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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF MARIN**

MARIE DEMARTINI, WILLIE  
AUSTIN, JR., and JOSE SOTO, on  
behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

SAFELITE FULFILLMENT, INC.,  
DBA SAFELITE AUTO GLASS,  
a Delaware Corporation; SAFELITE  
SOLUTIONS, LLC, a Delaware  
Corporation; BARRETT BUSINESS  
SERVICES, INC., a Maryland  
Corporation; and DOES 1-50, inclusive,

Defendants.

Case No. CIV20002076

Assigned for all purposes to:  
Hon. Sheila Lichtblau, Dept. H

**CLASS AND REPRESENTATIVE ACTION**

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION AND PAGA SETTLEMENT**

[Filed concurrently with Notice of Motion and  
Motion, Declarations of James R. Hawkins,  
Kyle Nordrehaug, Marie DeMartini, Willie  
Austin Jr., Jose Soto, and [Proposed] Order]

Date: [REDACTED], 2024  
Time: [REDACTED]  
Dept.: Courtroom H  
Judge: Hon. Sheila Lichtblau

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16 and all others similarly situated.  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Named Plaintiffs and proposed Class Representatives Marie DeMartini, Willie Austin Jr.,  
4 and Jose Soto (“Plaintiffs” of “Named Plaintiffs”) seek preliminary approval of a wage and hour  
5 class action settlement achieved on behalf of a Class of all current and former nonexempt  
6 employees employed by Safelite Fulfilment, Inc. or Safelite Solutions in California during the Class  
7 Period and all employees employed as temporary workers of Barrett Business Services, Inc. at  
8 Safelite Solutions’ distribution center as hourly, non-exempt employees in Ontario, California  
9 during the Class Period. The Class Period is the period between January 28, 2019, through May  
10 22, 2023. Defendants’ records indicate that there are approximately 2,600 Class Members.<sup>1</sup>

11 After engaging in substantial independent investigation, a full-day mediation before Hon.  
12 John Leo Wagner, Ret., and hard-fought negotiations during mediation and post-mediation, the  
13 parties agreed to a non-reversionary gross settlement amount of \$3,000,000, exclusive of  
14 employer-side payroll taxes. The settlement is strongly supported by experienced counsel, who  
15 carefully considered the strength of the claims and Defendants’ potential defenses, as well as the  
16 expense, complexity, risks, and likely duration of continued litigation.

17 Subject to Court-approval, and after deductions for a payment to the Labor Workforce and  
18 Development Agency pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Settlement  
19 Administration Costs, Class Representative Service Payments to Plaintiffs, and Class Counsel  
20 Attorneys’ Fees and Litigation Costs, the remaining amount will be distributed to Class Members  
21 who did not opt-out of the Settlement as follows:

22

|                                       |                           |
|---------------------------------------|---------------------------|
| Gross Settlement Amount               | \$3,000,000               |
| PAGA Payment                          | \$60,000                  |
| Administration Expenses               | \$25,000                  |
| Class Representative Service Payments | Up to a total of \$30,000 |
| Class Counsel Attorneys’ Fees         | Up to \$1,000,000         |
| Class Counsel Litigation Costs        | Up to \$26,000            |

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26  
27 <sup>1</sup> To the extent the terms used in this Memorandum are defined in the Class Action Settlement Agreement (“Settlement  
28 Agreement”), attached as Exhibit 1 to the Declaration of James R. Hawkins, the defined terms contained herein shall  
have the same meaning as set forth in the Settlement Agreement.

|                       |                              |
|-----------------------|------------------------------|
| Net Settlement Amount | Approximately<br>\$1,859,000 |
|-----------------------|------------------------------|

Through this motion, Plaintiffs respectfully request that the Court enter an order: (1) provisionally certifying the Class under Code of Civil Procedure § 382 and California Rule of Court 3.769(c) for settlement purposes; (2) preliminarily approving the Settlement; (3) approving as to the form of the Notice of Class Action Settlement (“Notice”) and ordering that the Notice be distributed to all Class Members; (4) appointing Named Plaintiffs Marie DeMartini, Willie Austin Jr., and Jose Soto as the Class Representatives; (5) appointing ILYM Group, Inc. as the Settlement Administrator; (6) appointing James Hawkins APLC and Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel; and (7) setting this matter for a hearing on the issues of final approval of the proposed Settlement, approval of the Class Representative Service Payments, approval of Class Counsel’s attorneys’ fees and costs, and approval of the administration expenses.

## **II. PROCEDURAL AND FACTUAL BACKGROUND**

### **A. Plaintiffs’ Claims and Relevant Background**

From approximately November 2019 through approximately September 2020, Plaintiff Marie DeMartini (“Plaintiff DeMartini”) was employed in California by Defendant Safelite Fulfillment, Inc. (“Defendant Safelite”) as a non-exempt employee, paid on an hourly basis. (Declaration of James R. Hawkins [“Hawkins Decl.”], ¶ 6.)

On May 27, 2020, Plaintiff DeMartini gave notice to the California Labor and Workforce Development Agency (“LWDA”) and Defendant Safelite of her intent to assert the rights granted to her under PAGA. (Hawkins Decl., ¶ 9.) Shortly thereafter, on June 25, 2020, Plaintiff DeMartini filed a separate class action, *DeMartini v. Safelite Fulfillment, Inc.*, Superior Court of the State of California, County of Marin Case No. CIV2001475, asserting claims for: (1) Failure to Pay Lawful Wages; (2) Failure to Provide Meal Periods; (3) Failure to Authorize or Permit Rest Periods; (4) Failure to Pay Wages Upon Separation of Employment and Within the Required Time; (5) Failure to Furnish Accurate Wage Statements; and (6) Violation of California Business and Professions Code §§17200, et seq. (*Ibid.*) On August 24, 2020, Defendant Safelite removed Plaintiff

1 DeMartini’s putative class action to the District Court of the Northern District of California as Case  
2 No. 3:20–cv–05952–MMC. (*Ibid.*) Subsequently, on September 18, 2020, Plaintiff DeMartini filed  
3 her representative action for civil penalties under PAGA, *DeMartini v. Safelite Fulfillment, Inc.*,  
4 Marin County Superior Court Case No. CIV20002076. (Hawkins Decl., ¶ 10.)

5 Plaintiff DeMartini contends that, during employment, Defendant Safelite implemented  
6 policies and practices which violate the California Labor Code and IWC Wage Orders. (Hawkins  
7 Decl., ¶ 8.) She asserts that, by way of these policies and practices, Defendant Safelite deprived her  
8 and the Class Members of earned wages, including minimum wages; straight time wages; overtime  
9 wages; premium wages; and failed to provide timely payment of wages, both during employment  
10 and upon separation. (*Ibid.*) Plaintiff DeMartini further contends that Defendant Safelite  
11 consistently failed to provide her with lawful meal and/or rest breaks; and failed to reimburse her  
12 for necessary expenses. (*Ibid.*)

13 Plaintiff Willie Austin Jr. (“Plaintiff Austin”) was also a non-exempt employee of  
14 Defendants during the relevant time period. (Hawkins Decl. ¶11.) On October 21, 2020, Plaintiff  
15 Austin filed his own class action against Defendant Safelite. (*Ibid.*) On January 8, 2021, Defendant  
16 Safelite removed Plaintiff Austin’s class action to the district court. (*Ibid.*)

17 On July 2, 2021, Plaintiffs DeMartini and Austin filed a consolidated complaint asserting  
18 the following claims: (1) Failure to Pay Lawful Wages; (2) Failure to Provide Meal Periods; (3)  
19 Failure to Authorize or Permit Rest Periods; (4) Failure to Reimburse Employees for Required  
20 Expenses; (5) Failure to Pay Wages Upon Separation of Employment and Within the Required  
21 Time; (6) Failure to Furnish Accurate Wage Statements; and (7) Violation of California Business  
22 and Professions Code §§17200, et seq. (Hawkins Decl., ¶ 12; Nordrehaug Decl. ¶ 6.)

