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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

ALICIA ORTEGA, BRYAN SHEPPARD,
individually, and on behalf of other members
of the general public similarly situated and
on behalf of other aggrieved employees
pursuant to the California Private Attorneys
General Act; SHANTEANNA BROWN,
RAYVEYONE BROWN, individually, and
on behalf of other members of the general
public similarly situated;

Plaintiffs,

vs.

SMARTGUARD, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 34-2020-00278712-CU-OE-GDS

Honorable Lauri A. Damrell
Department 28

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Declaration of Proposed Class Counsel
(Annabel Blanchard); Declarations of Proposed
Class Representatives (Alicia Ortega, Bryan
Sheppard, Shanteanna Brown, and Rayveyone
Brown); and [Proposed] Order filed
concurrently herewith]

Reservation No. 2699096
Date: February 3, 2023
Time: 9:00 a.m.
Department: 28

Complaint Filed: May 15, 2020
FAC Filed: October 19, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on February 3, 2023 at 9:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Lauri A. Damrell in Department 28 of the Superior Court of California for the County of Sacramento, located at 720 9th Street, Sacramento, California 95814, Plaintiffs Alicia Ortega, Bryan Sheppard, Shanteanna Brown, and Rayveyone Brown (“Plaintiffs” or “Class Representatives”) will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Class Action and Private Attorneys General Act Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Annabel Blanchard, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Attorneys’ Fees and Costs to Class Counsel, Enhancement Payments to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Alicia Ortega, Bryan Sheppard, Shanteanna Brown, and Rayveyone Brown as Class Representatives;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving ILYM Group as the Settlement Administrator; and

- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Fees and Costs to Class Counsel, Enhancement Payments for Plaintiffs, and Settlement Administration Costs to Settlement Administrator.

This motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which provide for approval by the Court of the settlement of a putative class action and allows the Court to preliminarily certify a class for settlement purposes, and permit the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Annabel Blanchard) and Proposed Class Representatives (Alicia Ortega, Bryan Sheppard, Shanteanna Brown, and Rayveyone Bryan) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: January 18, 2023

LAWYERS for JUSTICE, PC

By: _____



Annabel Blanchard
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Alicia Ortega, Bryan Sheppard, Shanteanna Brown, and Rayveyone Brown (“Plaintiffs” or “Class Representatives”) seek preliminary approval of the Class Action and Private Attorneys General Act Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Smartguard, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of One Million Four Hundred Thousand Dollars (\$1,400,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Shares to Settlement Class Members²; (2) the Enhancement Payments of Ten Thousand Dollars (\$10,000.00) each to Plaintiffs (\$40,000.00 total)³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or \$490,000.00, and reimbursement of litigation costs and expenses up to Forty Thousand Dollars (\$40,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount up to Twenty-Five Thousand Dollars (\$25,000.00);⁵ and (5) the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA Penalties”), of which seventy-five percent (75%) or One Hundred Twelve Thousand Five Hundred Dollars (\$112,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA Payment”) and twenty-five percent (25%) or Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00) will be distributed to Aggrieved Employees on a *pro rata* basis (“Employee PAGA Amount”).⁶

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Annabel Blanchard (“Blanchard Decl.”), ¶ 5.

² *Id.*, ¶ 14.

³ *Id.*, ¶ 5.a.

⁴ *Id.*, ¶¶ 8.c & 5.d.

⁵ *Id.*, ¶ 5.e.

⁶ *Id.*, ¶ 5.b.

1 Plaintiffs also seek to provisionally certify the following Class for settlement purposes,
2 which Defendant does not oppose:

3 All current and former hourly-paid or non-exempt employees of Defendant,
4 employed in California at any time during the Class Period (“Class” or “Class
Members”).⁷

5 The Class is estimated to consist of approximately six hundred and twenty-nine (629)
6 individuals.⁸

7 Class Members who do not submit a timely and valid Request for Exclusion from the
8 Class Settlement (“Settlement Class Member”) will receive a share of the Net Settlement
9 Amount (“Individual Settlement Shares”) on a *pro rata* basis based upon the number of
10 Workweeks worked by each Settlement Class Member as an hourly-paid or non-exempt
11 employee of Defendant in California during the Class Period (“Workweeks”).⁹ All current and
12 former hourly-paid or non-exempt employees of Defendant, employed in California during the
13 PAGA Period (“Aggrieved Employees”), will receive a share of the PAGA Employee Amount
14 (“Individual PAGA Payment”) on a *pro rata* basis, based on the number of Workweeks worked
15 by each Aggrieved Employee as an hourly-paid or non-exempt employee of Defendant in
16 California during the PAGA Period (“PAGA Workweeks”).¹⁰

