

Danny Yadidsion, Esq., SBN: 260282
Patrick D. Martinez, Esq., SBN: 337569
LABOR LAW PC
100 Wilshire Blvd., Suite 700
Santa Monica, California 90401
Telephone: (310) 494-6082
Danny@LaborLawPC.com
Patrick.martinez@LaborLawPC.com

Attorneys for Plaintiff
WALTER R. JIMENEZ, individually and on behalf of
the putative class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

WALTER R. JIMENEZ, individually and on
behalf of the putative class,

Plaintiff,

v.

BAY CITIES PARTNERS, INC., a California
corporation dba BAY CITIES ITALIAN DELI;
and DOES 1- 50, Inclusive,

Defendants.

BAY CITIES PARTNERS, INC., a California
corporation dba BAY CITIES ITALIAN DELI,

Cross-Complainant,

v.

ADP, INC., a Delaware corporation, and ROES 1-
50, inclusive,

Cross-Defendant.

Case No.: 20STCV40788

*[Case Assigned for all purposes to the Hon.
Elihu M. Berle; Dept. 6]*

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF’S MOTION FOR AN ORDER (1)
PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF CLASS ACTION
SETTLEMENT; AND (3) SETTING
HEARING FOR FINAL APPROVAL**

*[Filed concurrently with Plaintiff’s Notice of
Motion and Motion; Declaration of Danny
Yadidsion; Declaration of Plaintiff Walter
Jimenez; and [Proposed] Order]*

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TABLE OF CONTENTS

I.	INTRODUCTION	9
II.	STATUS OF THE LITIGATION.....	10
A.	Procedural History	10
B.	Investigation.....	11
C.	Settlement Efforts	12
III.	SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS	12
IV.	CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE.....	15
A.	There Is A Numerous and Ascertainable Class	15
B.	There Is A Well-Defined Community of Interest	16
C.	Plaintiff's Claims Are Typical	17
D.	Adequacy of Class Counsel and Class Representative	18
E.	Class Treatment is Superior to the Alternatives	18
F.	Common Issues of Law and Fact Predominate Over Any Individual Issues	20
V.	THE TWO-STEP APPROVAL PROCESS.....	21
VI.	PRELIMINARY SETTLEMENT APPROVAL	22
A.	The Settlement Agreement Resulted from M Arm's-length Negotiations.	24
B.	The Strength of Plaintiff's Case and Complexities of Further Litigation.....	24
1.	<i>Kullar v. Footlocker</i> Analysis.....	26
a.	Meal and Rest Break Violations	29
b.	Minimum Wages and Unpaid Overtime	30
c.	Failure to Pay Final	30
d.	Wage Statement Violations.....	32
e.	Risks of Litigation Which Necessitated Settlement Discounts.....	33

1	f. PAGA Penalties and Risks Associated with the PAGA	
2	Penalties	35
3	g. Trial and Manageability Issues	36
4	C. The Settlement Has No Obvious Deficiencies.....	37
5	VII. THE CLASS REPRESENTATIVE ENHANCEMENTS ARE FAIR AND REASONABLE	38
6	VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS	
7	MEMBERS.....	39
8	IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT	40
9	X. THE STIPULATED AWARD OF ATTORNEYS’ FEES AND COSTS IS REASONABLE	
10	AND SHOULD BE APPROVED.	41
11	XI. ACTION REQUESTED AS A PART OF THE MOTION FOR	
12	PRELIMINARY APPROVAL.	43

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	26
<i>Air Line Stewards, Loc. 550 v. American Airlines, Inc.</i> , (7th Cir.1972) 455 F.2d 101	37
<i>Amaral v. Cintas Corp.</i> (2008) 163 Cal.App.4th 1157	36
<i>Amchem Products, Inc. v. Windsor</i> (1997) 521 U.S. 591	19
<i>Armenta v. Osmose, Inc.</i> (2005) 135 Cal.App.4th 314	34
<i>Arroyo v. International Paper Co.</i> (N.D. Cal. 2020), ___ F.Supp.3d ___, 2020 WL 887771	34
<i>B.W.I. Custom Kitchens v. Owens-Illinois, Inc.</i> (1987) 191 Cal.App.3d 1341.....	16, 17
<i>Balderas v. Massage Envy Franchising, LLC</i> , (N.D. Cal. July 21, 2014, No. 12-CV-06327 NC) 2014 WL 3610945	28
<i>Behrens v. Wometco Enters., Inc.</i> (S.D. Fla. 1988) 118 F.R.D. 534.....	28
<i>Brewer v. Premier Golf Properties</i> (2009) 168 Cal.App.4th 1243.....	34
<i>Brinker Restaurant Corp. v. Super. Ct.</i> (2012) 53 Cal.4th 1004	29
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960.....	40
<i>Cellphone Fee Termination Cases</i> (2009) 180 Cal.App.4th 1110.....	26
<i>Chu v. Wells Fargo Invest. LLC</i> (N.D. Cal. Feb. 16, 2011) 2011 WL 672645	21, 23
<i>City of Detroit v. Grinnell Corp.</i> (S.D. N.Y. 1972) 356 F.Supp. 1380.....	28
<i>Clark v. American Residential Services, LLC</i> (2009) 175 Cal.App.4th 785	23
<i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1992) 955 F.2d 1268	26
<i>Classen v. Weller</i> (1983) 145 Cal.App.3d 27	17
<i>Clothesrigger, Inc. v. GTE Corp.</i> (1987) 191 Cal.App.3d 605.....	20
<i>Culley v. Lincare Inc.</i> (E.D. Cal. 2017) 236 F.Supp.3d 1184.....	32
<i>Daar v. Yellow Cab Company</i> (1967) 67 Cal. 2d 695	15
<i>Daum v. Claim Jumper Restaurants</i> Orange County Super. Ct. Case No. 02CC10201 (2006)	42
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	23, 26
<i>Elliot v. Spherion Pacific Work, LLC</i> (2008) 572 F.Supp.2d 1169	32
<i>Estrada v. Dr. Pepper/Seven-Up</i> Los Angeles County Super. Ct. Case No. BC 262247 (May 2005).....	42

