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8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF BUTTE**

11
12 ROBERT LAWSON, on behalf of himself
and all "aggrieved employees" pursuant to
13 Labor Code § 2698 *et seq.*,

14 Plaintiff,

15 v.

16 GRAPHIC PACKAGING
INTERNATIONAL, LLC, a Delaware
17 limited liability company, and DOES 1
through 10, inclusive,

18 Defendants.
19
20

CASE NO: 20CV01921

*Assigned to the Honorable Robert A. Glusman,
Dept. 10*

**NOTICE OF UNOPPOSED MOTION AND
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND SEEKING
LEAVE TO FILE FIRST AMENDED
COMPLAINT**

DATE: March 23, 2022

TIME: 9:00 a.m.

DEPT.: 10

Action Filed: September 29, 2020

1 **PLEASE TAKE NOTICE THAT** on March 23, 2022 at 9:00 a.m., or as soon thereafter
2 as the matter may be heard, in Department 10 of the above-entitled Court, located at 1775 Concord
3 Avenue, Chico, CA 95928, Plaintiff Robert Lawson will and hereby does move unopposed for an
4 Order (1) preliminarily finding that the settlement between the parties falls within the range of
5 reasonableness and approving the proposed class action settlement in the above-captioned case. (2)
6 conditionally certifying, for settlement purposes only, a settlement class, (3) approving the
7 appointment of Plaintiffs Robert Lawson, Marty Linebarger, and Marcos Castro as Class
8 Representatives, (4) approving the appointment of Daniel F. Gaines, Esq., Alex P. Katofsky, Esq.,
9 and Miriam Schimmel, Esq. of Gaines & Gaines, APLC, Larry W. Lee, Esq. and Mai Tulyathan,
10 Esq. of Diversity Law Group, P.C. and William L. Marder, Esq. of Polaris Law Group, LLP as
11 Class Counsel, (5) approving the appointment of ILYM Group, Inc. as settlement administrator.
12 (6) preliminarily approving the allocation of \$120,000 from the Settlement Amount to settle
13 Plaintiffs' representative claims under the Private Attorneys General Act (Lab. Code §§ 2698 et
14 seq., "PAGA"), of which seventy-five percent (75%) will be paid to the Labor and Workforce
15 Development Agency and twenty-five percent (25%) will be retained in the Net Settlement Fund
16 for distribution to Class Members employed during the PAGA period as penalties and apportioned
17 based on their Eligible Workweeks during the PAGA Period, (7) approving as to content and form
18 the notice to the settlement class, and directing it be disseminated by the Settlement Administrator;
19 (8) permitting Plaintiff to file a First Amended Complaint, and (9) setting a final fairness and
20 approval hearing.

21 This unopposed Motion is made pursuant to Rule 3.769 of the California Rules of Court,
22 which provides for court approval of the settlement of a purported class action and allows the Court
23 to preliminarily certify a class for settlement purposes only.

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

28 \\

1 This Motion will be based on the Memorandum of Points and Authorities set forth herein,
2 the Stipulation of Resolution, the Declarations of Daniel F. Gaines and Larry W. Lee, such evidence
3 or oral argument as may be presented at the hearing, and on the complete record and file herein.

4
5 DATED: February 22, 2022

Respectfully submitted,

6 GAINES & GAINES,
7 A Professional Law Corporation

8
9 By: 

DANIEL F. GAINES

ALEX P. KATOFISKY

10 Attorneys for Plaintiff Robert Lawson and Proposed
11 Class Counsel

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Parties have reached a resolution of this class action and hereby submit their Stipulation
4 of Resolution (“Settlement”, “Stipulation” or “Stip.”) for the Court’s approval. The Settlement is
5 made and entered into by and between Plaintiffs Robert Lawson (“Lawson”), Marty Linebarger
6 (“Linebarger”), and Marcos Castro (“Castro”) (collectively, “Plaintiffs”), individually and on
7 behalf of all others similarly situated, and Defendant Graphic Packaging International, LLC, a
8 Delaware limited liability company (“Defendant”).

9 The settlement occurred as a result of extensive arm’s-length negotiations by experienced
10 counsel with the assistance of a respected mediator with experience in the area of employment class
11 actions. Most importantly, the settlement will result in significant financial benefit to the
12 participating claimants, on terms that are by any measure fair, reasonable and adequate. *See*
13 *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801-02. The proposed settlement provides
14 for a non-revisionary class settlement in the gross amount of \$1,250,000, which shall be paid to the
15 approximately 1,151 members of the proposed settlement class who worked approximately 152,418
16 Eligible Workweeks during the Class Period, a stellar result which yields approximately \$1.086 per
17 class member and about \$8.20 per Eligible Workweek worked. As detailed below, the settlement
18 is in the best interests of the class in light of all of the facts and circumstances and the risks and
19 delays of further litigation.