23 On August 4, 2022, Plaintiff Soto gave timely notice to the LWDA and, Defendants Safelite  
24 and Barrett Business Services, Inc. (“Defendant BBSI”) of his claims. (Hawkins Decl., ¶ 13.)  
25 Plaintiff Soto then filed a class action on August 5, 2022, asserting claims of: (1) Failure to Pay  
26 Minimum Wages; (2) Failure to Pay Overtime Owed; (3) Failure to Provide Meal Periods; (4)  
27 Failure to Authorize and Permit Rest Periods; (5) Failure to Timely Pay Wages During  
28

1 Employment; (6) Failure to Pay Wages Owed Upon Separation of Employment; (7) Knowing and  
2 Intentional Failure to Comply with Itemized Wage Statement Provisions; and (8) Violation of the  
3 Unfair Competition Law. (*Ibid.*) Shortly thereafter, on October 12, 2022, Plaintiff Soto filed his  
4 representative PAGA action against Defendants. (*Ibid.*)

5 On October 30, 2023, Plaintiffs filed a First Amended Complaint (“FAC”) in the above-  
6 entitled matter of *DeMartini v. Safelite Fulfillment, Inc.*, Case No. CIV20002076, effectively  
7 consolidating Plaintiffs DeMartini and Austin’s class action with Plaintiff DeMartini’s PAGA  
8 action and Plaintiff Soto’s class and PAGA Action. (Hawkins Decl., ¶ 14.) In the FAC, Plaintiffs  
9 assert the following claims: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime; (3)  
10 Failure to Provide Lawful Meal Periods; (4) Failure To Authorize and Permit Rest Periods; (5)  
11 Failure to Timely Pay Wages Owed During Employment; (6) Failure to Timely Pay Wages Owed  
12 Upon Separation from Employment; (7) Failure to Furnish Accurate Itemized Wage Statements;  
13 (8) Failure to Reimburse Necessary Expenses; (9) Violation of the Unfair Competition Law; (10)  
14 Civil Penalties Under Private Attorneys’ General Act, Labor Code § 2698, et seq. (*Ibid.*)

15 **B. Investigation And Evaluation of The Claims**

16 Prior to filing each of the lawsuits, Class Counsel conducted a thorough investigation of the  
17 facts and circumstances underlying the potential claims, including an in–depth review of Plaintiffs’  
18 employment files, as well as their payroll and timekeeping records. (Hawkins Decl., ¶ 16.) Class  
19 counsel engaged in numerous interviews and telephonic conferences with Plaintiff, analysis of  
20 documents and other information provided by Named Plaintiffs, investigation into the viability of  
21 class treatment of the potential claims, and research of the applicable law. (*Ibid.*) Based on this  
22 initial investigation, Class Counsel identified what appeared to be a common course of conduct  
23 affecting a similarly situated group of nonexempt employees and determined that Plaintiffs’ claims  
24 were well suited for class adjudication of employees. (*Ibid.*)

25 Class Counsel continued its diligent investigation for the duration of the litigation by: (1)  
26 conducting extensive informal and formal discovery; (2) reviewing and analyzing thousands of  
27 timekeeping and payroll records, Defendants’ employee handbooks, Plaintiffs’ personnel files, and  
28

1 relevant policies and procedures; (3) researching the applicable law and potential defenses; (4)  
2 interviewing Class Members regarding their experience and the claims asserted; and (5) analyzing  
3 and calculating Defendants’ potential liability based on interpretations of California law. (Hawkins  
4 Decl., ¶ 17–19.)

5 After analyzing the relevant documents and data, the Parties determined that this case  
6 presented a substantial risk for both sides, and the Parties elected to mediate Plaintiffs’ claims and  
7 explore the possibility of settlement. (Hawkins Decl., ¶ 19.) To facilitate a productive mediation,  
8 Class Counsel prepared a comprehensive mediation brief outlining relevant factual and legal issues,  
9 providing a detailed analysis of the timekeeping and payroll records, and presenting a complete  
10 breakdown of the liability exposure for Defendants if Plaintiffs succeeded on each of their claims  
11 at trial. (Hawkins Decl., ¶ 20.)

### 12 **C. Mediation And Settlement Efforts**

13 On March 22, 2022, the Parties attended a full-day mediation with Hon. John Leo Wagner,  
14 Ret. (Hawkins Decl., ¶ 21.) The parties engaged in good–faith non–collusive negotiations and  
15 candidly discussed all aspects of the case, including the relative strengths and weaknesses of  
16 Plaintiffs’ claims, the risks and delays further litigation would present, the current state of the law  
17 as it related to Plaintiffs’ claims, and potential obstacles preventing Plaintiffs from obtaining and  
18 maintaining class certification of each claim. (*Ibid.*) Despite diligent efforts by the Parties and  
19 Judge Wagner, the Parties were unable to reach settlement through this mediation; however, they  
20 continued their negotiations with the assistance of Judge Wagner. (Hawkins Decl., ¶ 22.) After  
21 extensive arm’s length efforts assisted by Judge Wagner and the filing of the Soto action, the Parties  
22 were finally able to achieve an agreement—memorialized in the written Settlement Agreement—  
23 to settle Plaintiffs’ claims on behalf of the Class for a Gross Settlement Amount of \$3,000,000.  
24 (Hawkins Decl., ¶ 22–24.)

25 After taking into consideration the strengths and weaknesses of the claims asserted, the  
26 amounts received in other wage and hour class actions, the risks inherent in complex litigation, and  
27 the defenses asserted, Class Counsel has concluded that this Settlement is fair and reasonable.  
28

(Hawkins Decl., ¶ 24–40.) At all times, the parties’ negotiations were hard–fought and conducted at arm’s–length between attorneys who are highly experienced in wage and hour litigation, and the Settlement is evidence of the parties’ substantial efforts to reach a mutually agreeable compromise. (Hawkins Decl., ¶ 22.)

### **III. THE TERMS OF THE PROPOSED SETTLEMENT**

Subject to Court approval, and pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 et seq., the Parties agreed to settle the claims in the operative complaint as set forth in the Settlement Agreement, a copy of which is attached as **Exhibit 1** to the Hawkins Declaration, and incorporated herein by reference in its entirety. The following is a summary of the principal terms of the Settlement Agreement:

#### **A. Class Definition**

The Class is defined as all individuals currently or formerly employed by Safelite Fulfillment and or Safelite Solutions in California as hourly, non–exempt employees during the Class Period and all employees employed as temporary workers by BBSI at Safelite Solution’s distribution center as hourly, non–exempt employees in Ontario, California during the Class Period, excepting those who timely opt–out. (Ex. 1, Settlement, ¶ 1.5.) The Class Period is defined as the period from January 28, 2019, through May 22, 2023. (Ex. 1, Settlement, ¶ 1.12.) Defendants’ records indicate that there are approximately 2,600 Class Members.