1	<i>Evans v. Coca-Cola</i> Los Angeles County Super. Ct. Case No. BC 220525 (Hon. Richard C. Hubbell) (Dec. 2001)	42
2	<i>Fleming v. Covdien, Inc.</i> , No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590	35
3	<i>Glass v. UBS Fin. Servs., Inc.</i> (N.D. Cal. Jan. 26, 2007, No. C-06-4068 MMC) 2007 WL 221862	28
4	<i>Gould v. Alleco, Inc.</i> (4th Cir. 1998) 883 F.2d 281	40
5	<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011	26
6	<i>Hicks v. Kaufman & Broad Home Corp.</i> (2001) 89 Cal.App.4th 908.....	20
7	<i>Hicks v. Toys ‘R’ Us–Delaware, Inc.</i> , (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915.....	21, 23
8	<i>In re Activision Securities Litigation</i> , (N.D. Cal. 1989) 723 F.Supp. 1373.....	41, 42
9	<i>In Re NASDAQ Market-Makers Antitrust Litigation</i> (SDNY 1997 172 F.R.D. 119.....	16
10	<i>In Re NASDAQ Market-Makers Antitrust Litigation</i> , (SDNY 1997) 169 F.R.D. 493.....	16
11	<i>In re Pacific Enterprises Securities Litigation</i> (9th Cir. 1994 47 F.3d 373.....	41, 42
12	<i>In re School Asbestos Litigation</i> (3rd Cir. 1990) 921 F.2d 1330.....	40
13	<i>In re Toys R Us–Delaware, Inc.—Fair & Accurate Credit Transactions Act (FACTA) Litig.</i> (C.D. Cal. 2014) 295 F.R.D. 438	27, 28
14	<i>In re Vitamin Cases</i> (2003) 107 Cal.App.4th 820	40
15	<i>In re Wash. Pub.Power Supply Sys. Sec. Litigation</i> (9th Cir. 1994) 19 F.3d 1291	41
16	<i>Iskanian v. CLS Transp. Los Angeles, LLC</i> (2014) 59 Cal. 4th 348.....	36
17	<i>Kimbell v. Abercrombie & Fitch Stores, Inc.</i>	
18	Los Angeles County Super. Ct. Case No. BC 277359 (Sept. 2006).....	42
19	<i>Kirby v. Immoos Fire Protection, Inc.</i> (2016) 53 Cal.4 th 1244.....	31
20	<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	23, 26, 27, 28
21	<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal. 4th 429	15, 19
22	<i>Ling v. P.F. Chang’s China Bistro</i> (2016) 245 Cal.App.4 th 1242	31
23	<i>Lopez v. Friant & Assocs., LLC</i> (2017) 15 Cal. App. 5th 773.....	35
24	<i>Ma v. Covidien Holding, Inc.</i> , (C.D. Cal. Jan. 31, 2014, No. SACV 12-02161-DOC) 2014 WL 36019628	
25	<i>Maldonado v. Epsilon Plastics, Inc.</i> (2018) 22 Cal. App. 5th 1308	32
26	<i>Martel v. Valderamma</i> (C.D. Cal. 2015) 2015 U.S. Dist. LEXIS 49830	28
27	<i>McGhee v. Crocker-Citizens Nat. Bank</i> (1976) 60 Cal.App.3d 442.....	18
28	<i>Miller v. Woods</i> (1983) 148 Cal.App.3d 862.....	18

1	<i>Mullane v. Central Hanover Bank & Trust Co.</i> (1950) 339 U.S. 306	39
2	<i>Munoz v. BCI Coca-Cola Bottling Co.</i> (2010) 186 Cal. App. 4th 399	27
3	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399	23
4	<i>Nat'l Rural Telecomm. Coop. v. Directv, Inc.</i> (C.D. Cal. 2004) 221 F.R.D. 523.....	27
5	<i>Newman v. Stein</i> (2d Cir 1972.) 464 F.2d 689.....	27
6	<i>Nordstrom Com. Cases</i> (2010) 186 Cal.App.4th 576.....	21, 23
7	<i>North County Contractor's Assn. v. Touchstone Ins. Services.</i> (1994) 27 Cal.App.4th 1085	21, 23
8	<i>Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco</i>	
9	(9th Cir. 1982) 688 F.2d 615	22, 27, 37
10	<i>Parker v. City of Los Angeles</i> (1974) 44 Cal.App.3d 556	42
11	<i>Prince v. CLS Transp., Inc.</i> (2004) 118 Cal. App. 4th 1320.....	15
12	<i>Reyes v. Board of Supervisors of San Diego County</i> (1987) 196 Cal. App. 3d 1263.....	15
13	<i>Richmond v. Dart Industries, Inc.</i> (1981) 29 Cal. 3d 462.....	15
14	<i>Road Sprinkler Fitters Local 669 v. G & G Fire Sprinklers, Inc.</i> (2002) 102 Cal.App.4th 765	33
15	<i>Rosack v. Volvo of America Corp</i> (1982 131 Cal. App. 3d 741	16
16	<i>Sarviss v. General Dynamics Information Technology, Inc.</i> (C.D. Cal. 2009) 663 F.Supp.2d 883	20
17	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319.....	20
18	<i>Soto v. Motel 6 Operating, L.P.</i> (2016) 4 Cal.App.5th 385.....	32
19	<i>St. Marie v. Eastern R.R. Assn.</i> (S.D.N.Y. 1976) 72 F.R.D. 443.....	19
20	<i>Stephens v. Montgomery Ward & Co., Inc.</i> (1987) 193 Cal.App.3d 411	21
21	<i>Tech-Bilt, Inc. v. Woodward-Clyde & Assoc.</i> (1985) 38 Cal.3d 488.....	26
22	<i>Thurman v. Bayshore Transit Management, Inc.,</i> 203 Cal. App. 4th 1112.....	35, 36
23	<i>Troester v. Starbucks Corp.</i> (C.D. Cal. 2019) 387 F.Supp.3d 1019	33
24	<i>Util. Reform Project v. Bonneville Power Admin.</i> (9th Cir. 1989) 869 F.2d 437	22
25	<i>Van Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294.....	38
26	<i>Vasquez v. Superior Court</i> (1971) 4 Cal. 3d 800.....	15, 16
27	<i>Vincent v. Hughes Air West, Inc.</i> (9th Cir. 1977) 557 F.2d 759	41
28	<i>Washington Mutual Bank, FA v. Superior Court</i> (2001) 24 Cal.4th 906	18

