

James R. Hawkins (SBN 192925)
Isandra Fernandez (SBN 220482)
Anthony Draper (SBN 344391)
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676
Isandra@jameshawkinsaplc.com
Anthony@jameshawkinsaplc.com

Attorneys for Plaintiff AMBER PALMA
on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

AMBER PALMA, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

VOLUNTEERS OF AMERICA
NORTHERN CALIFORNIA AND
NORTHERN NEVADA, INC., a
California Company, and DOES 1 through
50, inclusive,

Defendants.

Case No. 34-2020-00282148 (consolidated
with Case No. 34-2021-00301329-CU-OE-
GDS)

Assigned for All Purposes To:
Hon. Lauri A. Damrell
Dept. 22

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

[Declarations of Anthony Draper, Amber
Palma [Proposed] Order, concurrently filed
herewith]

Date: May 30, 2025
Time: 9:00 a.m.
Dept. 22

1 **PLEASE TAKE NOTICE** that on May 30, 2025, in Department 22 of the above-
2 entitled court located at, 720 9th Street, Sacramento, CA 95814, Plaintiff Amber Palma
3 (“Plaintiff”) will and hereby does move the Court for an Order: (1) provisionally certifying the
4 Class for Settlement purposes only; (2) provisionally approving James R. Hawkins, Isandra
5 Fernandez, and Anthony Draper of James Hawkins APLC; counsel for Plaintiff as Class Counsel
6 in this matter, (3) provisionally approving Plaintiff as the Class Representative; (4) approving
7 ILYM Group Inc., as the Settlement Administrator; (5) preliminarily approving the Class, PAGA
8 and FCRA Settlement Agreement (“Settlement Agreement”); (6) approving and directing
9 distribution of the Notice of Class and PAGA Action Settlement; and (7) scheduling a Hearing
10 Date for Final Approval.

11 This Motion is made pursuant to Rule 3.769 of the California *Rules of Court*, which
12 provides for court approval of the settlement of a purported class action and allows the Court to
13 preliminarily certify a class for settlement purposes. The basis for this Motion is that the
14 proposed Settlement is fair, adequate, and reasonable and the procedures proposed by the Parties
15 are adequate to ensure the opportunity of Class Members to participate in, opt out of, or object to
16 the Settlement.

17 This Motion will be based on the Memorandum of Points and Authorities included
18 herein, the Declarations of Anthony Draper, the Settlement Agreement attached to the
19 Declaration of Anthony Draper as Exhibit 1, the Declaration of Amber Palma in Support of the
20 Motion for Preliminary Approval of Settlement and upon the oral arguments of counsel (should
21 there be any) and upon the complete records and file herein.

22
23 Dated: May 7, 2025

JAMES R. HAWKINS, APLC



Isandra Y. Fernandez
Anthony Draper
Attorneys for Plaintiff
Amber Palma

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. INTRODUCTION.....3

II. FACTUAL BACKGROUND.....4

III. SUMMARY OF SETTLEMENT TERMS.....6

 A. Settlement Class.....6

 B. Wage and Hour Class.....6

 C. Background Check Class.....6

 D. Aggrieved Employees.....6

 E. Allocation of the Gross Settlement Amount.....6

 F. Releases.....9

 1. Participating Wage and Hour Class Member Released Claims
 Summary.....9

 2. Participating Background Check Class Member Released Claims
 Summary.....9

 3. PAGA-Related Claims Summary.....10

 4. Plaintiff’s Released Claims.....10

 G. Notice Procedure.....10

IV. PRELIMINARY APPROVAL OF SETTLEMENT IS APPROPRIATE.....11

 A. The Terms of the Proposed Settlement are Fair.....12

 1. The Settlement Was Reached Through Extensive Arm’s Length
 Bargaining and Based on the Recommendation Proposed by the
 Mediator.....12

 2. Investigation and Discovery were Sufficient for the Parties to
 Evaluate the Risks Intelligently.....13

 3. Plaintiffs’ Counsel is Experienced in Similar Litigation.....13

 B. The Settlement Provides for Reasonable Compensation to Class Members....13

 1. Failure to Pay Lawful Wages for All Hours Worked 14

 2. Meal Period Claim.....15

1	3. Rest Break Claim.....	16
2	4. Failure to Provide Accurate Itemized Wage Statements.....	16
3	5. Failure to Timely Pay Wages at Separation.....	17
4	6. Bus. & Prof. Code § 17200 Claim.....	17
5	7. Lab. Code §2699 (PAGA Claim).....	18
6	8. Background Check Claims.....	19
7	C. The Class Representative Enhancement Payment and Class Counsel Fees Are	
8	Reasonable And Should be Awarded.....	21
9	V. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE.....	22
10	A. The Proposed Class is Ascertainable.....	23
11	B. Numerosity of the Proposed Settlement Class is Satisfied.....	23
12	C. There are Common Questions of Law and Fact that Apply to the Proposed	
13	Settlement Class.....	23
14	D. The Typicality Requirement is Met as to the Proposed Settlement Class.....	24
15	E. The Adequacy Requirement is Met as to the Proposed Settlement Class.....	24
16	F. Common Issues Predominate and Class-wide Settlement is Superior to Other	
17	Available Methods of Resolution.....	25
18	VI. THE PROPOSED CLASS NOTICE IS APPROPRIATE.....	25
19	A. The Class Notice Satisfies Due Process.....	26
20	B. The Proposed Class Notice is Accurate and Informative.....	26
21	VII. CONCLUSION.....	27
22		
23		
24		
25		
26		
27		
28		

1 **TABLE OF AUTHORITIES**

2 **CASES**

3 *Bell v Farmers Ins. Exchange*

4 (2004) 115 Cal.App.4th 715.....25

5 *Brinker Rest. Corp. v. Super. Ct.,*

6 (2012) 53 Cal. 4th 1004.....6,16

7 *Cardenas v. McLane Foodservice, Inc.,*

8 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....19

9 *Cartt v. Superior Court*

10 (1975) 50 Cal.App.3d 960.....26

11 *Clark v American Residential Services, LLC*

12 (2009) 175 Cal. App. 4th. 785.....11

13 *Clark v. Superior Court,*

14 (2010) 50 Cal. 4th 605.....17

15 *Class Plaintiffs v. City of Seattle*

16 (9th Cir. 1992) 955 F.2d 1268.....11

17 *Cortez v. Purolator Air Filtration Prods. Co.,*

18 (2000) 23 Cal. 4th 163.....18

19 *Dunk v. Ford Motor Company*

20 (1996) 48 Cal.App.4th 1794.....passim

21 *Fleming v. Covidien,*

22 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....19

23 *Gomez v. Jacobo Farm Labor Contractor, Inc.,*

24 (2019) 334 FRD. 234.....8,18

25 *Hanlon v Chrysler Corp.*

26 (9th Cir. 1998) 150 F.3d 1011.....passim

27 *Hebberd v. Colgrove*

28 (1972) 28 Cal.App.3d 1017.....23

III

TABLE OF CONTENTS AND AUTHORITIES

1	<i>In re Taco Bell Wage & Hour Actions,</i>	
2	2016 U.S. Dist. LEXIS 48557, *40 43 (E.D. Cal. Apr. 6, 2016).....	19
3	<i>Kullar v. Foot Locker Retail, Inc.,</i>	
4	(2008) 168 Cal. App. 4th 116.....	13,14
5	<i>Limon v Circle K Stores, Inc.</i>	
6	(2022) 84 Cal, App. 5th 671.....	21
7	<i>McGhee .v Bank of America</i>	
8	(1976) 60 Cal. App.3d 442.....	24
9	<i>Mitchell v. WinCo Foods, LLC</i>	
10	(9th Cir 2020) 828 Fed. Apx.467.....	20
11	<i>Munoz v. BCI Coca-Cola Bottling Co.,</i>	
12	(2010), 186 Cal. App. 4th 399.....	14
13	<i>North County Contractor’s Ass. Inc. v. Touchstone Ins. Svcs.</i>	
14	(1994) 27 Cal. App. 4th 1085.....	11
15	<i>Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco,</i>	
16	(9th Cir. 1982) 688 F.2d 615.....	13
17	<i>Pineda v. Bank of Am., N.A.,</i>	
18	(2010) 50 Cal. 4th 1389.....	18
19	<i>Potter v Pacific Coast Lumber Company</i>	
20	(1951) 37 Cal. 2d. 592.....	11
21	<i>Richmond v. Dart Industries, Inc.</i>	
22	(1981) 29 Cal.3d 462.....	25
23	<i>Rose v. City of Hayward</i>	
24	(1981) 126 Cal. App. 3d 926.....	23
25	<i>Sav-On Drug Stores, Inc. v Superior Court</i>	
26	(2004) 34 Cal. 4th 319.....	25
27	<i>Wershba v Apple Computer, Inc.</i>	
28	(2001) 91 Cal. App. 4th 224.....	12