The PAGA Members are all current and former hourly, non–exempt employees of Safelite Fulfillment or Safelite Solutions who worked in California at any time between June 25, 2019, to May 22, 2023 (“PAGA Period”), and all hourly, non–exempt employees employed as temporary workers for BBSI at Safelite Solutions’ distribution center in Ontario, California during the PAGA Period. (Ex. 1, Settlement, ¶¶ 1.31–1.32.) As set forth below, any Class Member who opts out of the Settlement will nonetheless remain eligible for an Individual PAGA Payment and will be bound by the Release of PAGA Claims. (Ex. 1, Settlement, ¶¶ 6.5.4, Ex. A.)

#### **B. The Gross Settlement Amount and Allocation of Settlement Funds**

The non–reversionary Gross Settlement Amount is the \$3,000,000 that Defendants agreed

1 to pay to settle the claims in the operative complaint. (Ex. 1, Settlement, ¶ 1.22.) In addition to  
2 payments to Class Members and PAGA Members for their portion of the Net Settlement Amount,  
3 the Gross Settlement Amount includes: (1) Class Counsel’s Attorneys’ Fees of up to \$1,000,000;  
4 (2) Class Counsel’s Litigation Costs of up to \$26,000; (3) Settlement Administration Costs of up  
5 to \$25,000; (4) Class Representative Service Awards to Plaintiffs of up to \$10,000 each (totaling  
6 \$30,000); and (5) PAGA Payment of \$60,000 (75% or \$45,000 to the LWDA). (Ex. 1, Settlement,  
7 ¶¶ 1.3, 1.7, 1.14, 1.26, 1.33. 2.1-2.2.) Defendants will separately pay the applicable employer-side  
8 payroll taxes owed on the wage portions of the Individual Class Payments. (Id., ¶¶ 2.1, 3.4.)

9 **C. Net Funds Available to Class Members**

10 After all Court-approved deductions from the Gross Settlement Amount, Class Counsel  
11 estimates that approximately \$1,859,000 (the “Net Settlement Amount”) will be distributed to Class  
12 Members. The Net Settlement Amount will be distributed on a pro rata basis based on the number  
13 of workweeks a Class Member worked during the Class Period. (Ex. 1, Agreement, ¶ 2.2.5.) Class  
14 Members will be provided with notice of the Settlement and its terms, their estimated Individual  
15 Class Payment and Individual PAGA Payment, their right to opt-out or object to the settlement,  
16 and their right to appear at the fairness hearing. (Id., ¶¶ 6.4.1–5, Ex. A.)

17 **D. Release**

18 Upon final approval of the settlement, Class Members who do not seek to be excluded from  
19 the settlement will release the Released Parties from any and all claims, damages, and penalties  
20 alleged in the Operative Complaint and all claims and penalties that could have been pled based on  
21 the factual allegations in the Operative Complaint during the Class Period, including, without  
22 limitation, claims for: (1) failure to pay all minimum wages; (2) failure to pay all overtime wages;  
23 (3) meal period violations and meal period premium violations; (4) rest break violations and rest  
24 break premium violations; (5) untimely payment of wages; (6) wage statement violations; (7)  
25 failure to provide/fully provide paid sick leave; (8) waiting time penalties; (9) failure to timely pay  
26 wages during employment; (10) failure to reimburse business expenses; and (11) violations of the  
27 unfair competition law (the “Released Class Claims”). (Ex. 1, Settlement, ¶ 4.2.)  
28

1           Additionally, the Defendants shall be entitled to a release of all PAGA claims pled or that  
2 could have been pled based on the factual allegations contained in the Operative Complaint  
3 (including any amendments thereto) and PAGA letters sent by Plaintiffs during the PAGA Period  
4 as to the PAGA Members (“Released PAGA Claims”). Released PAGA Claims include PAGA  
5 civil penalties predicated on the underlying alleged violations for: (1) failure to pay all minimum  
6 wages; (2) failure to pay all overtime wages; (3) meal period violations and meal period premium  
7 violations; (4) rest break violations and rest break premium violations; (5) untimely payment of  
8 wages; (6) wage statement and recordkeeping violations; (7) failure to provide/fully provide paid  
9 sick leave; (8) waiting time penalties; (9) failure to reimburse business expenses; (10) failure to  
10 timely pay wages during employment. (Ex. 1, Settlement, ¶ 4.3.)

11           In addition to the release given by each Settlement Class Member and PAGA Member, and  
12 in exchange for the proposed Class Representative Service Payment, Plaintiffs will enter into a  
13 general release with a Civil Code § 1542 waiver. (Ex. 1, Settlement, ¶¶ 4.1–4.1.1.)

14           **E.       Class Notice and Settlement Administration**

15           Subject to Court approval, the Parties will retain ILYM Group, Inc. as the Settlement  
16 Administrator (“Administrator”), who will be responsible for mailing the Class Notice to Class  
17 Members, posting notice of entry of final order and judgment, handling inquiries from Class  
18 Members concerning the Class Notice and Settlement, calculating Individual Class Payments and  
19 PAGA Payments, maintaining the settlement funds in an appropriate account, distributing all  
20 Court–approved payments under the Settlement, issuing a final report on the disbursement of funds,  
21 preparing tax documents and reporting, and performing such other duties as the parties may direct.  
22 (Ex. 1, Settlement, ¶¶ 2.1–2.3, 3.1-3.4, 6. 1–6.8.6.) The Administrator will provide weekly reports  
23 to Counsel with summary information as to the number of validated and timely objections and  
24 requests for exclusion. (Ex. 1, Settlement, ¶ 6.8.3.)

25           The Class Notice will inform Class Members of their estimated Individual Class Payment,  
26 their estimated Individual PAGA Payment, and the number of workweeks they worked during the  
27 Class Period and PAGA Period. (Ex. 1, Settlement, ¶ 6.4.2.) Class Members may challenge the  
28

1 number of Workweeks Worked allocated to them in the Class Notice by contacting the  
2 Administrator no later than 60 days after being mailed the Class Notice. (Id., ¶ 6.6.) The  
3 Administrator's determination of each Class Member's calculation of Workweeks Worked shall be  
4 final and not appealable. (Id.) The Administrator shall promptly provide copies of all challenges  
5 to the calculation of Workweeks Worked to Defense Counsel and Class Counsel, along with the  
6 Administrator's determination of the challenges. (Id., ¶ 6.6.)

7 **F. Notice Process**

8 Class Members who wish to exclude themselves from the Settlement must send the  
9 Administrator, by mail, a signed written request for exclusion not later than 60 calendar days after  
10 the Administrator mails the Class Notice (plus an additional 14 calendar days for Class Members  
11 whose Class Notice is re-mailed). (Ex. 1, Settlement, ¶¶ 6.4.4, 6.5.1.) To be valid, a request for  
12 exclusion must be timely postmarked by the response deadline. (Id., ¶ 6.5.1.) Every Class Member  
13 who does not submit a timely and valid request for exclusion will be bound by all terms and  
14 conditions of the Settlement. (Id., ¶ 6.5.3.) Any Class Member who submits a valid and timely  
15 request for exclusion will not receive a Settlement Payment or have the right to object to the  
16 Settlement but will nonetheless be entitled to a PAGA Payment and will be bound by the Release  
17 of PAGA Claims. (Id., ¶ 6.5.4.)

18 Class Members may send written objections to the Administrator by mail within 60 calendar  
19 days after the Administrator's mailing of the Class Notice (plus an additional 14 calendar days for  
20 Class Members whose Class Notice was re-mailed). (Id., ¶ 6.7.2.) Class Members who submit  
21 written objections may also appear in Court (or retain an attorney to appear on their behalf) to  
22 present verbal objections at the Final Approval Hearing. (Id., ¶ 6.7.3.)