17 Defendant has represented there are no more than approximately 29,408 total
18 Workweeks worked by Class Members during the Class Period. If the number of Workweeks
19 worked by Class Members during the Class Period is more than ten percent (10%) greater than
20 this 29,408 figure (i.e. if the actual Workweeks are calculated at 32,348 or more), the Settlement
21 provides that the Gross Settlement Amount shall increase on a proportional basis (i.e. if there is
22 a twelve percent (12%) increase in the number of Workweeks worked by Class Members, the
23 Gross Settlement Amount would increase by two percent (2%)).¹¹

24
25
26 ⁷ Settlement Agreement, ¶ 2.a. “Class Period” is defined as the period of time from May 15, 2016 through March 31, 2021. See *id.*, ¶ 2.b.

27 ⁸ Blanchard Decl., ¶ 9.

⁹ Settlement Agreement, ¶¶ 8.c.iii & 14.

28 ¹⁰ *Id.*, ¶¶ 2.d., 5.b. & 13. “PAGA Period” is defined as the period of time from March 3, 2019, through March 31, 2021. See *id.*, ¶ 2.e.

¹¹ *Id.*, ¶ 6.

The Settlement resolves the Class Released Claims of Plaintiffs and Settlement Class Members and PAGA Released Claims of Plaintiffs Alicia Ortega and Bryan Sheppard, and Aggrieved Employees, against the Released Parties.¹²

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is an organization that provides private security services to private businesses, schools, and other facilities. Plaintiffs Alicia Ortega, Bryan Sheppard, Shanteanna Brown, and Rayveyone Brown are former employees of Defendant.

On March 3, 2020, Plaintiff Alicia Ortega provided written notice by online submission to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendant of the specific provisions of the California Labor Code and Industrial Welfare Commission Wage Orders that were violated.

On May 15, 2020, Plaintiff Alicia Ortega filed a Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code Section 2698, *Et Seq.* in the Sacramento County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

On July 13, 2020, Defendant filed an Answer to Plaintiff Alicia Ortega’s Class Action Complaint. On June 3, 2021, Plaintiff Bryan Sheppard provided written notice by online submission to the LWDA and by certified mail to Defendant of the specific provisions of the California Labor Code and Industrial Welfare Commission Wage Orders that were violated.

On October 19, 2021, Plaintiffs filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* (“Operative Complaint”), which added named Plaintiffs Bryan Sheppard, Shanteanna Brown, and Rayveyone Brown to the Action.

Plaintiffs’ core allegations are that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal

¹² Settlement Agreement, at ¶ 2.h., for the full scope of the “Class Released Claims,” *id.* ¶ 2.g., for the definition of the “Released Parties,” and *id.*, ¶ 2.i., for the full scope of the “PAGA Released Claims.”

1 and rest periods and associated premium pay, failing to timely pay wages during employment
2 and upon termination of employment, failing to provide compliant wage statements, failing to
3 maintain requisite payroll records, and failing to reimburse necessary business expenses, and
4 thereby engaged in unfair business practices in violation of California Business and Professions
5 Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiffs
6 contend that they, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties
7 (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

8 On December 9, 2021, Defendant filed an Answer to Plaintiffs' First Amended Class
9 Action Complaint.

10 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
11 associated with any of the allegations in the Action, and further denies that the Action is
12 appropriate for class treatment or representative adjudication for any purpose other than for
13 settlement purposes only.

14 On September 4, 2020, Plaintiff Alicia Ortega propounded multiple sets of discovery
15 including Requests for Production of Documents, (Set One and Two); Special Interrogatories,
16 (Set One, Two, and Three); and Form Interrogatories, (Set One), on Defendant. Additionally,
17 on September 4, 2020, Plaintiff Alicia Ortega noticed the deposition of Defendant's Person Most
18 Knowledgeable designee regarding job duties and organizational structure of Defendant.

19 The Parties have actively litigated the Action since it was commenced on May 15, 2020.
20 On April 1, 2021, the Parties participated in a formal, full-day mediation conducted by the
21 Honorable Steven M. Vartabedian (Retired), a well-regarded mediator experienced in mediating
22 complex labor and employment matters. With the aid of the mediator's evaluation, the Parties
23 ultimately reached the Settlement described herein to resolve the Action in its entirety.