IV
TABLE OF CONTENTS AND AUTHORITIES

1	<i>Wherner v. Syntex</i>	
2	(N.D. Cal. 1987) 117 F.R.D. 641.....	24
3		
4		
5	<u>STATE RULES AND STATUTES</u>	
6	California Business and Professions Code §17200.....	9,17,23
7	California Business and Professions Code §17203.....	18
8	California Code of Civil Procedure § 382.....	22
9	California Rules of Court 3.760.....	26
10	California Rules of Court 3.766(d).....	27
11	California Rules of Court 3.769.....	2
12	Industrial Welfare Commission (“IWC”) Wage Order No.1-2001.....	passim
13	Labor Code § 203.....	9,10,17,18
14	Labor Code § 204.....	9,10
15	Labor Code § 210.....	10
16	Labor Code § 226.....	10,17,18
17	Labor Code § 226.7.....	10,16
18	Labor Code § 226(e).....	16
19	Labor Code § 510.....	7
20	Labor Code § 1194.....	9,10
21	Labor Code § 1197.....	9,10
22	Labor Code § 2698.....	4
23	Labor Code § 2699.....	18
24	Labor Code § 2699(e)(2).....	18
25	Private Attorney General Act, Lab. Code § 2698 <i>et seq.</i> (“PAGA”).....	passim
26		
27		
28		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECONDARY SOURCES

MANUAL at §30.21.....27

MANUAL at §30.41.....26

Newberg, § 8.39.....27

Newberg, § 11.41.....11

FEDERAL RULES

FCRA. 15 U.S.C. § 1681n(a)(1)(A).....20

Federal Rules of Civil Procedure Rule 23.....22

Wright & Miller, Fed. Practice & Procedure § 1797.6.....26

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Amber Palma (“Plaintiff”) respectfully seeks preliminary approval of the class
4 and PAGA action settlement reached with Defendant Volunteers of America Northern California
5 and Northern Nevada, Inc. (“Defendant” and/or VOA”) (Plaintiff and Defendant hereinafter
6 collectively referred to as “Parties”).

7 Subject to Court approval, the Parties have reached a settlement of the claims asserted on
8 behalf of the Class and Aggrieved Employees in the present action for a total of One Million One
9 Hundred Thousand Dollars (\$1,100,000) inclusive of all settlement payments to Participating
10 Class Members and Aggrieved Employees, Class Counsel’s Court-approved attorneys’ fees and
11 reasonable litigation expenses, the Court-approved Class Representative Service Award to the
12 Class Representative, Settlement Administration Expenses, interest and the LWDA’s share of
13 PAGA penalties. The total settlement amount excludes the employer’s share of the payroll taxes.

14 **This is a cash settlement.** Every Class Member who does not opt out of the Settlement will
15 automatically be mailed an individual settlement payment. However, every Class Member who is
16 also an Aggrieved Employee will be mailed their respective Individual PAGA Payment
17 associated with the PAGA penalty portion of the settlement amount regardless of opt-out status.
18 Class Members do not have to file a claim to be mailed a payment.

19 As discussed more thoroughly below, the proposed Settlement satisfies all of the criteria
20 for preliminary settlement approval under California law and falls well within the range of
21 proper approval. As such, Plaintiff moves this Court to: (i) provisionally certify the proposed
22 Class; (ii) provisionally approve James R. Hawkins, Isandra Fernandez, and Anthony Draper of
23 James Hawkins APLC as class counsel for Plaintiff and the Class in this matter; (iii)
24 provisionally approve named Plaintiff Amber Palma as the Class Representative; (iv) appoint
25 ILYM Group, Inc., as the Settlement Administrator; (v) preliminarily grant approval of the
26 Class, PAGA and FCRA Settlement Agreement (hereinafter “Settlement Agreement”); (vi)
27 direct distribution of the Notice of Class and PAGA Action Settlement (the “Class Notice”) and;
28 (vii) schedule a Final Approval Hearing on the terms and conditions set forth in the Settlement

1 Agreement.

2 **II. FACTUAL BACKGROUND**

3 On July 23, 2020, Plaintiff Amber Palma. commenced this Action by filing a wage and
4 hour Class Action Complaint against Defendant in Sacramento Superior Court, Case No. 34-
5 2020-00282148. (Declaration of Anthony Draper “Draper Decl.”, ¶ 2.) The same day, Plaintiff
6 provided timely written notice to the Labor and Workforce Development Agency (“LWDA”)
7 and to Defendant of Plaintiff’s intent to pursue a Labor Code section 2698 Private Attorney
8 General Act (“PAGA”) claim. (*Id.*)

9 On April 20, 2021, Plaintiff filed a First Amended Class Action Complaint (“FAC”),
10 adding a cause of action for civil penalties under PAGA. The operative FAC alleges the
11 following causes of action: (1) failure to pay lawful wages; (2) failure to provide lawful meal
12 periods or compensation in lieu thereof; (3) failure to provide lawful rest periods of
13 compensation in lieu thereof; (4) failure to timely pay wages; (5) knowing and intentional failure
14 to comply with itemized employee wage statement provisions; (6) violation of the unfair
15 competition law; (7) and civil penalties under PAGA. (Draper Decl., ¶ 3.)

16 On May 24, 2021, Plaintiff filed a separate class action in Sacramento County Superior
17 Court, (Case No. 34- 2021-00301329) alleging Defendant improperly conducted employee
18 background checks without providing the proper disclosures and obtaining authorization in
19 violation of the Fair Credit Reporting Act (“FCRA”), Investigative Consumer Reporting
20 Agencies Act (“ICRAA”) Consumer Credit Reporting Agencies Act (“CCRAA”) (Draper Decl.,
21 ¶ 4.)

22 On February 21, 2025, the Court issued an order consolidating the class and PAGA
23 action (case no. 34-2020-00282148-CU-OE-GDS) with the FCRA action (34-2021-00301329-
24 CU-OE-GDS), with case no. 34-2020-00282148-CU-OE-GDS to serve as the lead action, and all
25 documents to be filed under that case number. (Draper Decl., ¶ 5.)

26 Throughout this litigation, Defendant has denied Plaintiff’s allegations and raised
27 defenses to her claims, both individually and on a representative basis. (Draper Decl., ¶ 6.)
28 Defendant maintains that its employment policies and practices meet the requirements of the
Labor Code and applicable Wage Orders along with state and federal employee background

1 check laws (*Id.*) To date, no class has been certified and the Court has not made any findings that
2 Defendant engaged in any wrongdoing or in violation of any state law, rule or regulation, with
3 respect to the issues presented in the litigation (Draper Decl., ¶ 7.)