23 Checks for Individual Settlement Payments will remain negotiable for 180 days after  
24 mailing. (Ex. 1, Settlement, ¶ 3.3.1.) Any funds associated with checks that have not been cashed  
25 within 180 days, will become void and the payment associated with the uncashed check will be  
26 distributed to the State of California Unclaimed Property Fund in the name of each Class Member  
27 or PAGA Member. (Ex. 1, ¶ 3.3.1–3.3.3.)

1           **G.     Tax Treatment of Individual Payments**

2           Twenty-five percent (25%) of each Class Member’s Individual Class Payment will be  
3 allocated to the settlement of wage claims and will be subject to tax withholding and reported on  
4 an IRS Form W–2. (Ex. 1, ¶ 2.2.6.) The remaining 75% shall constitute interest and penalties, and  
5 each Class Member will be issued an IRS Form 1099 for such payment. (*Ibid.*) PAGA Payments  
6 will be treated as penalties for tax purposes, and will reported on an IRS Form 1099. (*Ibid.*)

7           **IV.     PROVISIONAL CERTIFICATION IS APPROPRIATE**

8           Courts have generally found that class action suits are appropriate when they concern a  
9 question of “common or general interest . . . or when the parties are numerous, and it is  
10 impracticable to bring them all before the court.” (Code Civ. Proc. § 382; see *Richmond v. Dart*  
11 *Indus., Inc.* (1981) 29 Cal.3d 462, 469–475.) In order to sustain a class action, two requirements  
12 must be met: (1) there must be an ascertainable class; and (2) there must be a “well–defined  
13 community of interest in the questions of law and fact involved affecting the parties to be  
14 represented.” (*Daar v. Yellow Cab. Co.* (1967) 67 Cal.2d 695, 704.)

15           To ensure efficient use of judicial resources, California law and policy favor the fullest and  
16 most flexible use of the class action device. (*Richmond, supra*, 29 Cal. 3d at pp. 469–475.) Indeed,  
17 courts have acknowledged “the importance of class actions as a means to prevent a failure of justice  
18 in our judicial system” particularly where the rights of numerous “small claimants” are at issue.  
19 (See *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 434–435, 445.) Any doubt as to the  
20 appropriateness of class treatment should be resolved in favor of certification. (*Richmond, supra*,  
21 29 Cal.3d at pp. 473–475.)

22           **A.     There Is a Numerous and Ascertainable Class**

23           A proposed class will satisfy the numerosity requirement if it is so large that joinder of all  
24 members would be impracticable. (See Code Civ. Proc. § 382.) Whether a class is ascertainable is  
25 determined by examining the class definition, the size of the class and the reasonable means  
26 available for identifying members of the class. (See *Reyes v. Board of Supervisors of San Diego*  
27 *County* (1987) 196 Cal.App.3d 1263, 1271.) Class members are “ascertainable” where they may  
28

1 be readily identified without unreasonable expense or time. (*Reyes*, 196 Cal.App.3d at p. 1275  
2 [citing *Hypolite v. Carleson* (1975) 52 Cal.App.3d 566, 578–579].)

3 Plaintiffs contend, and Defendants do not dispute, that for settlement purposes only, there  
4 is a numerous and ascertainable class. (Ex. 1, ¶ 1.9; Hawkins Decl., ¶ 69.) The Class is defined as  
5 all individuals employed by Safelite Fulfillment or Safelite Solutions in California as hourly, non-  
6 exempt employees during the Class Period and employees employed as temporary workers by  
7 BBSI at Safelite Solutions’ distribution center as hourly, non-exempt employees in Ontario,  
8 California during the Class Period. (Ex. 1, ¶ 1.5.) Defendants have identified approximately 2,600  
9 Class Members from their payroll and personnel records. (Ex. 1, ¶ 1.9; Hawkins Decl., ¶ 69.)

10 Because joinder of 2,600 employees would be impracticable, and Class Members can  
11 readily be determined by Defendants’ records, there is a numerous and ascertainable class that is  
12 suitable for provisional certification.

13 **B. There Is a Well-Defined Community of Interest**

14 As a general rule, a community of interest is established where (1) there are predominant  
15 common questions of law or fact; (2) the named plaintiff has “claims or defenses typical of the  
16 class”; and (3) the named plaintiff is able to adequately represent the class. (See *Dunk v. Ford*  
17 *Motor. Co.* (1996) 48 Cal.App.4th 1794, 1806.)

18 **1. Common Questions of Law and Fact Exist**

19 A class action is the appropriate vehicle for litigation when “the common questions are  
20 sufficiently pervasive to permit adjudication in a class action rather than in a multiplicity of suits.”  
21 (*Richmond, supra*, 29 Cal.3d at pp. 477–478.) In determining whether common questions of law  
22 and fact exist, courts generally look at the allegations in the complaint, as well as the declarations  
23 of class counsel. (*Richmond, supra*, 29 Cal.3d at p. 478.) The primary purpose of this inquiry is to  
24 ascertain whether the proposed class is sufficiently cohesive to warrant adjudication by  
25 representation. (See, e.g., *Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 612; *Lazar*  
26 *v. Hertz Corp.* (1983) 143 Cal.App.3d 128, 138–139; *Hogya v. Superior Court* (1977) 75  
27 Cal.App.3d 122, 142.) The requirement that individual class members prove their own individual  
28

1 damages does not negate the pervasiveness of common questions of law and fact. (*Clothesrigger,*  
2 *Inc., supra*, 191 Cal.App.3d at p. 617.)

3 Common questions of law and fact exist among Class Members in this case. The operative  
4 complaint alleges that Defendant failed to pay minimum wages, overtime, provide lawful meal  
5 periods, authorize and permit lawful rest periods, failed to timely pay wages during employment  
6 and at termination, failed to provide accurate itemized wage statements, failed to pay sick leave at  
7 the regular rate, failed to pay premiums at the regular rate, and failed to reimburse necessary  
8 expenses. The complaint alleges that these violations stem from Defendants' common policies and  
9 practices. (Hawkins Decl., ¶¶ 14, 71-72.) Thus, at minimum, some of the common questions of  
10 law and fact that affect the Class are whether Defendants included all forms of non-discretionary  
11 compensation when calculating Class Members' regular rate of pay for purposes of paying sick  
12 leave and meal and rest period premiums; whether Class Members were provided compliant meal  
13 and rest periods; whether Defendants were required to reimburse Class Members for expenses  
14 incurred in using their personal cellphones for business purposes; whether Defendants paid  
15 employees for all hours worked including donning and doffing; whether Defendants conducted loss  
16 prevention inspections while off the clock; whether the wage statements Defendants provided to  
17 Class Members complied with California law; whether Defendants failed to maintain accurate  
18 employment records as required under Labor Code sections 1174 and 1174.5; and whether  
19 Defendants' policies and practices constitute unfair business practices for purposes of Business and  
20 Professions Code section 17200 et seq. (Hawkins Decl., ¶ 72.)

21  
22 Here, the required commonality element is satisfied because these questions of law and fact,  
23 common to the Plaintiffs and to the Class, predominate over any such questions affecting only  
24 Plaintiffs or individual Class Members. As such, the underlying claims are sufficiently cohesive to  
25 warrant adjudication by representation. (*See Clothesrigger, Inc., supra*, 191 Cal.App.3d at p. 612.)