20 For the foregoing reasons, the Parties respectfully request that the Court: (a) grant
21 preliminary approval of the settlement agreement and preliminarily find that the settlement falls
22 within the range of reasonableness; (b) conditionally grant certification of the proposed Settlement
23 Class, for settlement purposes only; (c) approve the appointment of Plaintiffs Robert Lawson,
24 Marty Linebarger, and Marcos Castro as Class Representatives; (d) approve the appointment of
25 Daniel F. Gaines, Esq., Alex P. Katofsky, Esq., and Miriam Schimmel, Esq. of Gaines & Gaines.
26 APLC, Larry W. Lee, Esq. and Mai Tulyathan, Esq. of Diversity Law Group, P.C. and William L.
27 Marder, Esq. of Polaris Law Group, LLP as Class Counsel; (e) approve appointment of the
28 Settlement Administrator; (f) permit the filing of a First Amended Complaint; (g) authorize the

mailing of the proposed class action notice packet; and (h) schedule a final fairness and approval hearing.

II. BACKGROUND AND PROCEDURAL HISTORY

This settlement encompasses a resolution of three pending actions against Defendant by Robert Lawson, Marty Linebarger, and Marcos Castro.

On October 17, 2019, proposed Plaintiff Linebarger sent a letter to the LWDA, alleging Defendant violated the California Labor Code and seeking penalties under PAGA. Specifically, Plaintiff Linebarger alleged Defendant failed to pay wages to Defendant's non-exempt California employees, denied employees meal periods and rest periods, failed to reimburse business expenses, failed to provide accurate itemized wage statements, and failed to timely pay wages at the separation of employment. Declaration of Daniel F. Gaines ("Gaines Decl.") at ¶ 6.

On July 22, 2020, Plaintiff Lawson sent a letter to the LWDA, alleging Defendant violated the California Labor Code and seeking penalties under PAGA. Specifically, Plaintiff Lawson alleged Defendant failed to pay wages to Defendant's non-union, non-exempt California employees, denied employees meal periods and rest periods, failed to reimburse business expenses, failed to provide accurate itemized wage statements, and failed to timely pay wages at the separation of employment. Gaines Decl. at ¶ 7.

On October 29, 2020, Plaintiff Castro sent a letter to the LWDA, alleging Defendant violated the California Labor Code and seeking penalties under PAGA. On August 9, 2021, Plaintiff Castro submitted a supplemental letter to the LWDA alleging additional violations under the California Labor Code. Specifically, Plaintiff Castro alleged Defendant failed to pay minimum and overtime wages to Defendant's non-exempt California employees and failed to provide accurate itemized wage statements. Declaration of Larry W. Lee ("Lee Decl.") at ¶ 2.

On January 6, 2020, Plaintiff Linebarger initiated his Action in the Orange County Superior Court by filing a Representative Action Complaint, on behalf of himself and all other aggrieved employees (the "Linebarger Action"). Defendant removed the Linebarger Action to the United States District Court for Central District of California. Following motion practice and after this global settlement was reached, pursuant to the Parties' request the District Court issued an Order

1 Granting Stipulation to Stay Action Pending Approval of Settlement. Gaines Decl. at ¶ 8.

2 On September 29, 2020, Plaintiff Lawson initiated this Action by filing a Representative
3 Action Complaint for Penalties, pursuant to PAGA, on behalf of himself and all other aggrieved
4 employees (the “Lawson Action”). Gaines Decl. at ¶ 9.

5 On December 2, 2020, Plaintiff Castro initiated his Action in the Orange County Superior
6 Court by filing a Class and Representative Action Complaint, on behalf of himself and all other
7 aggrieved employees (the “Castro Action”). Lee Decl. at ¶ 3.

8 The First Amended Complaint, which will be filed as part of the settlement approval
9 process, asserts the direct individual, class, and PAGA representative action claims on behalf of
10 Plaintiffs Lawson, Linebarger, and Castro against Defendant which were alleged among all three
11 actions, including for (1) failure to pay all minimum, overtime, and double-time wages (Labor Code
12 §§ 510, 1194, and 1194.2); (2) failure to provide compliant rest periods or compensation in lieu
13 thereof (Labor Code §§ 226.7; IWC Wage Order 4-2001); (3) failure to provide compliant meal
14 periods or compensation in lieu thereof (Labor Code §§ 226.7, 510, 512, and 1194; IWC Wage
15 Order 4-2001); (4) knowing and intentional failure to comply with itemized employee wage
16 statement provisions (Labor Code §§ 226(a), (e), (h)); (5) failure to reimburse business expenses
17 (Labor Code § 2802); (6) failure to timely pay wages due at separation of employment (Labor Code
18 §§ 201-203); (7) violation of Business and Professions Code §§ 17200; and (8) penalties pursuant
19 to Labor Code §§ 2699(a) and (f) based on the foregoing alleged claims including for violations of
20 Labor Code §§ 201, 202, 203, 226(a), 226.3, 226.7, 510, 512, 558, 1194, and 2802 (the “First
21 Amended Complaint”). Gaines Decl. at ¶ 10.