1	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224.....	17
2	<i>Wilkerson v. Martin Marietta Corp.</i> (D. Colo. 1997) 171 F.R.D. 273	22
3	<i>Williams v. Brinderson Constructors</i> (C.D. Cal. Feb. 6, 2017) 2017 WL 490901.....	21

Statutes

4	Cal. Civ. Pro. § 340.....	33
5	Cal. Lab. Code § 2699(l)(2).....	23
6	California Code of Regulations, title 8, section 13520	33
7	Federal Rules of Civil Procedure, Rule 23 (e).....	22
8	<i>Labor Code</i> § 203	31, 33
9	<i>Labor Code</i> § 203(b).....	31
10	<i>Labor Code</i> § 226	32
11	<i>Labor Code</i> § 226(a).....	32
12	<i>Labor Code</i> § 226(e).....	32
13	<i>Labor Code</i> § 2699 et seq.	35
14	<i>Labor Code</i> § 2699(e)(2)	35
15	<i>Labor Code</i> § 2699(f)	35
16	<u><i>Labor Code</i></u> § 2699(l)(2)	21
17	<i>Labor Code</i> § 2699.5	35
18	<i>Labor Code</i> § 510	30
19	<i>Labor Code</i> §§ 226(a) and 226(e).....	32
20	<i>Labor Code</i> section 1194.2	34
21	<i>Labor Code</i> section 203.....	27
22	<i>Labor Code</i> section 226.....	27
23	<i>Labor Code</i> section 226(e).....	34
24	Title 8, California Code of Regulations, § 13520	31

Other Authorities

25	Judicial Council of California’s Deskbook on the Management of Complex Civil Litigation (Matthew Bender 2003).....	40
26	<i>Manual for Complex Litigation (Second)</i> (1985 at § 30.44.....	21

1	Manual for Complex Litigation (Third), § 30.41.....	22
2	Newberg on Class Actions (5th Ed. 2016) § 11.26.....	22
3	<i>Newberg</i> , § 11.25	21
4	<i>Newberg</i> , § 12.1	38
5	William B. Rubenstein et al., <i>Newberg on Class Actions</i> (5th ed. 2016) § 13:15	28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On October 21, 2020, Plaintiff (“Plaintiff” or “Class Representative”) filed a proposed class action
4 complaint in the Superior Court of the State of California, Los Angeles County, Case No. 20STCV40788,
5 against Defendant Bay Cities Partners, Inc. dba Bay Cities Italian Deli (“Defendant”) (collectively referred
6 to as the “Parties”). On September 7, 2022, Plaintiff filed a First Amended Complaint alleging the
7 following causes of action: (1) Failure to Provide Required Meal Periods; (2) Failure to Provide Required
8 Rest Periods; (3) Failure to Pay Overtime Wages; (4) Failure to Pay Minimum Wages; (5) Failure to
9 Timely Pay Wages During Employment; (6) Failure to Pay All Wages Due to Discharged and Quitting
10 Employees; (7) Failure to Maintain Required Records; (8) Failure to Furnish Accurate, Itemized Wage
11 Statements; (9) Unfair and Unlawful Business Practices; and (10) Penalties under Private Attorney
12 General Act (“PAGA”).

13 Pursuant to the proposed Class Action and PAGA Settlement Agreement and Class Notice¹
14 (“Settlement” or “Settlement Agreement”), attached to the Declaration of Danny Yadidsion as Exhibit
15 “1.” (“Yadidsion Decl.”), the class consists of “all current and former non-exempt employees who worked
16 for Defendant in California at any time between October 21, 2016 through February 7, 2022.” (“Class
17 Members.”) After engaging in substantial investigation and extensive negotiations with the assistance of
18 a respected third-party neutral Jill Sperber, Esq. beginning on the mediation date of February 7, 2022, the
19 Parties have agreed to settle all claims alleged in the lawsuit on a class-wide non-reversionary basis for
20 Seven Hundred and Seventy-Five Thousand Dollars and Zero Cents (\$775,000.00), inclusive of all fees
21 and costs. All Class Members shall receive a settlement share unless they opt out, except for Aggrieved
22 Employees.²

23 The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and adequate,
24 and in the best interests of the Class. Consequently, Plaintiff, with the consent of Defendant, hereby moves
25

26 ¹ The Parties have utilized the Court’s Model Class Action and PAGA Settlement Form implemented by
27 the Court on June 29, 2022. Attached to the Declaration of Danny Yadidsion is a redlined version of the
28 Court’s Model Class and PAGA Settlement Form for the Court’s review.

² Aggrieved Employees are defined as all current and former non-exempt employees of Defendant
employed in California at any time during the PAGA Period. (See Settlement Agreement.)

1 this Court for an order: (1) granting preliminary approval of the proposed class action settlement, as
2 embodied in the Settlement Agreement filed concurrently herewith; (2) approving the Notice of Class
3 Action Settlement to be sent to Class Members, and the notification schedule as set forth in the Settlement
4 Agreement and the Proposed Order, also filed concurrently herewith; and (3) setting a hearing for final
5 approval of the class action settlement.

6 **II. STATUS OF THE LITIGATION**

7 **A. Procedural History**

8 On October 21, 2020, Plaintiff filed a proposed class action complaint against Defendant alleging
9 nine causes of action: (1) Failure to Provide Required Meal Periods; (2) Failure to Provide Required Rest
10 Periods; (3) Failure to Pay Overtime Wages; (4) Failure to Pay Minimum Wages; (5) Failure to Timely
11 Pay Wages During Employment; (6) Failure to Pay All Wages Due to Discharged and Quitting
12 Employees; (7) Failure to Maintain Required Records; (8) Failure to Furnish Accurate, Itemized Wage
13 Statements; and (9) Unfair and Unlawful Business Practices. (Yadidsion Decl. ¶ 12). Plaintiff alleged
14 Defendant failed to pay minimum wages and overtime for all hours worked, failed to provide compliant
15 meal and rest breaks and failed to pay premium wages for missed meal and rest breaks, failed to furnish
16 accurate wage statements, failed to timely pay wages including final wages, failed to maintain accurate
17 records, and failed to pay for rest breaks as Defendant had a policy and practice of requiring its employees
18 to clock out and clock in to take their rest breaks. (*Id.*)

19 On October 21, 2020, Plaintiff submitted a PAGA notice letter to the Labor Workforce
20 Development Agency (“LWDA”) and served Defendant. (Yadidsion Decl., ¶ 13). The LWDA did not
21 express an interest in investigating Plaintiff’s claims within the 65-day period. (*Id.*)

22 On February 19, 2021, Defendant filed a Cross-Complaint against Cross-Defendant ADP, Inc.
23 (“Cross-Defendant.”) (Yadidsion Decl. ¶14.) Defendant alleges that Cross-Defendant is partially liable
24 for the damages alleged by Plaintiff against Defendant.³ (*Id.*)

27 ³ The Settlement Agreement does not resolve the claims of the Cross-Complaint and the Cross-Complaint
28 will not be impacted by the Court granting and approving the Settlement Agreement. (Yadidsion Decl. ¶
14.)