## 26 **2. Plaintiffs' Claims Are Typical of Class Members' Claims**

27 The typicality requirement for purposes of class certification focuses on the typicality of the  
28 named plaintiffs' claims as they relate to the defendants' policies and practices. (*See Medrazo v.*

1 *Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 99 [typicality met where plaintiff alleged  
2 that defendant subjected her to the same unlawful conduct that other putative class members were  
3 subjected to].) Typicality will not be invalidated by the mere fact that a defendant may raise certain  
4 defenses against only some members of the class. (*Ibid.*)

5 Here, Plaintiffs' claims are typical of the claims of the Class. As detailed in the operative  
6 complaint, Class Members were all subject to the same policies and practices while working for  
7 Defendants, including the company's payroll and timekeeping policies, meal and rest period  
8 policies, and reimbursement policies. (Hawkins Decl., ¶¶ 14, 71-72.) As such, all Class Members  
9 sustained the same or similar damages resulting from Defendants' alleged violations of California  
10 wage-and-hour laws, including unpaid regular, minimum and overtime wages, noncompliant meal  
11 and rest periods, underpaid premiums, underpaid sick leave, inaccurate wage statements, and  
12 unreimbursed business expenses. (*Ibid.*) Because each Class Member would be required to  
13 demonstrate the same elements in order to recover on their individual claims against Defendants,  
14 Class Members' interests are sufficiently aligned with Plaintiffs' so as to meet the typicality  
15 requirement. (See *Medraza*, *supra*, 166 Cal.App.4th at p. 99.)

16  
17 **3. Plaintiffs and Class Counsel Have and Will Continue to Adequately**  
18 **Represent the Class**

19 A class representative is an adequate representative of the class so long as his or her interests  
20 are not antagonistic or in conflict with the objectives that he or she purports to represent.  
21 (*Richmond*, *supra*, 29 Cal.3d at p. 470.) Additionally, Class Counsel "must be qualified,  
22 experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148  
23 Cal.App.3d 862, 875.) Here, Plaintiffs meet both of the requirements necessary to adequately  
24 represent the Class.

25 First, Plaintiffs' interests are not antagonistic to the interests of the Class. Plaintiffs allege  
26 that Class Members were all subject to the same unlawful policies and practices by Defendants,  
27 and suffered the same harm. Consequently, Plaintiffs seek the same relief sought by every other  
28 member of the Class. (See *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 625-26 ["[A]

1 class representative must be part of the class and possess the same interest and suffer the same  
2 injury as the class members.”].) For years, Plaintiffs have vigorously prosecuted this case on behalf  
3 of the other Class Members. (Hawkins Decl., ¶ 55.)

4 In addition, Plaintiffs have retained counsel with extensive experience prosecuting complex  
5 wage and hour class actions, who have worked diligently to obtain the Settlement on behalf of the  
6 Class. (Hawkins Decl., ¶ 75-84.) Class Counsel thoroughly investigated the claims raised in this  
7 action, the underlying case law, the merits of Defendants’ defenses, and meticulously reviewed the  
8 discovery, information and documents exchanged with the assistance of an expert prior to attending  
9 mediation. (Hawkins Decl., ¶¶ 16–20.) Thus, Class Counsel was sufficiently informed prior to  
10 engaging in settlement negotiations. (Ibid.) Moreover, the Parties, by and through their counsel,  
11 achieved the settlement before the Court through arm’s-length, non-collusive, and informed  
12 negotiations, which were overseen by a highly experienced mediator, Judge Wagner (retired).  
13 (Hawkins Decl., ¶¶ 21-22.) Over the course of this litigation, Plaintiffs and Class Counsel have  
14 adequately represented the interests of the Class and will continue to do so.

15 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT,**  
16 **WHICH IS FAIR, ADEQUATE, AND REASONABLE**

17 **A. The Proposed Settlement Meets the Standards for Preliminary Approval**

18 California Rules of Court, Rule 3.769, requires court approval for class action settlements.  
19 “Before final approval, the court must conduct an inquiry into the fairness of the proposed  
20 settlement.” (Cal. R. Ct. 3.769(g).) Courts have discretion to approve settlements when they are  
21 fair, not collusive, and take into account “all the normal perils of litigation as well as the additional  
22 uncertainties inherent in complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir.  
23 1979) 607 F.2d 167, 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators*  
24 *Ass’n* (1981) 452 U.S. 905.)

25 The purpose of the preliminary evaluation of class action settlements is to determine only  
26 whether the proposed settlement is within the range of reasonableness, and, therefore, whether  
27 notice to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple*  
28

1 *Computer. Inc.* (2001) 91 Cal.App.4th 224, 234–235; Newberg on Class Actions (4th Ed.) § 11:25.)  
2 Courts have broad powers to determine whether a proposed settlement is fair under the  
3 circumstances of the case. (*Wershba, supra*, 91 Cal.App.4th at 234–235; *Mallick v. Superior Court*  
4 (1979) 89 Cal.App.3d 434, 438.) In determining whether a settlement meets the standards for  
5 preliminary approval, courts must consider several relevant factors, including “the strength of the  
6 Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of  
7 maintaining class action status through trial, the amount offered in settlement, the extent of  
8 discovery completed and the stage of the proceedings, [and] the experience and views of counsel .  
9 . . .” (*Dunk, supra*, 48 Cal.App.4th at 1801.) This list of factors is non-exhaustive, and courts are  
10 “free to engage in a balancing and weighing, of the factors depending on the circumstances of each  
11 case.” (*Wershba, supra*, 91 Cal.App.4th at 245.) Furthermore, courts must give “proper deference  
12 to the private consensual decision of the parties” and should take care not to intrude “upon what is  
13 otherwise a private consensual agreement negotiated between the parties to a lawsuit” except “to  
14 the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or  
15 overreaching by, or collusion between the negotiating parties, and that the settlement, taken as a  
16 whole, is fair, reasonable and adequate to all concerned.” (*Hanlon v. Chrysler Corp.* (9th Cir. 1998)  
17 150 F.3d 1011, 1027.)

18  
19 At the preliminary approval stage, the Court need only determine that the settlement falls  
20 within the “range of possible judicial approval,” such that giving notice to the class and scheduling  
21 a fairness hearing are justified. (See Newberg § 11:25.) Indeed, the Court should grant preliminary  
22 approval if there are no “grounds to doubt its fairness or other obvious deficiencies . . . and [the  
23 settlement] appears to fall within the range of possible approval.” (Manual For Complex Litigation  
24 (Third) § 30.41 (1995); see *Dunk, supra*, 48 Cal.App.4th at p. 1802.) A “presumption of fairness  
25 exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and  
26 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced  
27 in similar litigation; and (4) the percentage of objectors is small.” (*Dunk, supra*, 48 Cal.App.4th at  
28 p. 1802 [citing Newberg § 11:41].) As shown below, the proposed Settlement in this case falls well

1 within the range of possible approval and there are no grounds to doubt its fairness.

2                   **1.       The Settlement Is the Result of Serious, Informed, Non-Collusive**  
3                   **Negotiations**

4           The proposed Settlement was reached as a result of arm's-length negotiations following  
5 formal and informal discovery and significant investigation of the facts and law leading up to,  
6 during, and following a good faith attempt at mediation. (Hawkins Decl., ¶¶ 16-23.) The settlement  
7 negotiations have been, at all times, adversarial and non-collusive in nature. Indeed, following the  
8 Parties' attempt at mediation with Judge Wagner, continuous good faith but occasionally  
9 contentious negotiations were required to ultimately reach an agreement. (Ibid.) While Plaintiffs  
10 believe in the merits of their case, they also recognize the inherent risks of litigation and understand  
11 the benefit of the Class receiving settlement funds immediately as opposed to delaying payment or  
12 risking an unfavorable decision on summary adjudication, motion for class certification, at trial, or  
13 on appeal, all of which have the potential to eliminate any relief for Class Members. (Hawkins  
14 Decl., ¶¶ 24-39.)