4 Through formal and informal discovery, Plaintiff and Defendant have exchanged
5 extensive documents and information related to the claims asserted (Draper Decl., ¶ 8.) Plaintiff
6 obtained hundreds of pages of information, including timecard records and wage reports of
7 putative Class Members (*Id.*) Defendant provided Plaintiff with class data and random samples
8 of time records, wage statements, and information regarding the number of non-exempt
9 employees during the relevant time-period. Defendant also provided pertinent information and
10 documents regarding the background check claims alleged by Plaintiff. (*Id.*)

11 On September 21, 2022, the Parties participated in a mediation with Lou Marlin, Esq. an
12 experienced class action mediator. (Draper Decl., ¶ 9.) Although the Parties were unable to reach
13 a settlement at the conclusion of the mediation, they continued in good faith attempts to resolve
14 the Actions through the assistance of the mediator. (*Id.*) Thereafter, on or about August 2023,
15 Defendant substituted its counsel (Draper Decl. ¶ 10.) The Parties engaged in further discussion
16 and agreed to attend a second mediation. (*Id.*)

17 On April 4, 2024, the Parties participated in a second all-day mediation presided over by
18 Hon. Amy Hogue (Ret.) (Draper Decl., ¶ 11.) Although an agreement was not reached at the
19 conclusion of the mediation, the Parties continued in settlement discussions. (*Id.*) Defendant also
20 provided further information in support of settlement efforts including documents regarding
21 Defendant's financial status which were reviewed by Plaintiff's expert. (*Id.*) The mediator
22 continued to assist the Parties throughout the ongoing settlement negotiations and ultimately
23 made a settlement proposal that was accepted by all Parties on August 29, 2024. (Draper Decl., ¶
24 12.) Thereafter, the Parties exchanged multiple drafts of the proposed settlement agreement and
25 class notice documents and engaged in numerous communications regarding the settlement terms
26 (Draper Decl., ¶ 13.) The final terms and provisions of the settlement agreement were approved
27 and executed by all the parties on or about March 2025 (Draper Decl., ¶ 14.; Exhibit 1.-
28 Settlement Agreement.)

Based on their own respective independent investigations and evaluations and after

1 taking into account the sharply disputed factual and legal issues involved in this matter, the risks
2 attending further prosecution in light of certification issues faced due to the *Brinker Rest. Corp.*
3 *v. Super. Ct.*, (2012) 53 Cal. 4th 1004 (“*Brinker*”) decision, the discovery and investigation
4 conducted to date, Plaintiff and her counsel are of the opinion that settlement for the
5 consideration and on the terms set forth in the Settlement Agreement is fair, reasonable and
6 adequate and is in the best interests of the named Plaintiff and Class Members. (Draper Decl., ¶
7 15.)

8 **III. SUMMARY OF SETTLEMENT TERMS**

9 **A. Settlement Class**

10 “Class Member” and/or “Settlement Class Member” means: member of the Background
11 Check Class and Wage and Hour Class, as either a Participating Class Member or Non-
12 Participating Class Member (including a Non- Participating Class Member who qualifies as an
13 Aggrieved Employee) (Settlement Agreement, ¶¶1.12.)

14 **B. Wage and Hour Class**

15 “Wage and Hour Class” means all non-exempt employees employed by Defendant in
16 California at any time from July 23, 2016, to June 3, 2024. (“Wage and Hour Class Period”)
17 (Settlement Agreement, ¶¶1.48;1.49.)

18 **C. Background Check Class**

19 “Background Check Class” means all persons who executed Defendant’s disclosure form
20 to obtain consumer reports for employment purposes in the state of California during May 5,
21 2016, to June 3, 2024. (“Background Check Class Period”). (Settlement Agreement, ¶¶ 1.7,1.8.)

22 **D. Aggrieved Employees**

23 “Aggrieved Employees” means all current and former hourly-paid or non-exempt
24 employees employed by Defendant within the State of California at any time from July 23, 2019,
25 to June 3, 2024. (“PAGA Period”) (Settlement Agreement, ¶¶ 1.4,1.35.)

26 **E. Allocation of the Gross Settlement Amount**

27 1. The Gross Settlement Amount (“GSA”) is One Million One Hundred Thousand
28 Dollars (\$1,100,000). This Settlement Amount is in addition to the employer’s share of the
payroll taxes, inclusive of all settlement payments to Participating Class Members and PAGA

1 Employees, Class Counsel's Court-approved attorneys' fees and reasonable litigation expenses,
2 the Court-approved Service Award to the Class Representative, Settlement Administration
3 Expenses, interest and the LWDA's share of PAGA penalties. (Settlement Agreement, ¶ 1.24.)

4 2. Subject to Court approval, Class Counsel may seek approval from the Court of a
5 maximum of Three Hundred Eighty- Five Thousand Dollars (\$385,000) in attorneys' fees (35%
6 the GSA), and a maximum of Twenty Thousand Dollars (\$20,000) in actual litigation costs, for
7 serving as Class Counsel. (Settlement Agreement, ¶¶ 1.5, 1.6, 3.2.2.)

8 3. Subject to Court approval, the Class Representative may seek approval from the
9 Court of a Service Award payment not to exceed Seven Thousand Five Hundred Dollars
10 (\$7,500) for a general release of her claims and for serving as a Class Representative.
11 (Settlement Agreement, ¶¶ 1.16, 3.2.1.)

12 4. Subject to Court approval, reasonable Settlement Administration Expenses to be
13 taken from the Settlement Amount which are estimated not to exceed Twenty Three Thousand
14 Dollars (\$23,000). (Settlement Agreement, ¶ 3.2.3.)

15 5. Subject to Court approval, Fifty- Five Thousand Dollars (\$55,000) shall be
16 allocated to PAGA penalties, from which Forty One Thousand Two Hundred Fifty Dollars
17 \$41,250 (75%) shall be payable to the LWDA, representing the LWDA's share of PAGA
18 penalties ("PAGA Allocation") and Thirteen Thousand Seven Hundred Fifty Dollars (\$13,750)
19 (25%) to the PAGA Employees. (Settlement Agreement, ¶ 3.2.6.)

20 6. Subject to Court Approval, Thirty-Six Thousand Dollars (\$36,000) shall be
21 allocated to settlement of claims relating to Defendant's background check procedures.
22 ("Background Check Fund") (Settlement Agreement, ¶ 1.9.)

23 7. The portion of the Gross Settlement Amount remaining after subtracting the
24 Background Check Fund, Settlement Administration Expenses, Court-approved attorneys' fees
25 and litigation costs, Court-approved Service Enhancement, PAGA penalties, shall be designated
26 the "Net Settlement Amount" or "NSA" (Settlement Agreement, ¶ 1.31.)

27 8. "Individual Class Payment" (Wage and Hour Class) means the Wage and Hour
28 Participating Class Member's pro rata share of the Net Settlement Amount calculated according

1 to the number of Workweeks worked during the Class Period. (Settlement Agreement, ¶ 1.25.)
2 Said amount shall be allocated as follows: 20% of each Individual Class Payments to settle wage
3 claims, subject to withholding and reported on an IRS W-2 form, and 80% to settlement of
4 interest and penalties which shall be reported on an IRS 1099 without withholdings. (Settlement
5 Agreement, ¶ 3.2.5.1.)

6 9. “Individual Class Payment” (Background Check Class) means the Background
7 Check Participating Class Member’s equal share of the Background Check Fund (Settlement
8 Agreement, ¶ 1.26.)

9 10. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of
10 25% of the PAGA Penalties calculated according to the number of Pay Periods worked during
11 the PAGA Period. (Settlement Agreement, ¶ 1.27.)

12 11. Defendant shall be responsible for paying the employer’s share of payroll taxes,
13 separately and in addition to the maximum settlement amount. (Settlement Agreement, ¶ 1.23.)

14 Here, there are estimated to be 1,226 Wage and Hour Class Members. The Net
15 Settlement Amount, subject to Court approval, is Five Hundred Seventy-Three Thousand
16 Dollars (\$573,000). Thus, the estimated average net recovery of Wage and Hour Class Members
17 will be approximately Four Hundred Sixty-Eight Dollars (\$468). This average net recovery
18 amount is more than other wage and hour class action settlements approved by California state
19 and federal courts. *See, e.g., Ressler v. Federated Department Stores, Inc.*, Case No. BC335018
20 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale*
21 *Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately
22 \$65); *Sorenson v. Defendants, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average
23 net recovery of approximately \$60); *Lim v. Victoria’s Secret Stores, Inc.*, Case No. 04CC00213
24 (Orange County Super. Ct.) (average net recovery of approximately \$35); *Gomez v. Amadeus*
25 *Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20);
26 and *Jones v. Bath& Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal.) (average net
27 recovery of approximately \$50).
28

With respect to the background check claims, the settlement amount of \$36,000 results in

1 a net recovery is \$10 for the 3,636 Background Check Class Members which, as discussed
2 further below, is a favorable outcome.