1 On September 7, 2022, Plaintiff filed a First Amended Complaint adding a cause of action for
2 penalties under the PAGA. (Yadidsion Decl., ¶ 15).

3 **B. Investigation**

4 Before filing the lawsuit, Class Counsel investigated and researched the facts and circumstances
5 underlying the pertinent issues and the law applicable thereto. (Yadidsion Decl., ¶ 16). This required
6 thorough discussions and interviews between Class Counsel and Plaintiff, as well as preliminary research
7 into the various legal issues involved in the case. (*Id.*) After conducting their initial investigation, Class
8 Counsel determined that Plaintiff's claims were well-suited for class and representative action
9 adjudication owing to what appeared to be a common course of conduct affecting a similarly situated
10 group of employees. (*Id.*)

11 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims
12 giving rise to the action, including: (1) conducting extensive formal and informal discovery, and meeting
13 and conferring with defense counsel about same; (2) reviewing and analyzing a sampling of time and pay
14 records as well as employment handbooks, Plaintiff's personnel file, relevant policies and other
15 documentation; (3) researching the applicable law and potential defenses; (4) constructing damage models
16 based on interpretations of California law; (5) reviewing information provided by Defendant at the
17 mediation; and (6) taking the deposition of Defendant's Person Most Knowledgeable. (Yadidsion Decl.,
18 ¶ 17.) Plaintiff contends the proposed Class enumerated in this action is ascertainable because the Class
19 Members may be readily identified by reference to Defendant's records. (*Id.*) Defendant has agreed to
20 share the information from these records with the Settlement Administrator in order to identify and contact
21 the Class Members. (*Id.*) There are approximately 117 total Class Members. (*Id.*)

22 Defendant vigorously contested liability, the amount of claimed damages, and the propriety of
23 class certification. (Yadidsion Decl., ¶ 18) After Class Counsel analyzed the relevant documents and other
24 gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. (*Id.*)
25 Given the high level of risk present for both sides, the Parties elected to mediate Plaintiff's claims and
26 explore the possibility of settlement. (*Id.*)

C. Settlement Efforts

On February 7, 2022, the Parties mediated this case with Jill Sperber, Esq., a respected and highly experienced mediator in wage and hour class actions. (Yadidsion Decl., ¶ 19.) During mediation, Plaintiff's and Defendant's counsel discussed all aspects of the case, including the risks of litigation and the risks to both parties of proceeding with a motion for class certification as well as the law relating to unpaid wages, meal periods, rest periods, wage statements, and final pay. (*Id.*) The Parties did not reach a settlement at mediation. (Yadidsion Decl. ¶20.) As a result of the unsuccessful mediation, Plaintiff took the deposition of Defendant's Person Most Knowledgeable. (Yadidsion Decl. ¶21.) Plaintiff subsequently participated in the Defendant's deposition of Cross-Defendant's Person Most Knowledgeable. (Yadidsion Decl. ¶21.)

After the February 7, 2022 unsuccessful mediation, the mediator continually assisted the Parties in an attempt to reach a resolution. (Yadidsion Decl. ¶22.) After extensive settlement discussions, over the span of several months and with the assistance of the mediator, the Parties agreed to a settlement. (*Id.*)

From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class Counsel believes that the recovery for each Class Member is fair and reasonable taking into consideration the amounts received in other wage and hour class actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Class Member's claim to the settlement award he or she will receive. (Yadidsion Decl. ¶23.) Further, and based on the settlement negotiations, which were extensive, and conducted in good faith and at arm's length between attorneys with substantial experience litigating class actions and wage and hour cases, and extensive discovery, the Settlement Agreement was the product of a non-collusive settlement process in which the Parties were forced to make significant compromises in the interest of reaching a full and complete settlement of the lawsuit. (*Id.*)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

The Settlement Agreement has been prepared utilizing the Court's Model Class Action and PAGA Settlement Form implemented by the Court on June 29, 2022. (Yadidsion Decl. ¶24.) (Exhibit "2," attached to the Declaration of Danny Yadidsion, is a redlined version of the Court's Model Class Action

1 and PAGA Settlement Form which redlines the changes the Parties made to the model form. (Yadidsion
2 Decl. ¶24.))

3 Under the terms of the proposed Settlement Agreement, the Defendant has agreed to pay Seven
4 Hundred and Seventy-Five Thousand Dollars and Zero Cents (\$775,000.00) (“Gross Settlement Amount”)
5 on a non-reversionary basis to settle and release all claims asserted by Plaintiff in the proposed Class
6 Action and PAGA Action on behalf of the proposed Class. (Yadidsion Decl., ¶ 25; Exhibit “1.”) The
7 Settlement Agreement defines the “Class Members” as “all current and former non-exempt employees
8 who worked for Defendant in California at any time between October 21, 2016 through February 7, 2022.”
9 (Yadidsion Decl., ¶ 26; Exh. 1.) The “Net Settlement Amount,” available for distribution to Class
10 Members, shall be the Gross Settlement Amount, less the Attorneys’ Fees and Costs, the Class
11 Representative Enhancement Payment, Settlement Administration Costs, and PAGA Settlement Amount.
12 (Yadidsion Decl., ¶ 26; Exh. 1.) These amounts are detailed as follows:

- 13 • not more than Two Hundred Seventy-One Thousand Two Hundred Fifty Dollars and Zero
14 Cents (\$271,250.00) to Class Counsel for attorneys’ fees, and not more than Sixteen Thousand
15 Dollars and Zero Cents (\$16,000.00) to Class Counsel for litigation costs; (Yadidsion Decl., ¶
16 27; Exh. 1.);
- 17 • not more than \$15,000.00 for the Settlement Administration Costs. However, the actual
18 Settlement Administrative costs is going to be less than \$10,000.00; (Yadidsion Decl., ¶ 27;
19 Exh. 1.);
- 20 • not more than Seven-Thousand Five-Hundred Dollars and Zero Cents (\$7,500.00) for Class
21 Representative Enhancement Payments; and (Yadidsion Decl., ¶ 27; Exh. 1.);
- 22 • Fifty Thousand Dollars and Zero Cents (\$50,000.00) for civil penalties under the PAGA, where
23 75% (\$37,500.00) will be paid to the LWDA and 25% (\$12,500.00) will be distributed to the
24 Aggrieved Employees. (Yadidsion Decl., ¶ 27; Exh. 1.)

25 The “Individual Class Payment,” which is each Class Member’s share of the Net Settlement
26 Amount, will be calculated and apportioned from the Net Settlement Amount based on the number of
27 weeks worked by a Class Member worked during the Class Period as a non-exempt employee in
28 California. (Yadidsion Decl., ¶ 28; Exh. 1.) The Individual Class Payment shall have 25% allocated as

1 wages and 75% allocated as non-wages for payment of interest and penalties. (*Id.*)

2 Defendant shall pay its corporate payroll tax obligations of 25% on the payouts to Class Members
3 in addition to the Gross Settlement Amount. (Yadidsion Decl., ¶ 29; Exh. 1.)

4 The settlement amount was a compromise figure, factoring in the inherent risks related to
5 certification, liability and damages. (Yadidsion Decl., ¶ 30.) However, taking into account all of the
6 circumstances of the action and the defenses raised by Defendant against certification, liability and
7 damages, Class Counsel believes that the settlement is fair and reasonable. (*Id.*)

8 Attached to the Settlement Agreement as Exhibits A is the Court Approved Notice of Class Action
9 Settlement and Hearing Date for Final Court Approval (“Notice Packet”)⁴. (Yadidsion Decl. ¶31.) Class
10 Members shall each receive a Notice Packet which will include the Class Notice via first class mail (after
11 the Settlement Administrator conducts a national change of address search). (Yadidsion Decl., ¶ 32; Exh.
12 1.) Class Members will have an opportunity to dispute the information provided in their Notice Packet
13 and they may produce evidence to support the information is inaccurate. (Yadidsion Decl., ¶ 33; Exh. 1.;
14 *see also* Class Notice, Exhibit A attached to the Settlement Agreement.) The Settlement Administrator
15 shall decide the dispute and its determination shall be final. (*Id.*) Class Members wishing to opt-out from
16 the Settlement Agreement must sign and postmark a written Request for Exclusion to the Settlement
17 Administrator within the Response Deadline. (Yadidsion Decl., ¶ 34; Exh. 1.) The Response Deadline
18 will be sixty (60) calendar days from the initial mailing of the Notice Packet. (*Id.*)

19 Class Members will also have the opportunity to object to the Settlement Agreement, by serving a
20 copy of the objection to the Settlement Administrator within the Response Deadline. (Yadidsion Decl., ¶
21 35; Exh. 1.) The Response Deadline will be sixty (60) calendar days from the initial mailing of the Notice
22 Packet. (*Id.*)

23 The parties have also agreed that ILYM Group, Inc. shall handle the notice and settlement
24 administration (Yadidsion Decl. ¶ 36; Exh. 1), and the parties respectfully request this Court to appoint
25 ILYM Group, Inc. to handle those procedures. The procedures for mailing notice and processing
26

27 ⁴ The Notice Packet used by the Parties is the Court’s Model Class Action and PAGA Settlement Form
28 implemented by the Court on June 29, 2022. Exhibit 4, attached to the Declaration of Danny Yadidsion,
is a redlined version of the changes the Parties made to the model notice packet.

1 exclusions and objections as well as distribution of the Net Settlement fund is detailed in the Settlement
2 Agreement. (*Id.*)

3 The Settlement Agreement also includes an Exhibit B. Exhibit B is an addendum to the Settlement
4 Agreement in which the Parties have agreed that 90% of the settlement applies to Plaintiff's allegations
5 that Plaintiff, and Class Members, were not paid for rest breaks that were taken as Defendant required
6 Plaintiff, and the Class Members, to clock out and clock in for rest breaks and if the rest breaks went
7 longer 10 minutes, Plaintiff, and the Class Members, were not paid for the rest break taken. (Yadidsion
8 Decl. ¶37.) Defendant contends Cross-Defendant is responsible for the damages incurred due to the non-
9 payment of rest breaks. (*Id.*)

10 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

11 Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince v. CLS*
12 *Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d
13 462.) Any doubt as to the appropriateness of class treatment should be resolved in favor of class
14 certification, subject to later modification if necessary. (*Richmond*, 29 Cal. 3d at 473-75.) The decision to
15 certify a class is a procedural one, and should be based on the allegations in the operative complaint, and
16 not in the perceived factual or legal merit of the class claims. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th
17 429, 439-41.)

18 To certify a settlement class, the Court must find the two primary requirements for maintaining a
19 class action: (1) there must be an ascertainable class, and (2) there must be a well-defined community of
20 interest in the questions of law and fact involving the parties to be represented. (*See Vasquez v. Superior*
21 *Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab Company* (1967) 67 Cal. 2d 695, 704.) These
22 criteria are met here for the reasons set forth below.