15                   **2.       The Extent of The Information Provided Through Discovery and The**  
16                   **Stage of The Proceedings Support the Settlement**

17           A proposed settlement is presumed to be fair and reasonable when there has been sufficient  
18 investigation and discovery to permit counsel and the court to act intelligently, and counsel are  
19 experienced in similar litigation. (*Dunk, supra*, 48 Cal.App.4th at 1802.)

20           Here, the parties thoroughly investigated and evaluated the factual and legal strengths and  
21 weaknesses of this case before reaching the Settlement. (Hawkins Decl., ¶¶ 16-39.) As described  
22 above, the Settlement was reached only after extensive investigation and research, thorough  
23 calculations and risk evaluation, substantial written discovery, including special interrogatories,  
24 form interrogatories, and requests for production of documents, and a thorough evaluation of a  
25 sampling of timekeeping and payroll data for the Class. (Hawkins Decl., ¶¶ 16-20.) Plaintiffs  
26 retained an expert to evaluate the data and calculations regarding Defendants' potential exposure.  
27 (Hawkins Decl., ¶ 18.) Counsel for the Parties have investigated the law as applied to the facts  
28

1 regarding the claims asserted and potential defenses thereto. (Hawkins Decl., ¶ 19.) The proposed  
2 Settlement came only after the case was fully investigated by experienced counsel. (Hawkins Decl.,  
3 ¶¶ 16–23.) Therefore, the Court can be satisfied that, at the time they reached this agreement, the  
4 Parties had a clear view of the strengths and weaknesses of their cases, sufficient to support the  
5 Settlement. (See *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.)

### 6                   **3.       Class Counsel Is Experienced in Similar Litigation**

7           Experienced counsel for the parties, having engaged in arm’s-length negotiations, weighed  
8 the strengths of the case, and examined all of the issues and risks of litigation, now endorses the  
9 proposed settlement. The view of the attorneys actively conducting the litigation is entitled to  
10 significant weight in deciding whether to approve a settlement. (*Ellis v. Naval Air Rework Facility*  
11 (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* (9th Cir. 1981) 661 F.2d 939.)

12           Throughout this litigation, Class Members have been represented by well-qualified counsel  
13 with extensive experience in wage and hour class action litigation. (Hawkins Decl., ¶¶ 75-82;  
14 Nordrehaug Declaration ¶¶ 3-5, Ex. 1.) In total, Class Counsel has litigated hundreds of complex  
15 class and representative actions. (*Ibid.*) Thus, Class Counsel are experienced and qualified to  
16 evaluate the class claims, to evaluate the benefits of settlement versus trial on a fully informed  
17 basis, and to evaluate the viability of the defenses asserted. (*Ibid.* Counsel believe that this is a fair  
18 and reasonable settlement in light of the complexities of the case, the state of the law and  
19 uncertainties of litigation and trial, and the benefit the Settlement confers on the Class. (Hawkins  
20 Decl. ¶¶ 24-39; 47-53.) Given the risks inherent in litigation, in class certification proceedings, and  
21 in the defenses asserted, this Settlement is fair, adequate, and reasonable and in the best interests  
22 of the class. (Hawkins Decl., ¶ 84.)

### 24                   **4.       The Settlement Is Fair and Reasonable Based on The Strengths of** 25                   **Plaintiffs’ Case and The Risks and Costs of Further Litigation**

26           Plaintiffs and their counsel have concluded it was reasonable to enter into the proposed  
27 Settlement. Defendants have contested and continue to contest liability for the claims asserted in  
28 this action. (Ex. 1, Settlement, ¶ 11.1; Hawkins Decl. ¶ 25.) Although Defendants believe it is

1 unlikely that Plaintiffs would succeed on the merits of their claims, Defendants nonetheless agreed  
2 to resolve this action through settlement to avoid the expense, distraction, and uncertainty of  
3 protracted litigation. (*Ibid.*)

4       These types of large wage and hour class actions can involve significant legal uncertainties,  
5 as they can be factually complex and require protracted litigation to resolve. (Hawkins Decl., ¶¶  
6 24-40.) A settlement is not judged solely against what might have been recovered had the plaintiffs  
7 prevailed at trial, nor does the settlement have to provide 100 percent of the damages sought to be  
8 fair and reasonable. (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242;  
9 *Wershba, supra*, 91 Cal.App.4th at pp. 246, 250; *Rebney v. Wells Fargo Bank* (1990) 220  
10 Cal.App.3d 1117, 1139.) Instead, “[c]ompromise is inherent and necessary in the settlement  
11 process . . . even if the relief afforded by the proposed settlement is substantially narrower than it  
12 would be if the suits were to be successfully litigated.” (*Wershba, supra*, 91 Cal.App.4th at p. 250.)  
13 Where “each side gives ground in the interest of avoiding litigation,” discounted relief achieved  
14 through a voluntary settlement will still serve the public interest. (*Ibid.*)

15       Using information obtained through formal and informal discovery, Class Counsel were  
16 able to assess the strengths and weaknesses of the claims and the benefits of an early settlement.  
17 (Hawkins Decl., ¶¶ 24-40.) Based on this evaluation, Class Counsel believes that the Settlement  
18 before the Court represents a very favorable resolution for the Class. (Hawkins Decl., ¶¶ 39-40.)

19  
20               **5.       The Proposed Settlement Is a Reasonable Compromise of Claims**

21                   a.       *The Settlement Provides Relief to Class Members in Light of the*  
22                               *Significant Risks and Expense of Further Litigation*

23       To evaluate a settlement, the trial court must receive “basic information about the nature  
24 and magnitude of the claims in question and the basis for concluding that the consideration being  
25 paid for the release of those claims represents a reasonable compromise.” (*Kullar v. Foot Locker*  
26 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) The record need not contain an explicit statement of  
27 the maximum theoretical recovery, but rather evidence sufficient to allow “an understanding of the  
28 amount that is in controversy and the realistic ranges of outcomes of the litigation.” (*Munoz v. BCI*

1 *Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409 [quoting *Kullar, supra*,  
2 168 Cal.App.4th at p. 120].)

3 Here, the Gross Settlement Amount of \$3,000,000 is a fair and reasonable result in light of  
4 the potential risks of continued litigation and will provide Class Members with a significant benefit.  
5 (Hawkins Decl., ¶ 39-40.) In reaching this Settlement, Class Counsel carefully considered the  
6 strength Plaintiffs' claims against the amount offered in settlement; the risk, expense, complexity,  
7 and likely duration of further litigation and maintaining class certification through trial; the present  
8 state of the law as it applies to wage and hour class actions; and the burdens of proof necessary to  
9 establish liability against Defendants. (Hawkins Decl., ¶¶ 45-50.) Although Plaintiffs maintain all  
10 claims asserted are meritorious and believe they would have prevailed at trial, they also  
11 acknowledge that Defendants have formidable defenses to liability, class certification, and  
12 manageability. (Hawkins Decl., ¶¶ 24-40; 47-53.) Defendants have consistently denied all material  
13 allegations, that they violated any applicable laws, that they are liable for damages, penalties,  
14 interest, restitution, attorneys' fees, or for any other remedy on account of the claims asserted, and  
15 that class certification or representative treatment is appropriate as to any claim. (Hawkins, ¶¶ 25,  
16 51; see also Ex. 1, Settlement, ¶ 11.1.) This has the potential to substantially interfere with  
17 Plaintiffs' ability to maintain their claims, as well as to establish the full amount of Plaintiffs'  
18 estimated damages and civil penalties for such claims at trial. (Hawkins Decl., ¶¶ 24-40; 47-53.)