22 **III. INVESTIGATION AND SETTLEMENT DISCUSSIONS**

23 The settlement resolves the Linebarger Action, the Lawson Action and the Castro Action.
24 In the Linebarger Action, the Lawson Action and the Castro Action, the Named Plaintiffs allege,
25 *inter alia*, on behalf of themselves and all others similarly situated, that Defendant violated
26 California state wage and hour laws and the PAGA as a result of Defendant’s California wage and
27 hour policies and practices. Specifically, the Named Plaintiffs allege that Defendant failed to pay
28 all regular, minimum, and overtime wages, failed to provide rest periods, failed to provide meal

1 periods, failed to reimburse employees for business related expenses, failed to provide compliant
2 wage statements, and failed to timely pay all wages due at separation of employment. Gaines Decl.
3 at ¶ 11.

4 Class Counsel conducted informal discovery that yielded information and documentation
5 concerning the claims set forth in the Linebarger Action, the Lawson Action and the Castro Action,
6 such as Defendants' policies and procedures regarding the payment of wages, the provision of meal
7 and rest breaks, time keeping policies, including recording hours, issuance of wage statements, and
8 providing all wages at separation, as well as information regarding the number of putative class
9 members and the mix of current versus former employees, the average number of hours worked,
10 the wage rates in effect, and length of employment for the average putative class member. Gaines
11 Decl. at ¶ 12.

12 Named Plaintiffs and Class Counsel have engaged in good faith, arms-length negotiations
13 with Defendant concerning possible resolution of the claims asserted in the Litigation. On June 7,
14 2021, the Parties participated in a mediation before mediator Tripper Ortman which did not yield a
15 settlement. However, following months of subsequent litigation and negotiations, the mediator
16 continued working with the Parties to agree upon terms to resolve the Linebarger Action, the
17 Lawson Action and the Castro Action, subject to finalization of a formal Stipulation for Resolution
18 and approval of the Court. The Parties have now entered into a more detailed, formalized
19 Settlement Agreement for submission to the Court for preliminary and final approval. Gaines Decl.
20 at ¶ 13.

21 Class Counsel has conducted an investigation of the law and facts relating to the claims
22 asserted in the Linebarger Action, the Lawson Action and the Castro Action and have concluded,
23 taking into account the sharply contested issues involved, the expense and time necessary to pursue
24 the Litigation through trial and any appeals, the risks and costs of further prosecution of the
25 Linebarger Action, the Lawson Action and the Castro Action, the risk of an adverse outcome, the
26 uncertainties of complex litigation, and the substantial benefits to be received by the Named
27 Plaintiffs and the members of the Settlement Class pursuant to this Agreement, that a settlement
28 with Defendant on the terms and conditions set forth herein is fair, reasonable, adequate, and in the

1 best interests of the Settlement Class. Named Plaintiffs, on their own behalf and on behalf of the
2 Settlement Class, have agreed to settle the Linebarger Action, the Lawson Action and the Castro
3 Action with Defendant on the terms set forth herein. Gaines Decl. at ¶ 14.

4 Defendant has concluded that, because of the substantial expense of defending against the
5 Linebarger Action, the Lawson Action and the Castro Action, the length of time necessary to
6 resolve the issues presented herein, the inconvenience involved, and the concomitant disruption to
7 their business operations, it is in their best interests to accept the terms of this Agreement.
8 Defendant denies each of the allegations and claims asserted against it in the Litigation. However,
9 Defendant nevertheless desires to settle the Linebarger Action, the Lawson Action and the Castro
10 Action for the purpose of avoiding the burden, expense and uncertainty of continuing litigation and
11 for the purpose of putting to rest the controversies engendered by the Linebarger Action, the
12 Lawson Action and the Castro Action. Gaines Decl. at ¶ 15.

13 Based on their own independent investigation and evaluation, Class Counsel are of the
14 opinion that settlement for the consideration and on the terms set forth in this Settlement Agreement
15 is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all
16 known facts and circumstances, including the risk of significant delay, the risk the Settlement Class
17 will not be certified by the Court, and the defenses asserted by Defendant. Defendant and its
18 counsel also agree that this settlement is fair and in the best interest of the Settlement Class. Gaines
19 Decl. at ¶ 16.

20 The Parties agree that the Settlement Class described herein may be certified for settlement
21 purposes only and that any motion for approval seeking, *inter alia*, certification of the Settlement
22 Class is for purposes of the settlement only. If for any reason the settlement is not approved, the
23 certification will have no force or effect and will immediately be revoked. The Parties further agree
24 that certification for purposes of the settlement is in no way an admission that class certification is
25 proper under the more stringent standard applied for litigation and that evidence of this limited
26 stipulation for settlement purposes only will not be admissible for any purpose in this or any other
27 proceeding. Gaines Decl. at ¶ 17.

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1 **IV. LEGAL ANALYSIS**

2 **A. The Proposed Settlement Terms**

3 **1. The Settlement Class**

4 The Parties have agreed to a settlement class composed of all persons who are or were
5 employed by Graphic Packaging International, LLC in the State of California as non-exempt
6 employees who were paid wages at any time during the Settlement Period [April 27, 2017 to
7 October 25, 2021]. Defendant represents that this Class contains approximately 1,151 members
8 who worked approximately 152,418 Eligible Workweeks during the Settlement Period. Stip. at ¶
9 XVI(M)).