3 **F. Releases**

4 1) Participating Wage and Hour Class Member Released Claims Summary

5 Effective on the date when Defendant fully fund the entire Gross Settlement Amount and
6 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
7 Plaintiff, Class Members and Class Counsel will release the following claims against Defendant:

8 i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period
9 facts stated in the Wage and Hour Operative Complaint and ascertained in the course of the
10 Action, including (a) any and all claims involving any alleged failure to pay lawful wages under
11 Labor Code sections 510, 1194, 1197, and IWC Wage Orders; (b) any and all claims alleging
12 any alleged failure to provide meal periods or compensation in lieu thereof under Labor Code
13 sections 512, 226.7, and IWC Wage Orders; (c) any and all claims alleging any alleged failure to
14 provide rest periods or compensation in lieu thereof under Labor Code section 226.7 and IWC
15 Wage Orders; (d) any and all claims alleging any alleged failure to timely pay wages Under
16 Labor Code sections 201–203, and IWC Wage Orders; (e) any and all claims alleging any
17 alleged failure to provide accurate wage statements under Labor Code section 226 and IWC
18 Wage Orders; and (f) any and all claims alleging any alleged failure to comply with Bus & Prof.
19 Code section 17200, *et seq.* based on the above-listed violation. (Settlement Agreement, ¶ 5.2.)

20 2) Participating Background Check Class Member Released Claims Summary

21 Upon the Effective Date, Participating Background Check Class Members will release
22 Defendant from all claims, rights, demands, liabilities, and causes of action, known or unknown,
23 that were alleged or that could have been alleged based on the facts alleged in the Action
24 including all claims the Fair Credit Reporting Act, the California Investigative Consumer
25 Reporting Agencies Act, and the California Consumer Credit Reporting Agencies Act. The
26 Background Check Class Released Claims specifically include, without limitation: claims for:
27 (1) Violations of the Fair Credit Reporting Act; (2) Violations of the California Investigative
28 Consumer Reporting Agencies Act; and (3) Violations of the California Consumer. (Settlement

Agreement, ¶ 5.3.)

3. PAGA-Released Claims Summary

Upon the Effective Date, all Aggrieved Employees, whether or not they are Participating Class Members, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, Defendant from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, the PAGA Notice, and as ascertained in the course of the Action, including alleged violations of California Labor Code §§ 201–203, 210, 226, 226.7, 510, 512, 1194, 1197, 1198. (Settlement Agreement, ¶ 5.4.)

4) Plaintiff’s Released Claims

Upon the Effective Date, Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns shall separately release and discharge the Defendant from all claims, transactions, or occurrences arising out of or relating to their employment with Defendant, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaints and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaints, Plaintiff’s PAGA Notice, or ascertained during the Action including all unknown claims covered by California Civil Code § 1542. (Settlement Agreement, ¶¶ 5.1.)

G. Notice Procedure

No later than fifteen (15) calendar days after the Court grants Preliminary Approval of the settlement, Defendant will provide the name, last known address, social security number, and the total Class Period Workweeks worked by each Class Member and PAGA Pay Periods worked by the Aggrieved Employees to the Settlement Administrator (“Class Data”). (Settlement Agreement, ¶¶ 1.11, 4.2.)

Within fourteen (14) calendar days from the date the Settlement Administrator receives the Class Data, the Settlement Administrator shall mail the Class Notice to the Class Members by First Class Mail. (Settlement Agreement, ¶ 7.4.2.) With respect to any returned envelopes, the

1 Settlement Administrator shall take all reasonable steps to locate any Class Member whose Class
2 Notice is returned as undeliverable, such as a skip trace procedure or other independent research,
3 to obtain a current address and, if an updated address is located, then re-mail the envelope to
4 such address within three (3) business days of receipt of the returned Class Notice. (Settlement
5 Agreement, ¶ 7.4.3.)

6 Class Members shall have forty-five (45) days from the date of mailing of the Settlement
7 Documents to return a valid Request for Exclusion from the Settlement to the Settlement
8 Administrator (the “Opt-Out Period”). (Settlement Agreement, ¶ 7.5.1.) Class Members shall
9 have until the end of the Opt-Out Period, or an additional fourteen (14) calendar days if Class
10 Notice is re-mailed. (*Id.*) Class Members submitting untimely or invalid Requests for Exclusions
11 shall be deemed to be a Participating Class Member and will be bound by the terms and
12 conditions of the Settlement (Settlement Agreement, ¶ 7.5.3.)

13 The Class Notice will include a procedure by which a Class Member may dispute the
14 number of Class Workweeks and PAGA Pay Periods, if any, allocated to the Class Member by
15 communicating with the Settlement Administrator via fax, email or mail. (Settlement Agreement,
16 ¶ 7.6.)

17 **IV. PRELIMINARY APPROVAL OF SETTLEMENT IS APPROPRIATE**

18 The law favors settlement, particularly in class actions and other complex cases in which
19 substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation.
20 (*City of Seattle* 955 F.2d at p. 1276; *Potter v Pacific Coast Lumber Company*, (1951) 37 Cal. 2d.
21 592, 602-603; 4 NEWBERG § 11.41.) To grant preliminary approval of this class action
22 settlement, the Court need find only that the settlement falls within the “range of
23 reasonableness.” (*North County Contractor’s Ass. Inc. v. Touchstone Ins. Svcs.*, (1994) 27 Cal.
24 App. 4th 1085, 1089-1090.) In determining whether a class settlement is fair, adequate and
25 reasonable, courts must consider the following relevant factors: the strength of the plaintiff’s
26 case, the risk, expense, complexity and likely duration of further litigation, the risk of
27 maintaining class action status through trial, the amount of offered settlement, the extent of
28 discovery completed and the range of the proceedings, and the experience and views of counsel.
(*Dunk v. Ford Motor Co.*, (1996) 48 Cal. App. 4th 1794, 1801; *Clark v American Residential*

Services, LLC, (2009) 175 Cal. App. 4th. 785, 799.) The list of factors is not exclusive, and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case. (Clark, supra, at p. 799; Wershba, 91 Cal. App. 4th at p. 245.)

Furthermore, courts must give “proper deference to the private consensual decision of the parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement negotiated between the Parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (Hanlon v Chrysler Corp. (9th Cir. 1998) 150 F.3d 1011, 1027.)

A. The Terms of the Proposed Settlement are Fair

A preliminary review of the terms of the Settlement Agreement provides no reason to doubt its fairness. A presumption of fairness exists where: 1) the settlement is reached through arms-length negotiations; 2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of objectors is small (Dunk v. Ford Motor Co., supra, at 1802.) The first three of these factors apply at the preliminary approval stage; the percentage of objectors is determinable only at the final approval stage.

1) The Settlement was Reached Through Extensive Arm’s Length Bargaining and Based on the Recommendation Proposed by the Mediator

As already discussed herein, the Parties have conducted themselves in informed, good faith arm's-length negotiations after exchanging extensive information about the claims and defenses of this lawsuit and engaging in pre-mediation and post mediation discussions aimed at settling their dispute. In attempts to settle this lawsuit, the Parties participated in two full day mediations with Lou Marlin and Hon. Amy Hogue, respectively, and thereafter continued to engage in settlement discussions with the assistance of the mediators. (Draper Decl., ¶¶ 8-11.) In sum, armed with all of the relevant information and with the help of an experienced mediator, counsel for the parties participated in lengthy, serious and informed negotiations which have resulted in the proposed Settlement Agreement that is now placed before this Court.

2. Investigation and Discovery Were Sufficient for the Parties to Evaluate the Risks
Intelligently

Plaintiff conducted significant investigation of the facts and law both before and after the Action was filed. Plaintiff's counsel reviewed voluminous supporting documents provided by Defendant through formal and informal discovery and in exchanges of information in preparation for mediation (Draper Decl., ¶ 8.) Plaintiff also undertook an extensive expert analysis of timekeeping and payroll data for the class. (*Id.*)

3. Plaintiff's Counsel is Experienced in Similar Litigation

Moreover, counsel for Plaintiff has represented, mediated and settled hundreds of other employee class actions in wage and hour litigation and have knowledge of the strengths and weaknesses of the claims against Defendant and the benefits of the proposed Settlement under the circumstances of the case (Draper Decl., ¶¶ 22-25.)