19  
20 Under the terms of the Settlement, each Class Member will be entitled to receive a pro rata  
21 portion of the Net Settlement Amount available for distribution based upon his or her respective  
22 number of workweeks worked during the Class Period. (Ex. 1, Settlement, ¶ 1.23, 1.26.) As such,  
23 Class Members who worked a greater number of workweeks during the Class Period will receive  
24 a larger portion of the Settlement. (Ex. 1, Settlement, ¶ 2.2.5.) The distribution of the Net Settlement  
25 Amount takes ensures a fair and equitable outcome for all Class Members and prevents any Class  
26 Member from receiving improper preferential treatment.

27 b. *The Amount Offered in Settlement Given the Estimated Value of the*  
28 *Claims Favors Preliminary Approval of the Settlement*

1 As set forth in the accompanying Hawkins Declaration, the negotiated settlement of  
2 \$3,000,000 is approximately 15.9% of the maximum exposure (exclusive of PAGA) or 46.5% of  
3 the realistic liability (inclusive of PAGA). (Hawkins Decl. ¶ 36.) As such, this settlement is well  
4 within the ballpark of reasonableness, and is fair, reasonable, and adequate. (Id.) Class Counsel  
5 initially estimated Defendants' maximum-possible exposure to be approximately \$18.9 million  
6 exclusive of PAGA, and in excess of \$116.6 million inclusive of maximum PAGA Penalties.  
7 (Hawkins Decl., ¶ 34.) However, this estimate assumed that class certification would be granted,  
8 maintained despite opposition from the Defendants, and that Plaintiffs would prevail on all claims  
9 at trial at maximum violation rates, and that Plaintiffs would recover the full amount of the  
10 estimated damages and the maximum amount of civil penalties under PAGA with proof of one  
11 violation per pay period. (Hawkins Decl., ¶ 34, ¶ 37.) Thus, the maximum possible exposure was  
12 premised on an inflated "everything goes right" scenario for each and every claim.

13 With more than 2,600 Class Members holding twenty-four different nonexempt positions  
14 in dozens of locations throughout the state, class certification is by no means a certainty. (Hawkins  
15 Decl., ¶ 24-40.) As detailed more extensively in the Hawkins Declaration, Defendants argued that  
16 their written policies and procedures were facially compliant, and that they, in fact, complied with  
17 all applicable laws. They argued that the case could not be certified or proceed as a representative  
18 action because, among other things, any violations, which they adamantly denied, were solely the  
19 function of individual preferences and not any widespread practice. Indeed, Defendants argued  
20 that they provided lawful meal and rest periods and paid for all hours worked, and that their policies  
21 required the payment of premiums and wages for all reported time and missed meal or rest periods.  
22 Defendants contended that employees were instructed to clock in before performing any work,  
23 including putting on uniforms and protective gear, and that any inspections were on the clock. They  
24 also argued that Defendants incorporated all non-discretionary sums in the regular rate and that  
25 premiums were lawfully paid. Defendants further contended that they provided employees with all  
26 necessary tools and items, and denied that cellular phones were not required to perform job duties.  
27 Defendants further argued that with regard to PAGA, penalties could not be stacked, penalties  
28

1 would constitute double recovery, and given the circumstances, it was unlikely that a judge would  
2 exercise their discretion to award substantial penalties. After taking appropriate discounts based  
3 on Defendants’ defenses and issues of proof, Class Counsel believes the realistic valuation of the  
4 claims in this case is approximately \$5.5 million including PAGA. (Ibid.)

5 While the \$3,000,000 Gross Settlement Amount represents a substantial discount on  
6 Plaintiffs’ maximum estimate of Defendants’ potential exposure in this matter, the reduction  
7 represents an extremely reasonable compromise considering the substantial risks that Plaintiffs and  
8 Class Members faced in this litigation. (Hawkins Decl., ¶ 38-40.) As explained above, Defendants  
9 have legitimate defenses to class certification, manageability, and the merits of the underlying  
10 claims. (Ibid.) In negotiating the Settlement before the Court, Class Counsel considered the  
11 likelihood of obtaining and maintaining class certification of Plaintiffs’ claims through trial and  
12 obtaining 100 percent of the damages sought. (Hawkins Decl., ¶ 24, 39, 52.) As such, Plaintiffs  
13 considered the significant risk that the Court may deny class certification or reverse a favorable  
14 ruling on the merits on appeal—such risks that are mitigated by the Settlement. (Ibid.) In addition,  
15 continued litigation would likely be extremely expensive, reducing and substantially delaying any  
16 recovery by Class Members. (Hawkins Decl., ¶¶ 39.) In contrast, the proposed Settlement will  
17 guarantee Class Members receive timely relief and avoid the risk of an adverse judgment. (Ibid.)

18  
19 Finally, regarding the imposition of any penalties under PAGA, the Proposed Settlement  
20 Agreement mitigates the very real risk that the Court would exercise its discretion and reduce the  
21 award. (Hawkins Decl., ¶ 37.)

22 **B. The PAGA Settlement Should Be Approved**

23 Where a settlement includes a good faith amount for PAGA penalties and “there is no  
24 indication that this amount was the result of self-interest at the expense of other” class members,  
25 such amounts are generally considered reasonable. (*Hopson v. Hanesbrands, Inc.* (N.D. Cal. Apr.  
26 3, 2009) 2009 WL 928133 at \*1, \*9.) Courts routinely approve settlements where only a small  
27 portion of the gross settlement amount is allocated to PAGA penalties. (See *Nordstrom*  
28 *Commission Cases* (2010) 186 Cal.App.4th 576 [approving a settlement where no portion was

1 allocated to PAGA penalties; *Jack v. Hartford Fire Ins. Co.* (S.D. Cal. Oct. 13, 2011) 2011 WL  
2 4899942 at \*6 [approving a PAGA payment of 0.25%]; *McKenzie v. Fed. Express Corp.* (C.D. Cal.  
3 Jan. 23, 2012) 2012 WL 12882124 at \*5 [acknowledging that courts approve PAGA claim  
4 settlements in the range of zero to two percent of the total settlement].) Here, \$60,000 of the Gross  
5 Settlement Amount will be paid to settle the PAGA claims, 75% percent of which (\$45,000) will  
6 be paid to the LWDA, with the remaining 25% (\$15,000) to be distributed to PAGA Members. (Ex.  
7 1, Settlement, at ¶ 1.33.) The \$60,000 allocated to PAGA penalties equates to 2% of the Gross  
8 Settlement Amount, which is in line with amounts that are routinely approved by courts in this  
9 state. Therefore, the settlement of the claim for penalties under PAGA is reasonable because it was  
10 negotiated in good faith and was not the result of self-interest at the expense of any Class Member.  
11 (Hawkins Decl., ¶ 37.)

12 A higher allocation to the PAGA claim would have effectively shifted the burden of paying  
13 civil penalties to the PAGA Members, because it would reduce the amount that they ultimately  
14 receive under the Settlement. Although this burden shifting may achieve the enforcement objective  
15 of the PAGA statute, it would do so at the expense of the same employees that the statute was  
16 designed to protect. The Settlement has been submitted to the LWDA as required by statute.  
17 (Hawkins Decl., ¶ 5, Ex. 2.) The proposed \$60,000 allocation to PAGA penalties strikes a balance  
18 between the interests of all parties, including the LWDA and the general public, by achieving its  
19 prosecutorial function while still providing relief to the PAGA Members. As such, Plaintiffs  
20 respectfully request that the Court approve the allocation of \$60,000 to PAGA penalties.