10 **2. Allocations to be Paid from the Maximum Settlement Amount**

11 The Stipulation provides that Defendant shall pay an amount not to exceed \$1,250,000 to
12 resolve the Action on a class-wide basis (the "Settlement Settlement"). The Maximum Settlement
13 Amount, which shall be fully paid by Defendant, includes the following: Net Settlement Payments:
14 Court approved attorneys' fees and Litigation costs pursuant to Section XIII; Administrative Costs
15 pursuant to Section VIII; enhancements to Named Plaintiffs pursuant to Section XIV; statutory
16 penalties, interest, and Taxes pursuant to Section XV; and the PAGA Settlement pursuant to Section
17 XVI shall be paid, except as provided herein. Stip. at ¶ I(V).

18 From the Settlement Amount, Defendant will not oppose Plaintiffs' counsel's application
19 to the Court for up to 35% of the Settlement Amount (or \$437,000) for attorneys' fees. Stip. at ¶
20 XIII.

21 From the Settlement Amount, Defendant will not oppose Plaintiffs' counsel's application
22 to the Court for up to \$20,000 in reimbursement of litigation costs and expenses. Stip. at ¶ XIII.

23 From the Settlement Amount, Defendant will not oppose Plaintiffs' counsel's application
24 to the Court for an enhancement to each Class Representative in the gross amount of \$10,000 each,
25 in consideration for their efforts in instituting and participating in the Action. Stip. at ¶ XIV.

26 From the Settlement Amount, settlement administration fees paid to ILYM Group, Inc. will
27 be no more than \$20,000. Stip. at ¶ VIII.

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1 From the Settlement Amount, the portion to be allocated for settlement of any and all claims
2 for penalties under the PAGA is \$120,000 ("PAGA Payment"), 75% of which shall be paid to the
3 LWDA and 25% will be retained in the Net Settlement Fund for distribution to Class Members
4 employed during the PAGA period as penalties and apportioned based on their Eligible Workweeks
5 during the PAGA Period. Stip. at ¶ XVI.

6 The Net Settlement Amount shall include payments made to the Settlement Class as part of
7 the Resolution, including wages, penalties and interest, and shall be supplemented by any portion
8 of the requested attorneys' fees and Litigation costs, Administrative Costs, and the enhancement to
9 the Named Plaintiffs which are not approved by the Court. Stip. at ¶ I(M).

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

11 Pursuant to PAGA, the Parties have agreed that \$120,000 of the Settlement Amount will be
12 allocated to settle the claims brought under Labor Code § 2699 et seq. Pursuant to Labor Code
13 § 2699(i), "civil penalties recovered by aggrieved employees shall be distributed as follows: 75
14 percent to the Labor and Workforce Development Agency...and 25 percent to the aggrieved
15 employees." As such, 75 percent of the apportioned PAGA settlement amount – or \$90,000 – shall
16 be payable to the LWDA. The remaining 25 percent, or \$30,000, will be retained in the Net
17 Settlement Fund for distribution to Class Members employed during the PAGA period as penalties
18 and apportioned based on their Eligible Workweeks during the PAGA Period. Stip. at ¶ XVI.

19 **B. Two-Step Approval Process**

20 Any settlement of class litigation must be reviewed and approved by the Court. Cal. R. Ct.
21 3.769; Fed. R. Civ. P. 23(e).¹ This is done in two steps: (1) an early (preliminary) review by the
22 trial court, and (2) a final review after notice has been distributed to the Class Members informing
23 them of the terms of the settlement and allowing them to exclude themselves from, participate in
24 and/or object to the settlement. The Manual for Complex Litigation (Third) § 30.41 states:

25 \\\

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

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

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

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

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

28 *Id.* at § 11.24.

Here, the Parties have reached such an agreement and have submitted the Stipulation
herewith. *See* Gaines Decl., **Exhibit B**; Gaines Decl. ¶ 13.

C. Procedures for Settlement Before Class Certification.

Pursuant to California Rules of Court, Rule 3.769(d), parties also may, at the preliminary
approval stage, request that the court provisionally approve certification of the class – conditioned
upon final approval of the settlement. "[P]re-certification settlements are routinely approved if
found to be fair and reasonable." *Wershba, supra*, 91 Cal. App. 4th at 240. *Accord Dunk, supra*.

1 48 Cal. App. 4th at 1803 (although the settlement was reached before any “adversary certification,”
2 the court was satisfied that it was “fair, adequate and reasonable.”). *See also In re Baldwin-United*
3 *Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 478² (“many courts have employed this practice in the
4 name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.”)

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

12 4 *Newberg on Class Actions*, at § 11.26.

13 As required by Labor Code § 2699(1)(2), concurrent with Plaintiffs’ submission of the
14 Stipulation to the Court, his counsel is transmitting it, together with this Motion, to the LWDA.
15 Gaines Decl. at ¶ 36.