B. The Settlement Provides For Reasonable Compensation To Class Members

In seeking approval, a settling party must provide sufficient information to "enable the court to make an independent assessment of the adequacy of the settlement terms." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 131-32.) However, "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." (*See Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco* (9th Cir. 1982). 688 F.2d 615, 628.) "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." (*Id.* at 625.) "Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." (*In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA) Litig.* (C.D. Cal. 2014)295 F.R.D. 438, 453.) In other words, in valuing the claims within a realistic range of outcomes, the settling Plaintiff should discount the value of the settled claims for risks such as changes in the law, the probability of success, and other factors.

Settling parties are not, however, required to partake in a hypothetical accounting exercise: "Kullar does not ... require any such explicit statement of [maximum] value; it requires

1 a record which allows ‘an understanding of the amount that is in controversy and the realistic
2 range of outcomes of the litigation.’ (*Munoz v. BCI Coca-Cola Bottling Co.*, (2010), 186 Cal.
3 App. 4th 399, 409-10 (citing *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)). Overall, “the
4 most important factor” in determining “whether a settlement is fair and reasonable” is the
5 “strength of the case for Plaintiff on the merits, balanced against the amount offered in the
6 settlement.” (*Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130). As discussed further
7 below, the recovery of \$1,100,000 for the Class and PAGA Employees is well within the range
8 of reasonableness and undeniably fair, adequate and reasonable considering the risks and hurdles
9 of continued litigation.

10 Plaintiff’s counsel analyzed the potential liability in this matter based on documents and
11 information produced by Defendant in formal discovery and in preparation for mediation, expert
12 analysis of timekeeping records and payroll data, and took into account the nature of the claims
13 and Defendant’s defenses thereto. (Draper Decl., ¶ 16.)

14 The damages model used in calculating potential liability was largely based on the
15 number of class members, the number of pay periods, the average rate of pay and a random
16 sample of time records, wage statements and documents produced by Defendant in preparation
17 for mediation. Based on the information provided by Defendant, the estimated number of Class
18 work weeks is 89,025 during the Class Period and estimated 30,000 pay periods during the
19 PAGA Period. The average hourly rate of pay is approximately \$17.68 (Settlement Agreement, ¶
20 8; Draper Decl. ¶ 17.) Plaintiff’s counsel estimated the maximum potential liability as follows:
21 (Draper Decl., ¶ 18.)

22 1. Failure to Pay Lawful Wages for All Hours Worked

23 Plaintiff’s claim for failure to pay all lawful wages owed is premised on allegations that,
24 during the Class Period, Plaintiff and Class Members were not paid for the time spent “off the
25 clock” during their scheduled work shifts. Specifically, Plaintiff alleges that she and Class
26 Members were expected to be ready to work at the start of their scheduled work shift but prior to
27 doing so, were required to boot up the computer and log on to the system in order to clock in at
28 the start of the shift. It frequently took between five (5) and ten (10) minutes for computer to
“boot up” and they allegedly were not compensated for this time. Additionally, Plaintiff alleges

1 that, due to the work pressures, workload requirements and time constraints, it was not
2 uncommon for Plaintiff and Class Members to work through meal periods “off the clock” and
3 without compensation.

4 Defendant adamantly disputes Plaintiff’s allegations that she and Class Members were
5 not properly compensated for all hours worked and claim that Plaintiff lacked evidence in
6 support of the same. Defendant also contends that its policies not only prohibit employees from
7 working “off the clock” but also require employees to accurately record their time and report
8 inaccuracies. Further, Defendant asserts that this claim would be difficult to certify given the
9 predominance of the individualized inquiry as to whether, and to what extent, each Class
10 Member performed any work “off the clock.” Moreover, Defendant contends that the majority of
11 the Class Members executed binding individual arbitration agreements with class action waivers.

12 As per the analysis conducted on the sample provided by Defendant, the maximum off-
13 the-clock work was calculated based on estimated 10 minutes of unpaid overtime per shift for an
14 estimated 199,351 shifts over 8 hours. Thus, the maximum potential liability for this claim was
15 calculated at \$845,886 (199,351 shifts x \$26.52 x .16). However, taking into consideration the
16 nature of the claim and Defendant’s defenses thereto including the inability to establish the
17 violation with respect to all of the Class Members, for purposes of settlement, this claim was
18 valued between an estimated maximum of \$169,177.2 (20%) and \$84,589 (10%). (Draper Decl.,
19 ¶ 18(a).)

20 2. Meal Period Claim

21 Plaintiff alleges that, during the class period, Defendant did not provide Plaintiff and
22 Class Members with compliant meal breaks nor paid them one hour of their wages in lieu
23 thereof. As stated above, Plaintiff contends that due to the work pressures, work load
24 requirements and time constraints, Plaintiff and Class Members were at times required to work
25 “off the clock during their meal periods.

26 Defendant denies Plaintiff’s meal break allegations and maintain that Plaintiff and Class
27 Members were provided with the opportunity to take full and timely meal periods as per their
28 compliant policies and the law. Defendant also asserts the meal break premiums were paid when
Class Members were unable to take complaint meal breaks. Defendant disputes the propriety of

certification on this claim as well, under the holding in *Brinker* and other state and federal decisions.

Assuming a 100% violation rate during every meal break eligible shift the estimated maximum potential liability was calculated at \$6,523,937 (\$17.68 x 369,001 meal break eligible shifts). Taking into consideration the nature of the claim, Defendant's defenses and issues faced due to *Brinker*, for purposes of settlement, the meal break claim was valued between an estimated maximum of \$1,304,787.5 (20%) and \$652,394 (10%) (Draper Decl., ¶ 18(b).)

3. Rest Break Claim

As with the meal breaks, Plaintiff alleges that she and Class Members were regularly unable to take a minimum ten (10) minute rest breaks for every four hours worked or major fraction thereof. Plaintiff also allege she and Class Members were not compensated one (1) hour of pay at their regular rate of compensation for each workday that a lawful rest period was not provided, in violation of California labor laws, regulations, and IWC Wage Orders (IWC Wage Order 5-2001(12); Cal. Lab. Code § 226.7).

Defendant disputes Plaintiff's allegations regarding rest break violations and contends that Class Members were allowed to take compliant ten (10) minute rest periods under their policies and practices and regularly took such breaks. Defendant also argues that this claim would be difficult to certify given the predominance of the individualized inquiry as to whether, and to what extent, each Class Member was unable to take compliant rest breaks during their shifts.

Assuming a 100% violation rate during every shift the estimated maximum potential liability was calculated at \$6,991,397 (\$17.68 x 395,441 rest break eligible shifts). Taking into consideration the nature of the claim, Defendant's defenses and issues faced due to *Brinker*, for purposes of settlement, the meal break claim was valued between an estimated maximum of \$699,140 (10%) and 359,570 (10%) (Draper Decl., ¶ 18(c).)

4. Failure to Provide Accurate Itemized Wage Statements

Under Lab. Code § 226(e), an employee suffering "injury as a result of a knowing and intentional failure by an employer" to provide accurate wage statements is entitled to \$50 for the initial violation and \$100 for each subsequent violation up to \$4,000. This claim is derivative of

1 the unpaid wages claims asserted. The estimated maximum potential liability was calculated at
2 \$3,308,000 based on an estimated 827 Class Members x \$4,000 each.

3 Defendant contends that the wage statements issued to the employees fully
4 complied with Labor Code section 226. Defendant states that because it believes no wages are
5 unpaid, there can be no derivative penalties. Further, Defendant argues that, if any wage
6 statements were in fact inaccurate, it did not “knowingly and intentionally” fail to provide
7 accurate statements and that Plaintiff and the Class did not suffer any “injury” from such
8 inaccurate wage statements. For purposes of settlement negotiations, said claim was valued
9 between \$992,400 (30%) and \$661,600 (20%) (Draper Decl., ¶ 18 (d).)