24 **III. SUMMARY OF THE SETTLEMENT TERMS**

25 Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to
26 resolve the Class Released Claims of Plaintiffs and the Class Members who do not submit a
27 timely and valid Request for Exclusion from the Settlement (i.e., Settlement Class Members)
28 and PAGA Released Claims of Plaintiffs and Aggrieved Employees with respect to the Released

Parties.¹³ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys’ fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e.\$490,000.00 if the Gross Settlement Amount remains \$1,400,000.00), and reimbursement of costs and expenses in an amount up to Forty Thousand Dollars (\$40,000.00) to Class Counsel (collectively referred to as the “Attorneys’ Fees and Costs”); (2) settlement administration costs of up to Twenty-Five Thousand Dollars (\$25,000.00) to the Settlement Administrator (“Settlement Administration Costs”); (3) PAGA Penalties in the amount of One Hundred and Fifty Thousand Dollars (\$150,000.00), of which seventy-five percent (75%), or \$112,500.00, will be paid to the State of California Labor and Workforce Development Agency (“LWDA Payment”) and twenty-five percent (25%), or \$37,500.00, will be distributed to the Aggrieved Employees (“PAGA Employee Amount”) on a *pro rata* basis; and (4) payments in the amount of up to Ten Thousand Dollars (\$10,000.00) each to Plaintiffs Alicia Ortega, Bryan Sheppard, Shanteanna Brown, and Rayveyone Brown (for a combined total of \$40,000.00) (“Enhancement Payments”).¹⁴ The Parties have agreed to retain ILYM Group (“ILYM Group” or “Settlement Administrator”) to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member’s share of the available Net Settlement Amount (“Individual Settlement Shares”), in accordance with the Settlement Agreement and as follows:

- a. The Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the “Final Workweek Value,” and multiply each Settlement Class Member’s Individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.¹⁵

The Parties have agreed that the Settlement Administrator will determine each Aggrieved Employee ’share of their PAGA Employee Amount (i.e. Individual PAGA Payment), in accordance with the Settlement Agreement as follows:

- a. The PAGA Employee Amount will be divided by the total number of PAGA Workweeks worked by all Aggrieved Employees to produce a “Weekly PAGA Value.” The Weekly PAGA Value will be multiplied by the number of PAGA

¹³ Settlement Agreement, ¶ 22.

¹⁴ Settlement Agreement, ¶¶ 5.a, 5.b, 5.c, 5.d, 5.e, 5.f.

¹⁵ *Id.*, ¶ 14.

Workweeks attributable to an individual Aggrieved Employee to derive his or her Individual PAGA Payment.¹⁶

Each Settlement Class Member's Individual Settlement Share will be allocated as follows: twenty percent (20%) constitutes wages and will be reported on an IRS Form W-2; and the remaining eighty percent (80%) constitutes interest, penalties, and other non-wage damages and will be reported on an IRS Form 1099.¹⁷ Settlement Class Members will be issued payment of their Individual Settlement Shares subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Shares (the net payment is referred to as an "Individual Settlement Payment").¹⁸ No portion of the Individual PAGA Payments paid to Aggrieved Employees, is or shall be deemed compensation of wages. No withholding shall be made in relation to the Individual PAGA Payments, and an IRS 1099 shall be issued to each Aggrieved Employee.¹⁹ Defendant shall provide the Gross Settlement Amount and the employer's share of taxes and contributions in connection with the wages portion of the Individual Settlement Shares ("Employer Taxes") to the Settlement Administrator.²⁰

Individual Settlement Payment and Individual PAGA Payment checks will expire one hundred and eighty (180) calendar days from the date that are issued by the Settlement Administrator.²¹ After the 180-day period, the Settlement Administrator shall cancel checks and remit any remaining funds associated with cancelled checks to Legal Aid at Work.²² Settlement Class Members whose Individual Settlement Payment checks are cancelled shall, nevertheless, be bound to the Class Settlement, and Aggrieved Employees whose Individual PAGA Payment checks are cancelled shall, nevertheless, be bound to the PAGA Settlement.²³

Class Members may request to be excluded from the Class Settlement by mailing a written request ("Request for Exclusion") to the Settlement Administrator.²⁴ To be timely, the

¹⁶ Settlement Agreement, ¶ 13.

¹⁷ *Id.*, ¶ 17.

¹⁸ *Id.*, ¶ 14.

¹⁹ *Id.*, ¶ 16.

²⁰ *Id.*, ¶ 8.f.

²¹ *Id.*, ¶ 28.

²² *Ibid.*

²³ *Ibid.*

²⁴ *Id.*, ¶ 8.c.ii.