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

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

23 a. **The Settlement Class is Ascertainable**

24 The proposed Settlement Class is ascertainable. The class definition, the size of the Class,
25 and the means for identifying the members of the class determine whether the class is ascertainable.
26 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
27 are identifiable from Defendant’s employment and payroll records. Further, the Settlement Class
28 is sufficiently numerous to warrant certification. According to Defendant’s records, the Class
comprises approximately 1,151 employees. Gaines Decl. ¶ 31.

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

1 b. **Questions of Law or Fact Common to Members of the Settlement**

2 **Class Predominate**

3 The Class Members' claims all stem from a common source: members of the Settlement
4 Class allege that Defendant violated the same Labor Code provisions in connection with their
5 employment. All members of the Class seek the same relief under the same California laws (related
6 to unpaid wages, unpaid meal and rest period premiums, unreimbursed business expenses,
7 inaccurate or incomplete wage statements, failure to timely pay wages due upon separation, and
8 derivative claims). Under these circumstances, the commonality requirement is satisfied for
9 purposes of certifying the Settlement Class for settlement purposes. Gaines Decl. ¶ 32.

10 c. **The Proposed Class Representatives' Claims Are Typical of the**

11 **Class Members' Claims**

12 A class representative's claims are typical when they arise from the same event or course
13 of conduct that gives rise to the claims of the class, and are based on the same legal theory.
14 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, named Plaintiffs and proposed
15 Class Representatives are former non-exempt employees who worked for Defendant in the State of
16 California during the Settlement Period. They contend that Defendant failed to pay all wages,
17 failed to provide meal and rest periods, failed to comply with itemized employee wage statement
18 provisions, failed to reimburse expenses, and failed to timely pay wages at the separation of
19 employment, in violation of Labor Code §§ 201-203, 204, 210, 226(a), 226.7, 256, 510, 512, 558,
20 1194, 1194.2, 2698, 2699, and 2802, among other Labor Code provisions. They have the same
21 claims as those that the members of the Settlement Class would reasonably be expected to bring
22 based on the course of conduct alleged herein. Gaines Decl. ¶ 33.

23 Plaintiffs have also demonstrated that they will aggressively and competently assert the
24 interests of the proposed Settlement Class; they have taken active roles in this litigation and have
25 no apparent conflicts with other class members. Gaines Decl. ¶ 34. Furthermore, Plaintiffs have
26 retained competent counsel, experienced in litigating class action claims in the employment
27 context. *See* Gaines Decl. ¶¶ 2-5.

1 **D. The Settlement Is Fair and Reasonable and Not the Result of Fraud or**
2 **Collusion**

3 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
4 evidence to the contrary is offered. *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars*
5 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re*
6 *Chicken Antitrust Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962. Courts do not substitute their
7 judgment for that of the proponents, particularly where, as here, settlement has been reached with
8 the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*
9 *Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990)
10 752 F. Supp. 1087, 1093; *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored*
11 *Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp. 1357, 1368; *Sommers v. Abraham Lincoln*
12 *Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.

13 While the recommendations of counsel proposing the settlement are not conclusive, the
14 Court can properly take them into account, particularly where, as here, such counsel have been
15 involved in informal discovery and negotiations for some period of time, appear to be competent,
16 have experience with this type of litigation, and have exchanged substantial evidence with the
17 opposing party. *See Newberg on Class Actions, supra*, § 11.47; *In re Paine Webber Ltd. P'ships*
18 *Litig.* (S.D.N.Y. 1997) 171 F.R.D. 104, 125 (“[s]o long as the integrity of the arm’s-length
19 negotiation process is preserved, however, a strong initial presumption of fairness attaches to the
20 proposed settlement . . . [citations] and ‘great weight’ is accorded to the recommendations of
21 counsel, who are most closely acquainted with the facts of the underlying litigation”); *see* Gaines
22 Decl. ¶¶ 2-5, 11-15.

23 Here, the Parties’ counsel have a great deal of experience in class action litigation and
24 specialize in employment wage and hour matters. Moreover, counsel for the Parties conducted an
25 extensive investigation of the factual allegations involved in this case. The Parties have engaged
26 in a broad exchange of documents, data, records and other information. Each side has apprised the
27 other, informally and at a formal mediation, of their respective factual contentions, legal theories
28 and defenses, resulting in extensive arm’s-length negotiations taking place among the Parties. *See*

1 Gaines Decl. ¶¶ 2-5, 11-15.

2 1. **The Settlement Falls Within The “Ballpark” of Reasonableness**

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

12 Plaintiffs’ counsel created a comprehensive damage analysis using sampling information
13 obtained through informal discovery. This damage analysis reveals that the negotiated settlement
14 falls within a realistic range of recovery on Class Members’ claims. Gaines Decl. ¶ 18.