21  
22 **C. The Requested Class Representative Service Payments Are Fair and**  
23 **Reasonable**

24 Courts routinely approve class representative payments to compensate named plaintiffs for  
25 the services they provide and the risks they incur during the course of class litigation. (See *Bell v.*  
26 *Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 [upholding service payments to plaintiffs for  
27 their efforts in bringing a class case]; *Manual for Complex Litigation (Fourth)* (2004) § 21.62 n.  
28 971 [noting that service awards are warranted].) In approving such payments, California courts

frequently approve awards of \$10,000 or more. (In re Cellphone Termination Cases (2010) 186 Cal.App.4th 1380, 1393–1395 [upholding \$10,000 service award to each of four class representatives]; *West v. Circle K Stores, Inc.* (E.D. Cal. Oct. 19, 2006) 2006 U.S. Dist. LEXIS 76558, \*28 [“the court finds plaintiffs’ enhancement payments of \$ 15,000 each to be reasonable”]; *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2007) 2007 U.S. Dist. LEXIS 8476, \*52 [finding “requested payment of \$ 25,000 to each of the named plaintiffs is appropriate” in wage and hour settlement].) The factors courts use in determining the amount of an award include: (1) a comparison between the service awards and the range of monetary recovery available to the class; (2) time and effort put into the litigation; (3) whether the litigation will further the public policy underlying the statutory scheme; and (4) the risk of retaliation. (*Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 608, 804.)

By stepping forward as class representatives, Plaintiffs have jeopardized the availability of prospective employment because their names are now associated with a lawsuit against their former employers. Plaintiffs also ran the risk of being liable for Defendants’ attorneys’ fees and costs. (Hawkins Decl., ¶ 56.) Over the course of this litigation, Plaintiffs spent a significant amount of time searching for and reviewing documents, communicating with counsel, assisting with the investigation and preparation of the pleadings, identifying potential witnesses, answering questions, working through the discovery process, remaining abreast of developments in the litigation, helping Class Counsel prepare for mediation, evaluating the settlement proposal, and assisting with the preparation of the settlement documents including declarations. (Hawkins Decl., ¶ 55.) As part of the proposed Settlement, Plaintiffs have also agreed to a general release of any and all claims to the furthest extent permitted by law, something not required of all other class members. (Ex. 1, Settlement, ¶¶ 4.1, 4.2.) The proposed Class Representative Service Payments in the amount of \$10,000 each to Plaintiffs are fair and reasonable given the risk they took and the work they bore for the benefit of the Class. (Hawkins Decl., ¶ 54.)

**D. The Requested Attorneys’ Fees and Costs Are Fair and Reasonable**

The California Supreme Court has unanimously held “that when class action litigation

1 establishes a monetary fund for the benefit of the class members, and the trial court in its equitable  
2 powers awards class counsel a fee out of that fund, the court may determine the amount of a  
3 reasonable fee by choosing an appropriate percentage of the fund created.” (*Laffitte v. Robert Half*  
4 *International, Inc.* (2016) 1 Cal.5th 480, 503.) The Court further held that although trial courts have  
5 discretion to use a lodestar multiplier cross-check or to forego a lodestar multiplier cross-check if  
6 some other means to evaluate the reasonableness of a requested fee percentage exists, “the  
7 percentage method is a valuable tool that should not be denied our trial court.” (*Laffitte*, 1 Cal.5th  
8 at pp. 503–506.) California courts have awarded common fund fees calculated using a percentage–  
9 of–fund method that is not dependent on counsel’s lodestar amount. (Pearl, California Attorney Fee  
10 Awards (CEB 3d Ed. 2010) § 5.19 [citing *In re Sutter Health Uninsured Pricing Cases* (2009) 171  
11 Cal.App.4th 495, 512]; *Bell, supra*, 115 Cal.App.4th at p. 726; *Apple Computer, Inc. v. Superior*  
12 *Ct.* (2005) 126 Cal.App.4th 1253, 1270.)

13       Here, the Settlement provides that Class Counsel may seek Attorneys’ Fees of up to  
14 \$1,000,000 (one-third of the Gross Settlement Amount), in addition to reimbursement for actual  
15 litigation expenses in an amount not to exceed \$26,000. (Ex. 1, Settlement, ¶ 1.7.) As set forth in  
16 the Hawkins and Nordrehaug Declarations (and as will be more fully discussed at final approval),  
17 Class Counsel performed significant work litigating this action, including performing extensive  
18 legal and factual research and investigation, which counsel used to measure the relative strengths  
19 and weaknesses of Plaintiffs’ claims to better identify an appropriate range of settlement figures.  
20 (Hawkins Decl., ¶¶ 16-20; 47-53.) Class Counsel committed, and continue to commit, significant  
21 financial and staffing resources to this case, and in particular, have diverted many of their resources  
22 in order to contend with Defendants’ vigorous defense at the expense of other potential cases  
23 (Hawkins Decl. ¶¶ 63-65.) Further, Class Counsel undertook this action on a contingency basis,  
24 thereby bearing all the costs of this complex, risky, expensive, and time-consuming litigation, thus  
25 enabling Plaintiffs to vindicate their rights and those of their fellow class members. (Ibid.) The  
26 requested Attorneys’ Fees and Attorneys’ Costs payments are fair and reasonable, given the time,  
27 efforts, and resources contributed by Class Counsel, and they should be preliminarily approved.

1 **VI. THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING**

2 The final step in the settlement approval process is a final approval hearing, at which time  
3 the Court may hear all evidence and arguments necessary to conclusively evaluate the proposed  
4 Settlement. Should the Court grant Plaintiffs' motion for preliminary approval, Plaintiffs request  
5 that a hearing on the issues of final approval of the Settlement, approval of the Class Representative  
6 Service Payments to Plaintiffs, approval of the Class Counsel's Attorneys' Fees and Litigation  
7 Costs, and approval of the Administration Fees and Costs be scheduled approximately 120 days  
8 after preliminary approval.

9 **VII. CONCLUSION**

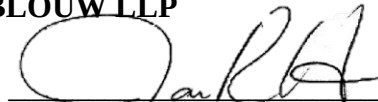
10 Plaintiffs respectfully request that this Court enter an Order: (1) provisionally certifying the  
11 Class under Code of Civil Procedure section 382 and California Rule of Court 3.769(c) for  
12 settlement purposes; (2) preliminarily approving the Settlement; (3) approving as to form the Notice  
13 of Class Action Settlement and ordering that the Notice of Class Action Settlement be distributed  
14 to all Class Members; (4) appointing Named Plaintiffs Marie DeMartini, Willie Austin Jr., and Jose  
15 Soto, as the Class Representatives; (5) appointing ILYM Group, Inc., as the Settlement  
16 Administrator; (6) appointing James Hawkins APLC and Blumenthal Nordrehaug Bhowmik De  
17 Blouw LLP as Class Counsel; and (7) setting this matter for a hearing on the issues of final approval  
18 of the proposed Settlement, approval of the Class Representative Service Payments, approval of  
19 Attorneys' Fees and Litigation Costs, and approval of the Administration Fees and Costs.

20 Respectfully submitted,

21  
22 Dated: May 8, 2024

**JAMES HAWKINS APLC**

23 **BLUMENTHAL NORDREHAUG BHOWMIK DE**  
24 **BLOUW LLP**

25 

26 James R. Hawkins, Esq.

27 Attorneys for Plaintiffs MARIE DEMARTINI, WILLIE  
28 AUSTIN, JR., and JOSE SOTO on behalf of themselves  
and all others similarly situated.