1 Class Member must mail a Request for Exclusion to the Settlement Administrator, forty-five
2 (45) calendar days from the date of mailing of the Class Notice (“Response Deadline”).²⁵ A
3 Request for Exclusion must: (a) contain the case name and number of the Action; (b) be signed
4 by the Class Member; (c) contain full name, address, telephone number, and the last four digits
5 of the Social Security number of the Class Member; (d) clearly state that the Class Member does
6 not wish to be included in the Class Settlement; and (e) be returned by mail or fax to the
7 Settlement Administrator at the specified address and/or fax number, postmarked or faxed on or
8 before the Response Deadline.²⁶ A Class Member who submits a valid and timely Request for
9 Exclusion will not be bound by the Class Settlement and will not receive an Individual
10 Settlement Share; however, if the Class Member is also an Aggrieved Employee, he or she will
11 nevertheless be bound to the PAGA Settlement and will still receive their Individual PAGA
12 Payment, irrespective of whether they submit a Request for Exclusion.²⁷

13 A Class Member may object to the Class Settlement, as long as he or she has not
14 submitted a Request for Exclusion (i.e. he or she is a Settlement Class Member), by mailing a
15 written objection to the Settlement Administrator (“Notice of Objection”).²⁸ A Notice of
16 Objection must: (a) contain the case name and number of the Action; (b) be signed by the Class
17 Member; (c) contain the full name, address, telephone number, and the last four digits of the
18 Social Security number of the Class Member; (d) contain a written statement of all grounds for
19 the objection accompanied by any legal support for such objection; (e) contain copies of any
20 papers, briefs, or other documents upon which the objection is based; and (f) be returned by mail
21 or fax to the Settlement Administrator at the specified address and/or fax number, postmarked
22 or faxed on or before the Response Deadline.²⁹ Settlement Class Members who timely submit a
23 Notice of Objection may appear at the Final Approval Hearing in person or through counsel or
24 may also present their objection at the Final Approval Hearing.³⁰

25 Settlement Agreement, ¶ 8.c.

26 *Id.*, ¶ 8.c.ii.

27 *Ibid.*

28 *Id.*, ¶ 8.c.iii.

29 *Ibid.*

30 *Ibid.*

Class Members may dispute the number of Workweeks to which they have been credited, as reflected in their Class Notices, by mailing a written dispute to the Settlement Administrator (“Workweeks Dispute”).³¹ A Workweeks Dispute must: (a) contain the case name and number of the Action; (b) be signed by the Class Member; (c) contain the full name, address, telephone number, and the last four digits of the Social Security number of the Class Member; (d) clearly state that the Class Member disputes the number of Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her; (e) include information and/or attach documentation demonstrating that the number of Workweeks that he or she contends is the correct number credited to him or her; (f) be returned by mail or fax to the Settlement Administrator at the specified address and/or fax number, postmarked or fax-stamped on or before the Response Deadline.³²

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or reject a proposed settlement is within the court’s discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 (“In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court’s broad discretion.”). Accordingly, a court’s decision to approve a class action settlement may be reversed only upon a strong showing of “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

Courts review class action settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later detailed review after the period during which notice is

³¹ Settlement Agreement, ¶ 8.c.i.

³² *Ibid.*

distributed to class members for their comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th Ed. 2002). This procedure, which is commonly utilized by both federal and state courts, assures class members of the protection of procedural due process safeguards and enables a court to fulfill its role as the guardian of the interest of the settlement class.

Preliminary approval of a settlement does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to voice their views of the settlement or to exclude themselves from the settlement. Cal. R. Ct. 3.769(g).

In considering a potential class settlement, a court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required for the trial court to grant provisional class certification and preliminary approval; the court may grant such relief upon an informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg*, § 11.25.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make this fairness determination, courts must consider several relevant factors, including "the strength of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Dunk, supra*, 48 Cal.App.4th at 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the

1 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give
2 “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d
3 at 1027 (citation omitted).

4 The proponent of the settlement has the burden to show that it is fair and reasonable.
5 *Wershba, supra*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the
6 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
7 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
8 litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at
9 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
10 1151.

11 **A. The Settlement Resulted from Arm’s-Length Negotiations Based Upon**
12 **Extensive Investigation and Discovery.**

13 The Parties actively litigated the Action since it was commenced on May 15, 2020. Both
14 sides used the pre-mediation time period to investigate the veracity, strength, and scope of the
15 claims, and Class Counsel was actively preparing the case for class certification and trial.³³

16 Prior to engaging in mediation, Class Counsel conducted significant investigation and
17 formal and informal discovery regarding the facts of the case, including and not limited to, the
18 exchange, review, and analysis of thousands of pages of documents and data produced by
19 Defendant.³⁴ The volume of data and documents that Class Counsel reviewed and analyzed
20 included and was not limited to: Plaintiffs’ and other Class Members’ employment records, a
21 detailed sampling of Class Members’ time and pay data, multiple iterations of Defendant’s
22 Employee Handbook, company policy acknowledgements, job descriptions, new hire
23 information checklists (including but not limited to Part-time Employee Acknowledgement),
24 Defendant’s operations and employment practices (including Safe Driving Agreement), and
25 policies (including but not limited to Smartguard Inc. Rules and Regulations, and Meal & Rest
26 Period Policy), among other information and documents.³⁵ Class Counsel interviewed Plaintiffs

27 ³³ Blanchard Decl., ¶¶ 11-13.