10 5. Failure to Timely Pay Wages at Separation

11 Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant
12 statutory period (i.e., three years before the filing of the initial Complaint) is entitled to thirty
13 (30) days’ worth of wages as a waiting time penalty for not being paid all wages upon the
14 separation of employment. Plaintiff alleges that penalties are owed under Labor Code section
15 203 due to, at a minimum, Defendant’s failure to pay wages for all hours worked and failure to
16 pay premium wages. With respect to Lab. Code § 203 claim, there were an estimated 939 Class
17 Members to whom this claim applied. The estimated maximum potential liability was
18 determined to be \$3,834,951 using the formula: (939 former employees) x (30 x \$17.68 x 7.7
19 hours per day).

20 Defendant once again asserts that no unpaid wages are owed as Defendant did not fail to
21 pay the correct wages owed, including overtime or minimum wages, nor did they fail to pay
22 premium wages. Defendant further contends that its actions were not willful as required for
23 penalties to issue and that, thus, waiting time penalties cannot be awarded. Because of the costs
24 and risks of proceeding, and the defenses faced, for purposes of settlement negotiations, said
25 claim was valued between \$766,990 (20%) and \$383,595 (10%). (Draper Decl., ¶ 18(e).)

26 6. Bus. & Prof. Code § 17200 et seq. (“UCL”) Claim

27 The only remedies available under the unfair competition law (“UCL”) Business and
28 Professions Code Section 17200 et seq. are restitution and injunction, as opposed to damages
Clark v. Superior Court, (2010) 50 Cal. 4th 605, 610. The UCL provides that “[t]he court may

1 make such orders or judgments ... as may be necessary to restore to any person in interest any
2 money or property, real or personal, which may have been acquired by means of such unfair
3 competition.” (Bus. & Prof. Code, § 17203.) Restitution under the UCL includes “earned
4 wages.” *Cortez v. Purolator Air Filtration Prods. Co.*, (2000) 23 Cal. 4th 163, 177-78.
5 Restitution under the UCL is not available for all violations of the Labor Code. (See *Pineda v.*
6 *Bank of Am., N.A.* (2010) 50 Cal. 4th 1389, 1401-02.) In *Pineda*, the California Supreme Court
7 held Labor Code section 203 is “not designed to compensate employees for work performed
8 [but] it is intended to encourage employers to pay final wages on time, and to punish employers
9 who fail to do so.” (*Id.*) Like Labor Code section 203, section 226 for wage statement violations
10 is also intended to “punish” the employer and is not an action brought to recover wages. (See
11 *Gomez v. Jacobo Farm Labor Contractor, Inc.* (2019) 334 F.R.D. 234, 267-268.)

12
13 Here, Plaintiffs’ UCL claim is solely premised on the failure to pay lawful wages and
14 premium wages claims discussed above. Plaintiffs’ Counsel assigned a zero-dollar value to the
15 UCL claim because it does not provide any additional value in this Action other than to increase
16 the statute of limitations to four years for the underlying claims. Those claims are valued and
17 analyzed above based on the four-year statute of limitations provided by the UCL. However, the
18 UCL claim in and of itself does not provide any additional damages. Therefore, there is no
19 additional or separate monetary value that this statute provides based on the facts of this Action
20 (Draper Decl., ¶ 18(f).)

21 7. Lab. Code § 2699 (PAGA Claim) – Plaintiff’s claims under PAGA are predicated
22 on or derivative of the claims discussed above and as set forth in the Operative Complaint. The
23 estimated maximum PAGA penalty was calculated as \$3,000,000. This figure attributes a \$100
24 penalty to each of the estimated 30,000 pay periods in scope during the PAGA Period. This
25 figure is based on an assumption that there is a 100% violation rate during the PAGA Period,
26 such that every single pay period in question involved at least one Labor Code violation, despite
27 disputes regarding Defendant’s liability. However, PAGA claims under the facts and
28 circumstances of this case may result in no award or at best a very minimal award by the trial
court. See specifically § 2699(e)(2) which states in its pertinent part: “... a court may award a
lesser amount than the maximum civil penalty amount specified by this part if, based on the facts

1 and circumstances of the particular case, to do otherwise would result in an award that is unjust,
2 arbitrary and oppressive, or confiscatory.”

3 For instance, in *Fleming v. Covidien* (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590 , a
4 federal court reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%. The
5 court found maximum penalties “unjust” because the employees had suffered no injuries. Some
6 trial courts have actually awarded no civil penalties, even when Labor Code violations are
7 established. *In re Taco Bell Wage & Hour Actions* (E.D. Cal. Apr. 6, 2016) 2016 U.S. Dist.
8 LEXIS 48557, *40-43 (PAGA penalties denied after trial).

9 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each
10 of the underlying Labor Code violations. (See *Cardenas v. McLane Foodservice, Inc.* (C.D. Cal.
11 2011) 2011 U.S. Dist. LEXIS 13126, *10 [“Given the statutory language [of PAGA], a plaintiff
12 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of
13 the Labor Code by the defendant.”].) Here, Plaintiff would need to prove that each Aggrieved
14 Employee suffered all violations for each pay period the employee worked. As discussed herein,
15 the nature of the PAGA based claims (i.e. rest break, meal period, wage statements, failure to
16 pay all wages owed and to timely pay wages) and Defendant’s asserted defenses thereto present
17 a strong risk that some or all of the PAGA penalties sought may not be awarded.

18 Defendant denies that a violation for each pay period can be established. Defendant states
19 that because the PAGA Action heavily relies on the same allegations made in the Class Action,
20 they are subject to the same defenses, and, thus, for the same reason Defendant believes there
21 will be no damages collectible in the class action, no PAGA penalties would be awarded, either.
22 Defendant also asserts that individualized issues predominate the PAGA claims, making the
23 claims unmanageable for trial.

24 Given the nature of these claims, as analyzed above, Plaintiff’s Counsel believes it to be
25 likely that if there were any award, it could be a minimal amount. Therefore, the amount of
26 \$55,000 (which has been reserved for the PAGA claim) is both fair and reasonable. (Draper
27 Decl., ¶ 18 (g).)

28 8. Background Check Claims

The predominant background check claims in this action arise from alleged violations of

1 the Fair Credit Reporting Act (“FCRA”) with respect to the employment related background
2 checks conducted by Defendant. Specifically, Plaintiff alleges that Defendant improperly
3 conducted background checks and obtained consumer credit reports on Plaintiff and Class
4 Members when they applied for employment in violation of 15 USC §1681 *et seq.*

5 Specifically, Plaintiff alleges that Defendant required Plaintiff and Class Members to sign
6 documents purporting to provide disclosure and authorization for Defendant to perform a
7 background check and obtain consumer credit reports. Plaintiff asserts that Defendant did not
8 provide compliant disclosure forms and thus Plaintiff and Class Members, who executed the
9 same forms, did not give valid authorization for Defendant to procure consumer reports in
10 violation of 15 U.S.C. §1681b(b)(2)(A)(ii). Nevertheless, Defendant procured or caused to be
11 procured the consumer reports for employment purposes on the Plaintiff and the class members
12 in violation of the FCRA.

13 A plaintiff may be entitled to statutory and punitive damages when a defendant has
14 willfully violated the provisions of the FCRA. 15 U.S.C. § 1681n(a)(1)(A): “any person who
15 willfully fails to comply with any requirement imposed under this subchapter with respect to any
16 consumer is liable to that consumer in an amount equal to the sum of . . . damages of not less
17 than \$100 and not more than \$1000 . . . such amount of punitive damages as the court may
18 allow.”

19 VOA vehemently disputes Plaintiff’s claims and maintains that it complied with the
20 disclosure requirements under the FCRA and/or California law. Specifically, Defendant
21 contends that the form complies with the requirements of the FCRA in that the document
22 consists solely of the FCRA required disclosure and an authorization for the employee to
23 execute. Furthermore, VOA contends that Plaintiff would be unable to show any recognizable
24 injury. Defendant also contends that Plaintiff will not prevail on the “willfulness” requirement as
25 it complied with the FCRA requirement based on the law that existed at the time Defendant
26 provided the disclosure documents to Plaintiff and Class Members. *Mitchell v. WinCo Foods,*
27 *LLC* (9th Cir 2020) 828 Fed. Appx.467.

