settlement Administrator a list of all Class Members, including their last known addresses, telephone numbers, Social Security numbers, and their total Workweeks and Pay Periods (as defined in the Settlement) ("Employee List")	21 calendar days after entry of Court's Order granting preliminary approval of the Settlement Agreement
Last day for Settlement Administrator to mail Notice to Class Members	15 calendar days after Settlement Administrator's receipt of the Employee List
Last day for exclusion requests by Class Members to be postmarked to Settlement Administrator	45 calendar days after mailing of Class Notice
Last day for written objections to the settlement by Class Members to be postmarked to Settlement Administrator	45 calendar days after mailing of Class Notice
Last day for Class Counsel to file and serve moving papers in support of final settlement approval and request for attorneys' fees and costs	16 calendar days before the final settlement approval hearing date
Last day for Class Counsel to file with the Court and serve declaration by Settlement Administrator specifying the due diligence undertaken with regard to the mailing of the Notice	10 calendar days prior to the final settlement approval hearing date
Final settlement approval hearing	_____, 2022, at _____ [approximately 100 calendar days after entry of the Order granting this Motion]

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DATED: September 9, 2022

Respectfully submitted,

GAINES & GAINES,
A Professional Law Corporation

By: Alex P. Katofsky
DANIEL F. GAINES
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