28 ³⁴ *Id.*, ¶ 12.

³⁵ *Ibid.*

1 and other Class Members to gather facts and to identify potential witnesses.³⁶ Class Counsel
2 propounded multiple sets of formal written discovery requests on Defendant, and noticed the
3 depositions of Defendant's Person Most Knowledgeable designees regarding organizational
4 structure and job duties. Class Counsel prepared for and took the deposition of Defendant's
5 Person Most Knowledgeable witness and prepared for the deposition of Plaintiffs.³⁷ Counsel for
6 the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the
7 pleadings, discovery, and the production of documents and data prior to the mediation.³⁸ Class
8 Counsel also drafted Plaintiffs' mediation brief and prepared for and attended court proceedings,
9 settlement negotiations, and the mediation, among other tasks.³⁹

10 The Parties engaged in extensive settlement negotiations and participated in a formal,
11 full-day mediation conducted by the Honorable Steven M. Vartabedian (Retired), a well-
12 respected mediator experienced in mediating complex labor and employment matters.⁴⁰ Prior
13 to and during the mediation and settlement discussions, the Parties exchanged class information
14 and engaged in an intensive discussion regarding their evaluations of the case and various
15 aspects of the case, including but not limited to, the risks and delays of further litigation, the
16 risks to the Parties of proceeding with class certification and/or representative adjudication, the
17 law relating to off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement,
18 and PAGA representative claims, as well as the evidence produced and analyzed, and the
19 possibility of appeals, among other things.⁴¹ During all settlement discussions, the Parties
20 conducted their negotiations at arm's length in an adversarial position.⁴² Arriving at a settlement
21 that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about
22 their ability to prevail on the merits and at certification, and Plaintiffs and Class Counsel
23 believed that they would be able to obtain class certification and prevail at trial.⁴³ After
24

25 ³⁶ Blanchard Decl., ¶ 12

26 ³⁷ *Ibid.*

27 ³⁸ *Ibid.*

28 ³⁹ *Ibid.*

⁴⁰ *Id.*, ¶ 11.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Id.*, ¶¶ 11, 16-18.

conducting investigations, significant formal and informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴⁴

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.⁴⁵ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴⁶ Counsel for the Parties have also reviewed documents and information relating to Plaintiffs', Class Members', and Aggrieved Employees' employment with Defendant and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiffs' claims, and Defendant's defenses thereto, as well as facts discovered.⁴⁷ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁸

B. The Settlement Is Fair, Reasonable, and Adequate.

The Settlement, which provides for a Gross Settlement Amount of One Million Four Hundred Thousand Dollars (\$1,400,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁹ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.⁵⁰ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁵¹ Moreover, considering all of the facts and

⁴⁴ Blanchard Decl., ¶¶ 11, 16-18

⁴⁵ *Id.*, ¶¶ 18, 23-26.

⁴⁶ *Ibid.*

⁴⁷ *Id.*, ¶¶ 11-13.

⁴⁸ *Id.*, ¶¶ 6-7.

⁴⁹ *Id.*, ¶ 14.

⁵⁰ *Id.*, ¶¶ 11-13.

⁵¹ *Id.*, ¶¶ 16-18 & 23-26

1 circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery
2 for the Class.⁵²

3 Assuming that the Attorneys' Fees and Costs, Enhancement Payments, PAGA Penalties,
4 and Settlement Administration Costs are approved by the Court and paid in the full amounts
5 provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is
6 currently estimated to be Six Hundred Fifty-Five Thousand Dollars (\$655,000.00).⁵³
7 Additionally, 25% of the PAGA Penalties, which \$37,500.00 out of \$150,000.00, will be
8 distributed to Aggrieved Employees. As discussed in Part III, *supra*, the entire Net Settlement
9 Amount will be fully paid out to the Settlement Class Members, in accordance with the
10 Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement
11 Shares and each Aggrieved Employee's Individual PAGA Payment will be calculated based on
12 his or her Workweeks and PAGA Workweeks, respectively.⁵⁴ There is no reason to doubt the
13 fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary
14 approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable,
15 rational basis [to warrant approval], particularly if recommended by experienced and competent
16 class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y.
17 2001) 127 F.Supp.2d 418, 429-30.

18 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
19 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members,
20 Aggrieved Employees, and the State of California.⁵⁵ Although the recommendations of Class
21 Counsel are not conclusive, the Court can properly take the recommendations into account,
22 particularly if Class Counsel appears to be competent, and has experience with this type of
23 litigation, and investigations have been completed, as is the case here. *Newberg*, §11.47.
24 Accordingly, the Court should grant preliminary approval of the Settlement.