23 **A. There Is A Numerous and Ascertainable Class**

24 Whether a class is ascertainable is determined by examining the class definition, the size of the
25 class and the means available for identifying class members. (*See Vasquez, supra*, 4 Cal. 3d at 821-22;
26 *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271.) Class members
27 are "ascertainable" where they may be readily identified without unreasonable expense or time.
28

1 Plaintiff contends, and Defendant does not dispute for settlement purposes only, this requirement
2 and the requirement of numerosity is met. Class Members are “all current and former non-exempt
3 employees who worked for Defendant in California at any time between October 21, 2016 through
4 February 7, 2022” (Yadidsion Decl., ¶ 11) Documents and information exchanged between the parties
5 reflect a class of approximately 117 Class Members. (Yadidsion Decl., ¶ 17) The Class Members have
6 already been identified by reference to Defendant’s payroll and personnel records. (Yadidsion Decl., ¶
7 83(b))

8 Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

9 **B. There Is A Well-Defined Community of Interest**

10 A community of interest is established by the predominance of common issues of law and fact.
11 See *Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

12 [D]oes not depend upon an identical recovery, and the fact that each member of the
13 class must prove his separate claim to a portion of any recovery by the class is only
14 one factor to be considered ... The mere fact that separate transactions are involved
15 does not of itself preclude a finding of the requisite community of interest so long
16 as every member of the alleged class would not be required to litigate numerous and
17 substantial questions to determine his individual right to recover subsequent to the
18 rendering of any class judgment which determined in plaintiff favor whatever
19 questions were common to the class.

20 *Id.* at 809.

21 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that common
22 issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the Class is united in
23 its proof. (Yadidsion Decl., ¶ 83(e)) Because Plaintiff has alleged a single scheme, “the relevant proof
24 [does] not vary among class members” and “clearly presents a common question fundamental to all class
25 members.” (See *In Re NASDAQ Market-Makers Antitrust Litigation* (SDNY 1997 172 F.R.D. 119, 123
26 (citing *In Re NASDAQ Market-Makers Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518).)
27 California courts show “no hesitancy” in inferring class-wide causation, class-wide injury, and class-wide
28 damages when a common course of action has been shown. (*B.W.I. Custom Kitchen*, 191 Cal. App. 3d at
1350.) This inference ““eliminates the need for each class member to prove individually the consequences
of the defendants’ actions to him or her.”” (*Id.* at 1351 (quoting *Rosack v. Volvo of America Corp* (1982
131 Cal. App. 3d 741, 753 [*emphasis added*])).)

1 This action involves, *inter alia*, a determination about Defendant’s alleged failure to provide meal
2 period and rest periods, failure to pay wages and overtime due to allegedly common and unlawful policies,
3 failure to pay final wages when required, failure to provide accurate paystubs, failure to pay Class
4 Members for rest breaks they took as Defendant had a policy of requiring its employees to clock out for
5 rest breaks, and largely derivative claims under the Business & Professions Code and PAGA. Plaintiff
6 contends these practices affected Class Members in the same way. Plaintiff contends these practices
7 resulted in a failure to compensate employees at termination, and incomplete wages displayed on wage
8 statements. The outcome of litigation on this matter depends upon questions that are common to Class
9 Members. (Yadidsion Decl., ¶ 83(f)) While Defendant maintained otherwise, these issues will not be
10 decided on the basis of facts peculiar to each Class Member, but rather on the basis of facts common to
11 them all. It is also true that these issues of liability can be determined on a class-wide basis. (*Id.*)

12 C. Plaintiff’s Claims Are Typical

13 A class representative’s claims are typical when they arise from the same event, practice, or course
14 of conduct that gives rise to the claims of other putative class members, and if their claims rest on the
15 same legal theories. The class representative’s claims must be “typical” but not necessarily identical to
16 the claims of other class members. It is sufficient that the representative is similarly situated so that he or
17 she will have the motive to litigate on behalf of all class members. (*Classen v. Weller* (1983) 145
18 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347
19 (“[I]t has never been the law in California that the class representative must have identical interests with
20 the class members.”) Thus it is not necessary that the class representative should have personally incurred
21 all of the damages suffered by each of the other class members. (*Wershba v. Apple Computer, Inc.* (2001)
22 91 Cal.App.4th 224, 228.)

23 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that Plaintiff’s
24 claims are typical of Class Members’ claims because they arose from the same factual basis and are based
25 on the same legal theories. (Yadidsion Decl., ¶ 83(c)) Plaintiff was employed by Defendant during the
26 Class Period, and was subject to the allegedly unlawful meal and rest period policies, pay practices at
27 issue in this litigation, and improper deductions of wages. (*Id.*) Accordingly, Plaintiff is a member of the
28 Class. (*Id.*) The central issues of this litigation (whether Defendant failed to pay all wages, whether

1 Defendant failed to provide meal and rest periods, whether Defendant had rounding issues for reported
2 time worked, whether Defendant paid Class Members for rest breaks as Defendant required its employees
3 to clock out for rest breaks, etc.), which would arise if this was an individual action, applies to the other
4 Class Members as well. The answer to these questions would determine Defendant's liability to the
5 putative class. (*Id.*) Thus, the claims of Plaintiff are typical of the claims of the putative class. (*Id.*)
6 Accordingly, the typicality requirement is satisfied.

7 **D. Adequacy of Class Counsel and Class Representative**

8 The adequacy requirement is met by fulfilling two conditions: (1) the class representative must be
9 represented by adequate counsel qualified to conduct the pending litigation; and (2) the class
10 representative's interests cannot be antagonistic to those of the class. *McGhee v. Crocker-Citizens Nat.*
11 *Bank* (1976) 60 Cal.App.3d 442, 451.

12 Both conditions are met here. First, Plaintiff asserts that he and the class are represented by
13 experienced and competent counsel, as Class Counsel is qualified, experienced in wage and hour litigation,
14 and has served as class counsel in numerous actions. (Yadidsion Decl., ¶¶ 4-9.) Thus, Class Counsel is
15 "qualified, experienced, and generally able to conduct the proposed litigation." *Miller v. Woods* (1983)
16 148 Cal.App.3d 862, 874-75 (finding that being recognized as class counsel in prior cases is indicative of
17 experience and competency). Second, Plaintiff contends that he has no conflicts with any members of the
18 class and his interests are aligned with those of the class. (Declaration of Plaintiff Walter Jimenez,
19 (hereinafter "Jimenez Decl."), filed concurrently herewith, ¶¶ 3-11.) Further, as a result of Plaintiff's efforts
20 in bringing and prosecuting this action, he argues that the Settlement Class Members will obtain a
21 substantial financial benefit. Accordingly, the adequacy requirement is satisfied.