28 Moreover, Defendant asserts that Plaintiff and Class Members do not have standing to
sue under the FCRA as they will not be able to show that they suffered a concrete injury as a

1 result of Defendant's actions and therefore do not have standing to sue VOA under the FCRA.
2 (*Limon v Circle K Stores, Inc.* (2022) 84 Cal, App. 5th 671 ("*Limon*")

3 Plaintiff District court decisions have indicated that the minimum \$100 statutory damages
4 is the proper comparator in standalone disclosure cases. See e.g. *Lagos v Leland Stanford Junior*
5 *University* (N.D. Cal. 2017) 2017 WL 1113302 *4. Here, there are 3,636 Background Check
6 Class Members. (Settlement Agreement ¶ 1.7) Therefore, Plaintiff's counsel estimated a
7 maximum of statutory damages under the FCRA of \$363,600, if liability were proven. However,
8 taking into consideration Defendant's defenses, *Limon* and the willfulness requirement of this
9 statute, for settlement purposes Plaintiff's counsel reduced this amount to \$36,000. (Draper Decl.
10 ¶ 18(h).)

11 Through her counsel, Plaintiff took into consideration the significant risks that class
12 certification could be denied on the central claim, or that a merits decision on the central claim
13 would not favor the Class. Plaintiff has considered the expense and length of continued
14 proceedings necessary to continue the Action against Defendant through trial and any possible
15 appeals. Plaintiff is also aware of the burdens of proof necessary to establish liability for the
16 claims asserted in the Action, Defendant's defenses thereto, and the difficulties in establishing
17 Plaintiff's damages. Moreover, Plaintiff also reviewed and considered Defendant's financial
18 condition in arriving at this Settlement. (Draper Decl., ¶ 19.)

19 The proposed Settlement requires Defendant to pay each Class Member who does not opt
20 out a portion of the Net Settlement Amount as specifically set forth in the Settlement Agreement.
21 (Draper Decl., ¶ 20.) The amount to be paid to the Class is undoubtedly fair, adequate and
22 reasonable especially in light of the significant risk to Plaintiff and Class Members in continuing
23 with the litigation and not prevailing on class certification or at trial, and thus leaving employees
24 with no recovery. (*Id.*)

25 For all the foregoing reasons, the proposed Settlement Agreement is fair, adequate and
26 reasonable, and is in the best interests of the Class Members.

27
28 **C. The Class Representative Service Payments and Class Counsel Fees Are Reasonable and Should be Awarded.**

1 The Settlement Agreement provides for an award to be paid to the Class Representative.
2 The primary purpose is to provide Plaintiff an enhancement award, taking into consideration the
3 risks, time, effort and expenses incurred by her in coming forward to provide invaluable
4 information and litigate this matter on behalf of all Class Members and Aggrieved Employees.
5 (Draper Decl., ¶ 21.) Plaintiff has actively participated in this litigation by providing significant
6 supporting documents and information and assisting counsel in developing information
7 necessary to litigate and settle this case which has resulted in a favorable settlement for the
8 putative Class Members and Aggrieved Employees. (*Id.*) Thus, the payment of \$7,500 to her
9 represents a small portion of the aggregate settlement amount and should be awarded.

10 Further, as will be discussed in more detail in Plaintiff's motion for final approval of the
11 Settlement, Class Counsel's Attorneys' Fees in the amount of \$385,000 (35% of the GSA) is
12 reasonable within California's standard benchmark and within the range customarily approved
13 by California courts in comparable class actions.

14 **V. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE.**

15 In addition to such terms as class definition, settlement amounts and payment procedures,
16 the Settlement Agreement reached between the Parties contains a provision to which the parties
17 stipulate to the Court's provisional certification of the Class but do so for the purposes of this
18 settlement only. Plaintiff now requests this Court to provisionally certify the Class.

19 It is well established that trial courts should use a lower standard for determining the
20 propriety of certifying a settlement class, as opposed to a litigation class. (*Dunk*, 48 Cal.App.4th
21 at 1794, 1807, fn. 19.) Under California law, a class action is appropriate when the Class is
22 ascertainable and there is a "well defined community of interest in the questions of law and fact
23 affecting the parties to be represented." (Code Civ. Proc., §382; *Dunk*, 48 Cal. App. 4th at 1806.)
24 State law requirements under California Code of Civil Procedure section 382 for class
25 certification largely mirror Federal Rules of Civil Procedure Rule 23 – namely, numerosity and
26 typicality of the class representative's claims, adequacy of representation, predominance of
27 common issues and superiority. As discussed below, although Defendant adamantly disputed
28 and continues to dispute Plaintiff's ability to certify a litigation class, all of the requirements of
certification for settlement purposes are met for the proposed Settlement Class.

1 **A. The Proposed Settlement Class is Ascertainable.**

2 Here, the proposed class is ascertainable because all of the Class Members are/were
3 employees of VOA and received their compensation directly from Defendant. The Class
4 Members have been identified through Defendant’s employee and personnel files. (*See Rose v.*
5 *City of Hayward* (1981) 126 Cal. App. 3d 926, 932 [“Class Members are ‘ascertainable’ where
6 they may be readily identified without unreasonable expense or time by reference to official
7 records.”].)

8 **B. Numerosity of the Proposed Settlement Class is Satisfied.**

9 If the class is sufficiently large that joinder of all members is impractical or that
10 individual joinder is impractical, the numerosity requirement is met. (*Hebberd v. Colgrove*
11 (1972) 28 Cal. App. 3d 1017, 1030). Here, the proposed class consists of 3,636 putative Class
12 Members. Therefore, joinder of individual claims would be impractical and the numerosity
13 requirement is met.

14 **C. There are Common Questions of Law and Fact that Apply to the Proposed**
15 **Settlement Class.**

16 Commonality is met if there are common questions of fact and law to the class. (*Hanlon,*
17 *supra*, 150 F.3d at 1019 [“The existence of shared legal issues with divergent legal factual
18 predicates is sufficient, as is a common core of salient facts coupled with disparate legal
19 remedies within the class”].) Here, Plaintiff alleges that the proposed Class Members’ claims all
20 stem from the same alleged conduct. Specifically, Plaintiff alleges that Defendant violated
21 California wage and hour law because it: (1) failed to pay all lawful wages owed including
22 overtime compensation; (2) failed to provide statutorily compliant rest and meal periods and/or
23 to pay one (1) hour of pay at the employees regular rate of compensation for each workday that
24 a compliant meal period and/or rest period was not properly provided; (3) failed to timely pay
25 all wages owed at the termination of the Class Members’ employment and (4) failed to provide
26 accurate itemized wage statements. Plaintiff seeks recovery of alleged wages, premium wages,
27 penalties and interest pursuant to the California Labor Code, the IWC Wage Orders, Business
28 and Professions Code § 17200 and PAGA.

 Plaintiff also alleges that Defendant violated the background check laws by failing to

1 provide statutorily compliant disclosure and authorization for Defendant to perform
2 employment- related background check and obtain consumer credit reports.

3 Although Defendant disagrees with Plaintiff’s contentions for purposes of certifying a
4 litigation class, for purposes of a settlement class, these circumstances create questions of law
5 and fact common to all proposed Class Members.

6 **D. The Typicality Requirement is Met as to the Proposed Settlement Class.**

7 The typicality requirement is met if the claims of the Plaintiff are typical of those of the
8 class, though “they need not be substantially identical.” (*Hanlon, supra*, 150 F.3d at 1020.)
9 Factual differences may exist between the Class and the Class Representative(s) so long as the
10 claims arise from the same events or course of conduct and are based on the same legal theories.
11 (*Id.*) Here, as set forth in the Operative Complaint, the claims of the Class Representative are
12 typical of the other Class Members she represents because they arise from the same factual basis
13 and are based on the same legal theories as those applicable to all Class Members. (*Wherner v.*
14 *Syntex* (N.D. Cal. 1987) 117 F.R.D. 641, 644.) Thus, for purposes of a settlement class, the
15 typicality requirement is met.