15 Plaintiffs allege that Defendant failed to pay all minimum and overtime wages earned
16 during employment, in violation of Labor Code §§ 510, 558 and 1194, when it rounded down or
17 shaved off the hours reflected on Plaintiffs’ and Class Members’ time records to pay fewer hours
18 than were actually worked. Plaintiffs also contend they were not paid for time spent cleaning their
19 tools, attending meetings, and conducting some other tasks. Plaintiffs contend that this practice
20 deprived Plaintiffs and Class Members of significant hours worked and wages due. Rounding is
21 only permissible if the employer applies a consistent rounding policy that, on average, favors
22 neither overpayment or nor underpayment. *AHMC Healthcare, Inc. v. Superior Court* (2018) 24
23 Cal.App.5th 1014. Plaintiffs claim that they and Class Members were adversely affected as a result
24 of the rounding policy, evidenced by the statistics: 66% of all shifts suffered a time loss due to
25 rounding, and over 10% had a result in favor of the employee. Based on expert analysis, Plaintiffs
26 and Class Members were underpaid 3.8 minutes per shift due to rounding, yielding total damages
27 of \$1,220,044. Defendant contends this damage analysis is overstated and that it owes no money
28 because it never required employees to work without pay and its rounding practice was neutral on

1 its face. A compromise was therefore required to resolve this claim at this juncture of the litigation.
2 Gaines Decl. ¶ 19.

3 Plaintiffs and Class Members contend that they were not provided with all meal periods to
4 which they were entitled because of Defendant's meal period policy and practices. When they were
5 provided meal periods, they were oftentimes late or cut short due to machine issues that required
6 immediate attention. Plaintiffs and Class Members were also required to carry a two-way radio to
7 which they must be alert and responsive during their meal periods, resulting in on-duty meal periods
8 rather than uninterrupted ones. For its Visalia facility, Defendant's meal period policy requires that
9 employees take their meal period in the Break Area. If an employee may not leave the workplace
10 to take a meal period, the meal period is counted as time worked, even if the employee is relieved
11 of all work duties during mealtime. See *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th
12 1004, 1036. See also Department of Industrial Relations website
13 (https://www.dir.ca.gov/dlse/FAQ_MealPeriods.html) (Question: "Can my employer require that I
14 stay on the work premises during my meal period? Yes, your employer can require that you remain
15 on its premises during your meal period, even if you are relieved of all work duties. However, if
16 that occurs, you are being denied your time for your own purposes and in effect remain under the
17 employer's control and thus, the meal period must be paid."). Thus, Plaintiffs allege that
18 Defendant's Visalia meal period policy is not legal, and employees are therefore owed premium
19 wages for each meal period required to be taken while at Defendant's facility. Based on Plaintiffs'
20 expert's review and analysis of a 25% sampling of time records for Defendant's employees at each
21 of its three locations, out of 172,363 shifts analyzed, 27.6% evidenced late meal periods (taken after
22 the end of the fifth hour of work), 0.03% showed short meal periods (less than 30 minutes in length),
23 .9% of first meal periods were not provided, and 41% of second meal periods were not provided,
24 yielding total damages of \$6,593,633. Defendant, in contrast, strongly argues that this claim is
25 without merit; that employees were always free to leave the work premises during meal breaks; and
26 that employees never were affirmatively precluded by the employer from taking meal periods, and
27 instead voluntarily waived them. A compromise was therefore required to resolve this claim at this
28 juncture of the litigation. Gaines Decl. ¶ 20.

1 Plaintiffs further allege that Defendant failed to offer or authorize uninterrupted ten-minute
2 on-the-clock rest periods to Plaintiffs and Class Members for every four hours worked or major
3 fraction thereof, and did not pay the premium wages in the amount of one hour's pay for these
4 denied rest periods, in violation of Labor Code §§ 226.7 and 558 and IWC Wage Order 4-2001.
5 Plaintiffs contend that Defendant's Visalia rest period policy violates California law, for reasons
6 provided herein. For one, it does not provide the timing requirement for rest periods (one ten-minute
7 rest period for every four hours of work, or major fraction thereof). In *Brinker supra*, 53 Cal.4th
8 1004,1029-30, where a restaurant employer applied a similarly deficient rest period policy, the
9 California Supreme Court held that the defendant's uniform rest period policy violated California
10 law because it did not consider the "major fraction thereof" language in the relevant IWC Wage
11 Order and provided rest periods "only for each full four hours worked." *Id.* at 1033. This language
12 refers to shifts of between 3:30 and 3:59 hours, 7:00 and 7:59 hours, and 10 and 11:59 hours, and
13 requires all employees working those shifts lengths be authorized and permitted to take a first,
14 second, or third ten-minute rest period (as applicable for the shift length). Additionally, according
15 to Plaintiffs, Defendant had a practice of requiring Plaintiffs and Class Members to remain on
16 Defendant's premises during rest periods, resulting in impermissible on-duty rest periods subject
17 to employer control. Plaintiffs allege that by preventing employees from leaving the work premises
18 during a rest period, Defendant was unlawfully maintaining control over its employees during rest
19 periods. This policy therefore violates the holding in *Augustus v. ABM Security Services, Inc.*
20 (2016) 5 Cal. 5th 257, stating that the rest period requirement "obligates employers to permit and
21 authorizes employees to take off-duty rest periods. That is, during rest periods employers must
22 relieve employees of all duties and **relinquish control over how employees spend their time.**"
23 *Id.* at 269 (emphasis added). An employer may not place any limitations on where employees may
24 go or not go during their rest periods. Plaintiffs' claim is that these restrictions and requirements
25 contravene California law with respect to rest periods. *See also* Department of Industrial Relations
26 website (www.dir.ca.gov/dlse/faq_restperiods.htm) (Question: "Can my employer require that I
27 stay on the work premises during my rest period? No, your employer cannot impose any restraints
28 not inherent in the rest period requirement itself."). Notwithstanding the policies which Plaintiffs