22 **E. Class Treatment is Superior to the Alternatives**

23 The California Supreme Court stated that a "class action should be certified only if it will provide
24 substantial benefits to the courts and the litigants." *Washington Mutual Bank, FA v. Superior Court* (2001)
25 24 Cal.4th 906, 914. The United States Supreme Court provides, "the policy at the very core of the class
26 action mechanism is to overcome the problem that small recoveries do not provide the incentive for any
27 individual to bring a solo action prosecuting his or her rights." *Amchem Products, Inc. v. Windsor* (1997)
28

521 U.S. 591, 617. “The class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone’s (usually an attorney’s) labor.” *Ibid*.

Other relevant considerations regarding superiority include the improbability that each class member will come forward to prove his or her separate claim and whether the class approach would serve to deter or redressed the alleged wrongdoing. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435. In employment cases, concerns such as fear of the employer, lack of representation, size of claim, and the employee’s perception about the difficulty of litigation, increase the likelihood that an employer will not be held accountable. Acknowledging these concerns, courts have noted that “[t]he risks entailed in suing one’s employer are such that the few hardy souls who come forward should be permitted to speak for the others when the vocal ones are otherwise fully qualified.” *St. Marie v. Eastern R.R. Assn.* (S.D.N.Y. 1976) 72 F.R.D. 443, 449.

Here, Plaintiff contends that class treatment provides a substantial benefit to the courts and the class. Each Settlement Class Member will receive a substantial benefit upon the Class Members. Second, class treatment serves to redress and deter the alleged wrongdoing by ensuring that each victim is compensated. Although the alleged injury resulting from Defendant’s policies and practices are real and significant, the cost of individually litigating each such case against Defendant would easily exceed the value of any relief that could be obtained by any one Class Member individually. As such, there is little interest or incentive for Class Members to individually initiate and control the prosecution of separate actions. Therefore, without class treatment, Defendant would be accountable for a smaller amount of alleged violations, thereby undermining any potential deterrence of alleged wrongdoing. Third, class treatment protects and preserves valuable judicial resources. If Class Members are forced to litigate their claims individually, it would result in numerous individual actions against Defendant, straining judicial resources. Fourth, class treatment provides a substantial benefit to Defendant. Class treatment saves Defendant from the potential risk of being subjected to conflicting rulings and decisions in numerous individual actions.

In light of the foregoing, Plaintiff asserts that class treatment provides tangible and substantial benefits to the class and the courts. As such, preliminary approval of the Settlement is appropriate.

F. Common Issues of Law and Fact Predominate Over Any Individual Issues

A court should grant class certification when questions of law and fact common to all Class Members predominate over any questions affecting only individual members. *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916 (“As a general rule, if the defendant’s liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages. In order to determine whether common questions of fact predominate, the trial court must examine the issues framed by the pleadings and the law applicable to the causes of action alleged.”)

The commonality and predominance requirements are easily met when “[defendant] has engaged in some course of conduct that affects a group of persons and gives rise to a cause of action,” because “one or more elements of that cause of action will be common to all of the persons affected.” *Sarviss v. General Dynamics Information Technology, Inc.* (C.D. Cal. 2009) 663 F.Supp.2d 883, 908. Further, the fact that “calculation of individual damages may at some point be required does not foreclose the possibility of taking common evidence on the [liability issues].” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 332 (holding that the legal question of whether the plaintiff-employees were nonexempt and therefore entitled to overtime was a common question that predominated over the individual questions of each employee’s duties performed and hours worked); *Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 617 (“[t]he necessity for class members to prove their own damages does not mean individual fact questions predominate.”)

The scope of this case is narrowly focused on a specific class of persons employed by Defendant during a specific period of time. The alleged common questions of law and fact in this case all stem from Class Members’ allegations that Defendant had a policy of requiring its employees to clock out for rest breaks, improperly deducted wages from its employees, failed to pay minimum wages and overtime for all hours worked, failed to provide compliant meal and rest breaks, failed to pay premium wages for missed meal and rest breaks, failed to furnish accurate wage statements, failed to timely pay wages including final wages, and failed to maintain accurate records,. All of the Settlement Class Members were subjected to the same policies and practices. (Jimenez Decl. ¶¶ 3-6.) Plaintiff and the Settlement Class Members all sought the same remedies. Thus, these common issues predominate over individual issues

1 because identical evidence establishes Defendant’s potential liability as to all Settlement Class Members.
2 Under such circumstances, the commonality and predominance requirements are satisfied. *Stephens v.*
3 *Montgomery Ward & Co., Inc.* (1987) 193 Cal.App.3d 411, 421.

4 **V. THE TWO-STEP APPROVAL PROCESS**

5 Any settlement of class action litigation must be reviewed and approved by the Court. This is
6 accomplished in two steps: (1) An early (preliminary) review by the trial court, and (2) a detailed review
7 after the notice has been distributed to the class members for their comments or objections. In this regard,
8 the Manual for Complex Litigation (Second) explains:

9 A two-step process is followed when considering class settlements... If the
10 proposed settlement appears to be the product of serious, informed, non-collusive
11 negotiations, has no obvious deficiencies, does not improperly grant preferential
12 treatment to class representative or segments of the class, and falls within the range
of possible approval, then the court should direct that notice be given to the class
members of a formal fairness hearing, at which evidence may be presented in
support of and in opposition to the settlement.

13 (*Manual for Complex Litigation (Second)* (1985 at § 30.44.) The preliminary approval of the class action
14 settlement by the trial court is simply a conditional finding that the settlement appears to be within the
15 range of acceptable settlements. (*See, e.g., Newberg*, § 11.25; *North County Contractor’s Assn., Inc. v.*
16 *Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-95.) Thus, the preliminary approval of the
17 class action settlement by the trial court is simply a conditional finding that the settlement appears to be
18 within the range of acceptable settlements.

19 Settlements to resolve PAGA claims also require court approval. (Labor Code § 2699(1)(2).)
20 There is no articulated standard for approving PAGA settlements. PAGA settlements for as little as \$0
21 have been approved. (*See Nordstrom Com’n Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA
22 settlement and release that allocated \$0 to PAGA claim).) Courts have also approved settlements for
23 \$20,000 or less. (*See, e.g., Hicks v. Toys ‘R’ Us–Delaware, Inc.*, (C.D. Cal. Sept. 2, 2014) 2014 WL
24 4703915, at *1 (approving \$5,000 PAGA payment in \$4 million settlement); *Chu v. Wells Fargo Invest.*
25 *LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1 (approving PAGA payment of \$7,500 in \$6.9
26 million settlement); *Williams v. Brinderson Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at
27 *5 (\$10,000 PAGA settlement in \$300,000 settlement).)