25 **C. The Settlement Is of Significant Value.**

26
27 ⁵² Blanchard Decl., ¶¶ 11, 13, & 27.

⁵³ Settlement Agreement, ¶ 8.f.

28 ⁵⁴ *Id.*, ¶¶ 13 & 14.

⁵⁵ Blanchard Decl., ¶¶ 11, 12, & 27.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged thousands of pages of documents, data, and information prior to mediation.⁵⁶ The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.⁵⁷ As outlined in the Declaration of Annabel Blanchard, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁸

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE.

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵⁹ California Code of Civil Procedure Section 382 "authorizes class actions 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." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. Further, Plaintiffs' claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the Class. Finally, prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the case. The Class is amenable to class certification for settlement purposes as discussed below.

⁵⁶ Blanchard Decl., ¶¶ 11-13 & 18.

⁵⁷ *Id.*, ¶¶ 18 & 23-26.

⁵⁸ *Id.*, ¶¶ 11-13, 16-18, & 23-26.

⁵⁹ Settlement Agreement, ¶ 9.a.

1 **A. The Class Is Ascertainable and Sufficiently Numerous.**

2 “Ascertainability is required in order to give notice to putative class members as to whom
3 the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001)
4 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs
5 by describing a set of common characteristics sufficient to allow a member of that group to
6 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
7 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
8 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

9 This action involves a class of approximately six hundred twenty-nine (629)
10 individuals.⁶⁰ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126
11 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity
12 requirement as joinder is not practical at that point). Further, all Class Members can and will
13 be identified by Defendant to the Settlement Administrator through a review of Defendant’s
14 employment records regarding hourly-paid and non-exempt employees in California during the
15 Class Period. As such, the Class is ascertainable and sufficiently numerous.

16 **B. The Class Members Share a Well-Defined Community of Interest.**

17 The community of interest requirement “embodies three factors: (1) predominant
18 common questions of law or fact; (2) class representative with claims or defenses typical of the
19 class; and (3) class representative who can adequately represent the class.” *Sav-On, supra*, 34
20 Cal.4th at 326. “[T]he community of interest requirement for certification *does not mandate*
21 *that class members have uniform or identical claims.*” *Capitol People First v. Dep’t of*
22 *Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts
23 focus on the Defendant’s internal policies and “pattern and practice . . . in order to assess whether
24 that common behavior toward similarly situated plaintiff renders class certification appropriate.”
25 *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

26 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
27 of recovery’ is likely to prove compatible with class treatment.” *Capitol People, supra*, 155

28

⁶⁰ Blanchard Decl., ¶ 9.

Cal.App.4th at 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at 327). Furthermore, the commonality inquiry centers on the “reasonableness” of the defendant’s labor policies as applied to the potential class. *Ghazaryan, supra*, 169 Cal.App.4th at 1534.

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Operative Complaint. Based on the documents and information obtained through formal and informal discovery and exchange of information in this case, Plaintiffs contend that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.⁶¹ Plaintiffs’ claims arise from Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁶²

Plaintiffs also contend that Defendant’s payroll and recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.⁶³ As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁶⁴

Plaintiffs maintain that the outcome of this litigation would be determined by Defendant’s alleged uniform operations and employment policies and procedures that applied across its hourly-paid or non-exempt employees who worked in California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS’ FEES AND COSTS

Class Counsel has litigated the matter for over two years, and was actively preparing the

⁶¹ Blanchard Decl., ¶ 16.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

1 matter for class certification and trial.⁶⁵ The ongoing work has been extensive, demanding, and
2 ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted
3 extensive investigations into the facts of the case and formal and informal discovery, including,
4 and not limited to, propounding multiple formal written discovery requests onto Defendant.
5 Class Counsel also noticed the depositions of Defendant's Person Most Knowledgeable
6 designees. Class Counsel reviewed thousands of pages of documents and data⁶⁶ and also
7 interviewed and obtained information from Plaintiffs and other Class Members, researched
8 applicable law, undertook damages/valuation calculations, and met and conferred with
9 Defendant's counsel regarding the pleadings, discovery, and the production of documents and
10 data prior to mediation.⁶⁷ Counsel for the Parties also undertook extensive settlement
11 discussions, which included participating in a formal, full-day mediation.⁶⁸

12 Class Counsel is well-experienced in wage-and-hour class action litigation and used that
13 experience to obtain a great result for the Class.⁶⁹

14 The Settlement establishes a Gross Settlement Amount of One Million Four Hundred
15 Thousand Dollars (\$1,400,000.00), and provides for Class Counsel to apply to the Court for an
16 award up to thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$490,000.00) for
17 attorneys' fees, and for an amount up to Forty Thousand Dollars (\$40,000.00) for reimbursement
18 of actual litigation costs and expenses.⁷⁰ The attorneys' fees provided for by the Settlement are
19 commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2)
20 the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and
21 determination that Class Counsel has shown, (4) the results that Class Counsel has achieved
22 throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the
23 Class Members, Aggrieved Employees, and the State of California, and (6) the other cases that
24 Class Counsel had to turn down in order to devote its time and efforts to this matter. The
25

26 ⁶⁵ Blanchard Decl., ¶¶ 11-13.