1 contend contravene the requirements of California law, Defendant argues that employees were not
2 under its control during their rest breaks and were free to engage in their own pursuits during such
3 time. This was a challenging claim because rest breaks are not recorded on the time records. If
4 Plaintiffs could prove a 15% violation rate for rest breaks – far from a certainty – the value of this
5 claim could be worth as much as \$2,500,000. Gaines Decl. ¶ 21.

6 Plaintiffs and Class Members also contend that Defendant failed to reimburse Plaintiffs'
7 and Class Members' business expenses incurred in the discharge of their duties, in violation of
8 Labor Code § 2802. The purpose of this statute is to prevent employers from passing their operating
9 expenses on to their employees. *James v. Dependency Legal Group*, 253 F.Supp.3d 1077 (S.D.
10 Cal. 2015). The employer's duty to indemnify does not turn on whether an employee has made a
11 request for reimbursement, but rather, on whether the employer knew or had reason to know that
12 the employee has incurred a reimbursable expense; if it does, the employer must exercise due
13 diligence to ensure that the employee is reimbursed. *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d
14 901 (N.D. Cal. 2009). The contention here is that Plaintiffs and Class Members were not
15 reimbursed by Defendant for the use of their personal cellular phones to order machine parts as part
16 of their work tasks for Defendant, in violation of Labor Code § 2802. Defendant argued that no
17 employees were ever required to use their cellular phones for work purposes, and even if they were,
18 Defendant did or would have reimbursed them for the expense. Because of the small value of this
19 claim and due to the difficulty of proving it at trial, its value was nominal. Gaines Decl. ¶ 22.

20 Class Members also sought wage statement penalties pursuant to Labor Code § 226(e),
21 waiting time penalties pursuant to Labor Code § 203, and PAGA penalties derivative of the
22 underlying violations alleged. The value of these penalties – which are derivative, discretionary,
23 and subject to defenses of their own – is approximately \$16,355,367 (without stacking duplicative
24 and oppressive PAGA penalties). This is a substantial amount that required a compromise to resolve
25 based on risk of litigation. Plaintiffs believed it was unlikely that many of these penalties could be
26 recovered because the value of the penalties could eclipse the value of alleged underpaid wages (if
27 wages were recovered at all), because Plaintiffs' claims are novel, and because of Defendant's
28 potential independent defenses to these penalties. Gaines Decl. ¶ 23.

1 The discount negotiated for settlement here is a reasonable compromise, particularly
2 considering that the risk of obtaining class certification on all or any of Plaintiffs' claims involves
3 a 50% or higher hurdle, especially with respect to the meal, rest period, and off-the-clock claims,
4 to which Defendant maintains strong arguments to defeat class certification (in addition to multiple
5 defenses on the merits of the claims). Further, it is important to note the fact that Plaintiffs and all
6 Class Members entered into arbitration agreements with Defendant, which may render the class
7 action claims valueless because they cannot be pursued in a group action and few, if any, employees
8 are likely to pursue their claims on an individual basis. Class certification is a substantial risk in
9 any class action case. Here, while Plaintiffs maintain that the requirements of class certification
10 are met, Defendant proffers various arguments why class treatment is not appropriate, including
11 but not limited to that individualized inquiries among class members predominate over common
12 ones. If Defendant was to defeat Plaintiffs' class certification motion, there would be no class wide
13 relief whatsoever, and most class members would likely not file individual claims. Gaines Decl. ¶
14 24.

15 Plaintiffs also faced the risk of a loss on the merits on their claims. It is very possible that
16 the Court would agree with Defendant's position that its meal and rest period policies and practices
17 complied with the requirements of California law or could not be certified. In such a case, the value
18 of the majority of Plaintiffs' claims would be zero. Gaines Decl. ¶ 25.

19 Finally, Plaintiffs faced the risk that they would not obtain a maximum damage/penalty
20 award on all (or any of) their claims. For example, Plaintiffs seek discretionary penalties pursuant
21 to the PAGA worth approximately \$3,746,400 (without stacking). Even if Plaintiffs did prevail on
22 these claims, it is possible that the Court would not impose all penalties pursuant to its discretionary
23 power to reduce them. Gaines Decl. ¶ 26.

24 Defendant strongly contends that its policies and practices do not violate any laws. It
25 contends that it properly provided for all meal and rest periods and fully compensated its employees
26 for all time worked. It further contends that the wage statements it provides to its employees are
27 fully compliant with California law. Gaines Decl. ¶ 27.

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1 When the costs and risks of non-certification and loss on the merits are considered,
2 Plaintiffs' counsel is of the opinion that the settlement reached is clearly a favorable one. Gaines
3 Decl. ¶¶ 18-28.