16 **E. The Adequacy Requirement is Met as to the Proposed Settlement Class.**

17 If the named representatives and their counsel have no interests adverse to the interest of
18 the putative Class Members and are committed to vigorously prosecuting the case on behalf of
19 the class, then the adequacy requirement is met. (*McGhee v. Bank of America* (1976) 60 Cal.
20 App.3d 442, 450.) Here, under the proposed Settlement, the Class Representative will receive a
21 reasonable award for her time and effort assisting counsel with factual issues surrounding the
22 case and risk incurred in bringing this action on behalf of the Class Members. Other than this
23 specific payment, all Wage and Hour Class Members who do not opt out of the Settlement will
24 receive a percentage of the NSA based on the number of weeks each Class Member worked
25 during the class period. The Background Check Class Members will receive their equal share of
26 the Background Check Fund. Therefore, no “settlement allocation” questions are raised.
27 (*Hanlon*, 150 F.3d at 1020.)

28 Finally, Class Members who wish to exclude themselves from the Settlement may do so.
(Settlement Agreement, ¶ 7.5.) As a result, there is no conflict of interest between the Plaintiff

1 and the Class Members. Additionally, Plaintiff and her counsel have prosecuted this action
2 vigorously on behalf of the Class, and they have no interest contrary to the Class either.

3 **F. Common Issues Predominate and a Class-Wide Settlement of the Proposed**
4 **Settlement Class is Superior to Other Available Methods of Resolution.**

5 Class certification is authorized where common questions of law and fact predominate
6 over individual questions and where class-wide treatment of a dispute is superior to individual
7 litigation. (*Richmond v. Dart Industries, Inc.*, (1981) 29 Cal.3d 462, 469.) The test is whether
8 the proposed class is sufficiently cohesive to warrant adjudication by representation. (*Hanlon*,
9 150 F.3d at 1022.) Plaintiff contends that the proposed Class in this case is sufficiently cohesive,
10 since all Class Members share a “common nucleus of facts and potential legal remedies.”
11 Specifically, Plaintiff asserts that because all of the Class Members seek compensation for
12 alleged wage and hour violations and background check violations discussed herein, common
13 questions about compensation or lack thereof for worked performed by Class Members
14 predominate over individual questions, and the Class Members’ potential legal remedies are
15 identical. Although Defendant disagrees with Plaintiff’s contentions, it has agreed the Class may
16 be certified for settlement purposes only.

17 Additionally, particularly in the settlement context, class resolution is superior to other
18 methods for the fair and efficient adjudication of the controversy. (*Hanlon*, 150 F. 3d at 1023;
19 *Dunk*, 45 Cal. App. 4th at 1087.) The superiority requirement involves a “comparative
20 evaluation of alternative mechanisms of dispute resolution.” (*Hanlon, supra*, at 1023.) Here, the
21 alternative methods of resolution are a plethora of individual claims from potentially 3,636 Class
22 Members. The class action device can thus conserve judicial resources by avoiding the waste
23 and delay of repetitive proceedings and prevent inconsistent adjudication of similar issues and
24 claims. (*Sav-On Drug Stores, Inc. v. Superior Court*, (2004) 34 Cal. 4th 319, 340; *Bell v.*
25 *Farmers Ins. Exchange*, (2004) 115 Cal.App.4th 715, 741.) Therefore, settlement on a class-wide
26 basis is superior.

27 **VI. THE PROPOSED CLASS NOTICE IS APPROPRIATE.**

28 The proposed Class Notice is attached as Exhibit A to the Settlement Agreement. Should
a Class Member wish to exclude himself/herself from the Settlement, he/she can send a request

1 for exclusion to the Settlement Administrator as detailed in the Class Notice. Should a Class
2 Member wish to object to the Settlement, he/she can object as described in the Class Notice. If a
3 Class Member does nothing in response to the Class Notice, the Class Member will be mailed an
4 individual settlement payment.

5 **A. The Proposed Class Notice Satisfies Due Process.**

6 California statutory and case law vests the Court with broad authority to fashion an
7 appropriate notice process. (Cal. Rules of Court, Rule 3.760, *et seq.*) A proposed method of
8 notice of a proposed settlement is fair, adequate, and reasonable if it has “a reasonable chance of
9 reaching a substantial percentage of the class members.” (*Cartt v. Superior Court*, (1975) 50
10 Cal.App.3d 960, 974.) The procedure for notice to Class Members described herein entails
11 mailing the Class Notice to all known and reasonably ascertainable Class Members based on
12 Defendant’s payroll records and provides for a reasonable chance of reaching a significant
13 percentage of Class Members. Further, such individual notice by first class mail is routinely
14 approved as consistent with due process. (See, e.g., Federal Judicial Center, *Manual For*
15 *Complex Litigation* (3rd ed. 1995) (hereinafter “*Manual*”) §30.41.; Wright & Miller, Fed.
16 Practice & Procedure, §1797.6 [“Of course, notice by mail to all of the identified class members
17 . . will suffice”] (citing cases).) Notice by mail is consistent with the class certification notices
18 approved by numerous state and federal courts and is the best notice practicable under
19 circumstances of this case. Other potential alternatives, such as publication of notice in a
20 newspaper, or electronic dissemination of notice through email, are unlikely to be as effective as
21 mail notice. Given the geographic range of Class Members, notice by publication is not feasible
22 or reasonably likely to satisfy due process.

23 **B. The Proposed Class Notice Is Accurate and Informative.**

24 Not only is the manner of the proposed Class Notice proper, so too is the content of the
25 said notice. The proposed Class Notice provides information on the meaning and the nature of
26 the proposed Settlement, the terms and provisions of the Settlement (and where it may be found),
27 the relief the Settlement will provide the Class Members, the application of Plaintiff’s counsel
28 for reimbursement of costs and attorneys’ fees from the Settlement amount, the date, time and
place of the final fairness and approval hearing, and the procedure and deadlines for opting out

1 of the Settlement and for submitting objections. Counsel for Plaintiff and Defendant have spent
2 considerable time attempting to draft a Class Notice that is likely to be readily understood by
3 members of the Class.

4 The Class Notice also fulfills the requirement of neutrality in class notices. (2 *Newberg*, §
5 8.39.) It summarizes the proceedings to date and the terms and conditions of the Settlement in
6 an informative and coherent manner, in compliance with the *Manual*'s statement, "the notice
7 should be accurate, objective, and understandable to class members..." (*Manual*, § 30.21.) The
8 Class Notice clearly states the settlement does not constitute an admission of liability by
9 Defendant and recognizes the Court has not ruled on the merits. It also states the final settlement
10 approval decision has yet to be made, and that any final determination of that issue will be made
11 at the final approval hearing. Accordingly, the Class Notice complies with the standards of
12 fairness, completeness and neutrality required of a class notice disseminated under the authority
13 of the Court.

14 Moreover, the Class Notice comports with Cal. Rules of Court, Rule 3.766(d). As per
15 Rule 3.766, the contents of the class notice that provides for an opt out procedure for the Class
16 Members must include the following:

17 (1) A brief explanation of the case, including the basic contentions or denials of the
18 parties;

19 (2) A statement that the court will exclude the member from the class if the member so
20 requests by a specified date;

21 (3) A procedure for the member to follow in requesting exclusion from the class;

22 (4) A statement that the judgment, whether favorable or not, will bind all members who
23 do not request exclusion; and

24 (5) A statement that any member who does not request exclusion may, if the member so
25 desires, enter an appearance through counsel.

26 The Class Notice contains the information required under Rule 3.766 (d). (See Exhibit A
27 attached to Settlement Agreement.)
28

VII. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court enter the Proposed Order Granting Preliminary Approval submitted concurrently herewith, and thus:

1. Grant preliminary approval of the Settlement Agreement, and provisionally certify the Settlement Class for the purposes of settlement only;
2. Confirm Plaintiff Amber Palma as Class Representative;
3. Confirm James Hawkins, Isandra Fernandez, and Anthony Draper from the law firm of James Hawkins, APLC provisionally as Class Counsel;
4. Approve and appoint ILYM Group, Inc. as Administrator;
5. Enter an Order preliminarily approving the proposed Settlement and approving of the Class Notice; and
6. Schedule the Final Fairness Hearing Date on _____ 2025 (to be determined by the Court at the hearing for preliminary approval of settlement).

Respectfully submitted,

Dated: May 7, 2025

JAMES HAWKINS, APLC

By:

Isandra Y. Fernandez
Anthony Draper
Attorneys for Plaintiff
Amber Palma