27 ⁶⁶ *Id.*, ¶ 12.

28 ⁶⁷ *Ibid.*

⁶⁸ *Id.*, ¶ 11.

⁶⁹ *Id.*, ¶¶ 6-7.

⁷⁰ Settlement Agreement, ¶ 5, 5.c, & 5.d.

1 proposed Class Notice provides Class Members with information about the amount allocated
2 toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will
3 be sought, as provided for by the Settlement.⁷¹

4 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
5 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
6 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the
7 "experienced trial judge is the best judge of the value of professional services rendered in his
8 court." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney
9 fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result
10 achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing
11 *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to
12 a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should
13 "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
14 in comparable litigation." *Id.* at 50. In cases where class members present claims against a
15 settlement fund and the settlement agreement provides that the defendant agrees to paying the
16 attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

17 The propriety of calculating and awarding attorneys' fees as a percentage of a settlement
18 that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed
19 by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California
20 Supreme Court has taken the position that "[t]rial courts have discretion to conduct a lodestar
21 cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check
22 and use other means to evaluate the reasonableness of a requested percentage fee[.]" and "[t]he
23 percentage of fund method survives in California." *Id.* (internal quotation marks omitted).

24 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
25 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin*
26 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45%
27 of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*

28 ⁷¹ Settlement Agreement, Exh. A.

(S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷²

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiffs’ motion for final approval of the Settlement and application for the Attorneys’ Fees and Costs and at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys’ fees provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE.

California statutory and case law vests the Court with broad discretion in fashioning appropriate class notice. See Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. A class notice is adequate if it “present[s] a fair recital of the subject matter and proposed terms” of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

The proposed Class Notice⁷³ describes the Settlement, the deadlines and procedures to submit a Notice of Objection to the Class Settlement, Request for Exclusion from the Class Settlement, or Workweeks Dispute, and the date and time set for the Final Approval Hearing.⁷⁴

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class members to make an informed decision about their participation.” *Manual for Complex*

⁷² Blanchard Decl., ¶ 19.

⁷³ Settlement Agreement, Exh. A.

⁷⁴ *Ibid.*

Litigation § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷⁵ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁶ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Shares and if applicable, their Individual PAGA Payment are calculated and the number of Workweeks and/or PAGA Workweeks credited to them.⁷⁷

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

IX. APPOINTMENT OF ILYM GROUP AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected ILYM Group to administer the Settlement.

The Settlement Administrator will mail via First Class U.S. mail the court-approved Class Notice to the Class Members.⁷⁸ With respect to Class Notices that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternative address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.⁷⁹ In the event that a Class Notice is re-mailed to a Class Members the Response Deadline for that Class Member shall be extended by fifteen (15) calendar days.⁸⁰ The Settlement Administrator will receive Requests for Exclusion, Notices of Objection, and Workweeks Disputes.⁸¹

⁷⁵ Settlement Agreement, Exh. A.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Id.*, ¶ 8.c.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Id.*, ¶¶ 8.c.i, 8.c.ii, 8.c.iii.

The Settlement Administrator will calculate the amounts of the Individual Settlement Shares and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Shares; mail the Individual Settlement Payment checks to the Settlement Class Members and the Individual PAGA Payment checks to the Aggrieved Employees; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Enhancement Payments, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸² The Settlement Administration Costs are currently estimated to be up to Twenty-Five Thousand Dollars (\$25,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸³

Accordingly, Plaintiffs respectfully request that the Court appoint ILYM Group as the Settlement Administrator and direct the mailing of the Class Notice to the Class Members in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸⁴

Within fourteen (14) calendar days after the date that the Court enters an order granting preliminary approval of the Settlement, Defendant shall provide to the Settlement Administrator in Excel Spreadsheet form the full name, last known mailing address, Social Security number, and start and end dates of employment as an hourly-paid or non-exempt employee in California during the Class Period for each Class Member, and such other information as is necessary to calculate Workweeks and PAGA Workweeks as determined by the Settlement Administrator

⁸² Settlement Agreement, ¶ 8.g & 28.; Blanchard Decl., ¶ 15.