4 The settlement for each Class Member is fair, reasonable and adequate, given the inherent
5 risk of litigation, the risk relative to class certification and the costs of pursuing such litigation. The
6 settlement shall finally resolve all claims of the Class Members as alleged in the Action. Gaines
7 Decl. ¶ 29.

8 2. **Despite the Asserted Fairness of the Settlement Terms, Class Members**
9 **May Request Exclusion From, Or Object To, The Settlement**

10 Despite the asserted fairness of the settlement terms, any potential Class Member who
11 objects to the terms of the settlement set forth in the Stipulation of Settlement has the right to submit
12 a request for exclusion (*i.e.*, opt out) from the settlement, pursuant to which the Class Member
13 would otherwise retain any claim he or she may have against Defendant.

14 Moreover, Class Members who do not opt out may, upon providing proper notice to the
15 Parties and the Court, attend the final fairness and approval hearing for the purpose of objecting to
16 one or more of the settlement terms set forth in the Stipulation of Settlement.

17 **E. Plaintiff Should Be Permitted to File His First Amended Complaint**

18 In connection with this Settlement, Plaintiff shall file a First Amended Complaint, which
19 adds two additional named Plaintiffs and class allegations and claims to comport with the release
20 provided for in the Stipulation. The Parties agreed that, as part of his motion for preliminary
21 approval, Plaintiff would concurrently seek leave to file the First Amended Complaint, the filing
22 of which is a condition of the Stipulation.

23 To effectuate the class settlement of the Action, Defendant does not oppose the filing of the
24 First Amended Complaint for settlement purposes only. As part of its order preliminarily approving
25 the settlement, Plaintiff requests that the Court approve their filing of the First Amended Complaint,
26 and consent that Defendant not be required to file a responsive pleading thereto. Gaines Decl. ¶
27 35.

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1 **V. CONCLUSION**

2 Based on the foregoing, as part of its preliminary approval of the settlement, the Parties
3 request that the Court enter an order:

4 1. Preliminarily finding that the settlement falls within the range of reasonableness and
5 approving the proposed settlement;

6 2. Conditionally certifying, for settlement purposes only, the Settlement Class;

7 3. Appointing Plaintiffs Robert Lawson, Marty Linebarger, and Marcos Castro as
8 Class Representatives;

9 4. Appointing Daniel F. Gaines, Esq., Alex P. Katofsky, Esq., and Miriam Schimmel
10 Esq. of Gaines & Gaines, APLC, Larry W. Lee, Esq. and Mai Tulyathan, Esq. of Diversity Law
11 Group, P.C. and William L. Marder, Esq. of Polaris Law Group, LLP as Class Counsel;

12 5. Approving ILYM Group, Inc. as Settlement Administrator;

13 6. Preliminarily approving the allocation of \$120,000 from the Settlement Amount to
14 settle Plaintiffs' representative claims under the PAGA, of which seventy-five percent (75%) shall
15 be paid to the Labor and Workforce Development Agency and twenty-five percent (25%) will be
16 retained in the Net Settlement Fund for distribution to Class Members employed during the PAGA
17 period as penalties and apportioned based on their Eligible Workweeks during the PAGA Period;

18 7. Approving as to content and form the notice to the Settlement Class, and directing
19 it to be disseminated by the Settlement Administrator;

20 8. Permitting Plaintiff to file his First Amended Complaint no later than five (5) court
21 days after notice of the entry of the Order granting this motion has been given, and consent that
22 Defendant not be required to file a responsive pleading thereto; and,

23 9. Setting the following schedule of settlement proceedings:

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26 \\

27 \\

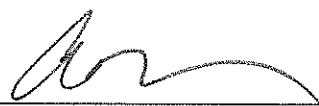
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<u>EVENT</u>	<u>TIMING</u>
Last day for Defendant to provide to the Settlement Administrator a list of all Class Members, including their (1) name; (2) last known home address; (3) number of Eligible Workweeks as a class member during the Settlement Period; and (4) social security number ("Class List")	30 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail Class Notice to Class Members	10 calendar days after Settlement Administrator's receipt of Class List
Last day for Class Members to submit a written request for exclusion to the Settlement Administrator	45 calendar days after the initial mailing of the Class Notice to Class Members
Last day for Class Members to submit an Objection to the Settlement Administrator	45 calendar days after the initial mailing of the Class Notice to Class Members
Last day for Class Counsel to file and serve moving papers in support of final settlement approval and request for attorneys' fees and costs	10 calendar days before the final settlement approval hearing date
Last day for Class Counsel to file with the Court and serve declaration by Settlement Administrator specifying the due diligence undertaken with regard to the mailing of the Notice	10 calendar days before the final settlement approval hearing date
Final settlement approval hearing	_____, 2022, at _____m. (approximately 110 days after entry of this Order)

DATED: February 22, 2022

Respectfully submitted,

GAINES & GAINES,
A Professional Law Corporation

By: 

DANIEL F. GAINES

ALEX P. KATOFISKY

Attorneys for Plaintiff Robert Lawson and Proposed Class Counsel