⁸³ Settlement Agreement, ¶ 8.e.

⁸⁴ *Ibid.*

1 (“Class List”).⁸⁵

2 Within seven (7) calendar days after Defendant provides the Class List to the Settlement
3 Administrator, the Settlement Administrator shall mail via First Class U.S. mail the court-
4 approved Class Notice to the Class Members.⁸⁶ With respect to Class Notices that are returned
5 as undeliverable on or before the Response Deadline, the Settlement Administrator will search
6 for an alternative address by way of skip-trace and re-mail the Class Notice within five (5)
7 calendar days.⁸⁷ In the event that a Class Notice is re-mailed to a Class Member, the Response
8 Deadline for that Class Member shall be extended by fifteen (15) calendar days.⁸⁸ Class
9 Members will have until the Response Deadline, or extended Response Deadline (if applicable,
10 to mail a Request for Exclusion, Notice of Objection, or Workweeks Dispute.⁸⁹

11 Within five (5) business days after the Effective Date, Defendant shall provide the Gross
12 Settlement Amount and the Employer’s Taxes to the Settlement Administrator.⁹⁰ Within ten
13 (10) calendar days after receiving the Gross Settlement Amount, the Settlement Administrator
14 shall issue payments consistent with the terms of the Agreement to (1) the LWDA, (2) the
15 Aggrieved Employees, (3) the Settlement Class Members, (4) Plaintiffs, (5) Class Counsel, and
16 (6) itself, pursuant to this Agreement.⁹¹

17 Individual Settlement Payment and Individual PAGA Payment checks will expire one
18 hundred eighty (180) calendar days from the date they are issued by the Settlement
19 Administrator. After the 180-day period, the Settlement Administrator shall cancel checks and
20 remit any remaining funds associated with cancelled checks to Legal Aid to Work.⁹²

21 **XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR**
22 **ENHANCEMENT PAYMENTS**

23
24
25 ⁸⁵ Settlement Agreement, ¶ 6.

26 ⁸⁶ *Id.*, ¶ 8.b.

27 ⁸⁷ *Id.*, ¶ 8.c.

28 ⁸⁸ *Ibid.*

⁸⁹ *Id.*, ¶ 8.c.

⁹⁰ *Id.*, ¶ 8.f.

⁹¹ *Id.*, ¶ 8.g.

⁹² *Ibid.*

Plaintiffs Alicia Ortega, Bryan Sheppard, Shanteanna Brown, and Rayveyone Brown respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Enhancement Payments in an amount up to Ten Thousand Dollars (\$10,000.00) each to Plaintiffs Alicia Ortega, Bryan Sheppard, Shanteanna Brown, and Rayveyone Brown (for a combined total of \$40,000.00).⁹³ It is within the Court’s discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Enhancement Payments are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁴ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would benefit the Class.⁹⁵ Accordingly, it is appropriate and just for Plaintiffs to each receive an Enhancement Payment for their services on behalf of the Class, in addition to their Individual Settlement Payments and Individual PAGA Payments (if applicable).

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminarily

⁹³ Settlement Agreement, ¶ 5.a.

⁹⁴ Blanchard Decl., ¶ 20; Declaration of Alicia Ortega in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (“Ortega Decl.”), ¶ 4; Declaration of Bryan Sheppard in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (“Sheppard Decl.”), ¶ 4; Declaration of Shanteanna Brown in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (“Brown Decl.”), ¶ 4; Declaration of Rayveyone Brown in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (“Rayeyone Decl.”), ¶ 4.

⁹⁵ Blanchard Decl., ¶ 20; Ortega Decl., ¶¶ 3-6; Sheppard Decl., ¶¶ 3-6; Brown Decl., ¶¶ 3-6; & Raveyone Decl., ¶¶ 3-6.

1 appoint and designate Lawyers *for* Justice, PC as Class Counsel; preliminarily appoint and
2 designate Plaintiffs Alicia Ortega, Bryan Sheppard, Shanteanna Brown, and Rayveyone Brown
3 as Class Representatives; appoint ILYM Group as Settlement Administrator; preliminarily
4 approve the allocations for Attorneys' Fees and Costs, Enhancement Payments, PAGA
5 Penalties, and Settlement Administration Costs; approve the proposed Class Notice; direct the
6 Settlement Administrator to undertake the notice and settlement administration process in
7 conformity with the deadlines and procedures provided by the Settlement Agreement; and
8 schedule a Final Approval Hearing to take place in approximately six months.

9 Dated: January 18, 2023

LAWYERS *for* JUSTICE, PC

10
11 By:



Annabel Blanchard
Attorneys for Plaintiffs