1 A review of the preliminary approval criteria demonstrates a substantial basis for granting the
2 instant Motion and proceeding to a full settlement hearing.

3 **VI. PRELIMINARY SETTLEMENT APPROVAL**

4 As a matter of public policy, settlement is a strongly favored method for resolving disputes. *See*
5 *Util. Reform Project v. Bonneville Power Admin.* (9th Cir. 1989) 869 F.2d 437, 443. This is especially
6 true in complex class actions such as the one before the Court. *See Officers for Justice v. Civil Serv.*
7 *Comm'n* (9th Cir. 1982) 688 F.2d 615, 625; *Wilkerson v. Martin Marietta Corp.* (D. Colo. 1997) 171
8 F.R.D. 273, 284.

9 Any class settlement must be reviewed and approved by the Court. California Rules of Court, Rule
10 3.769; Federal Rules of Civil Procedure, Rule 23 (e). This is done in two steps: (1) early (preliminary)
11 review by the court and (2) final review after notice has been distributed to the class members for their
12 comments or objections. The Manual for Complex Litigation (Third) succinctly describes the scope of the
13 preliminary approval inquiry as follows:

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

22 (Manual for Complex Litigation (Third), § 30.41.)

23 Thus, preliminary approval by the trial court is simply a conditional finding that the settlement
24 appears to be within the range of acceptable settlements. As Professor Newberg comments, “[t]he strength
25 of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement
26 proposal may vary. The court may find that the settlement proposal contains some merit, is within the
27 range of reasonableness required for a settlement offer or is presumptively valid subject only to any
28 objections that may be raised at a final hearing.” (4 William B. Rubenstein, et al., *Newberg on Class*
Actions (5th Ed. 2016) § 11.26.)

In short, the Court need find only that the settlement falls within the range of possible final

1 approval, also described as the “reasonable range.” (*See e.g. North County Contractor's Assn. v.*
2 *Touchstone Ins. Services.* (1994) 27 Cal.App.4th 1085.) Trial courts have broad discretion to determine
3 whether a class action settlement is fair. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,
4 128.) The trial court must exercise its discretion through the application of several well-recognized factors
5 when deciding whether a class action settlement is fair. (*Clark v. American Residential Services, LLC*
6 (2009) 175 Cal.App.4th 785, 799.) The list of factors, which “is not exhaustive and should be tailored to
7 each case,” includes “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of
8 further litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
9 the extent of discovery completed and the stage of the proceedings, the experience and views of counsel,
10 the presence of a governmental participant, and the reaction of the class members to the proposed
11 settlement.” (*Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 581; *Kullar*, 168 Cal.App.4th at p. 128,
12 quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) The most important factor the trial
13 court should consider in determining whether to approve a class action settlement is the strength of the
14 case for plaintiff on the merits, balanced against the amount offered in settlement. (*Munoz v. BCI Coca-*
15 *Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408; *Kullar*, 168 Cal.App.4th 116 at p.
16 130.) In sum, at the preliminary approval stage, the trial court must determine that the settlement was not
17 the product of fraud, overreaching or collusion, and that the settlement is fair, reasonable and adequate.
18 (*Nordstrom*, 186 Cal.App.4th. at p. 581.) In order to elicit the class members' "reaction ... to the proposed
19 settlement," they must first receive notice of the proposed resolution. The preliminary approval process
20 allows that to happen. Settlements to resolve PAGA claims also require court approval. *See* Cal. Lab.
21 Code § 2699(l)(2). There is no articulated standard for approving PAGA settlements. PAGA settlements
22 for as little as \$0 have been approved.⁵ Courts have also approved PAGA settlements for \$20,000 or less.⁶

23 A review of the preliminary approval criteria demonstrates a substantial basis for granting the
24 instant Motion and proceeding to a full settlement hearing.

25
26 ⁵ *See Nordstrom Com’n Cases* (2010) 186 Cal. App. 4th 576, 589 (approving PAGA settlement and release that allocated \$0
to PAGA claim).

27 ⁶ *See, e.g., Hicks v. Toys ‘R’ Us–Delaware, Inc.*, 2014 WL 4703915, at *1 (C.D. Cal. Sept. 2, 2014) (approving \$5,000.00
28 PAGA payment as part of \$4 million settlement); *Chu v. Wells Fargo Invest. LLC*, 2011 WL 672645, at *1 (N.D. Cal. Feb.
16, 2011) (approving PAGA payment of \$7,500 as part of \$6.9 million settlement); *Williams v. Brinderson Constructors*,
2017 WL 490901, at *5 (C.D. Cal. Feb. 6, 2017) (\$10,000.00 PAGA settlement as part of \$300,000 total settlement).

1 **A. The Settlement Agreement Resulted from Arm's-length Negotiations**

2 The presumption is that a proposed settlement is fair and reasonable when it is the result of arm's-
3 length negotiations. (See *Williams v. Vukovich* (6th Cir.1983) 720 F.2d 909, 922-923 ("The court should
4 defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs");
5 *In re Excess Value Ins. Coverage Litig.* (S.D. N.Y. July 30, 2004, No. M-21-84RMB) No. M-21-84
6 (RMB) 2004 U.S. Dist. LEXIS 14822, at *34 ("Where 'the Court finds that the settlement is the product
7 of arm's length negotiations conducted by experienced counsel knowledgeable in complex class litigation,
8 the Settlement will enjoy a presumption of fairness'"); *In re Inter-Op Hip Prosthesis Liab. Litig.* (N.D.
9 Ohio 2001) 204 F.R.D. 359, 380 (granting preliminary settlement approval) ("when a settlement is the
10 result of extensive negotiations by experienced counsel, the Court should presume it is fair"); see also 4
11 Rubenstein, et al., *Newberg on Class Actions* (5th Ed. 2016) §11.41 at p. 90; *Manual For Complex Litig*
12 (4th Ed. 2004), §21.612.)

13 The proposed settlement here is the product of arm's-length negotiations during and after a full-
14 day mediation, with the mediator facilitating settlement discussions after the mediation was formally
15 completed which spanned several months until the parties reached a settlement. (Yadidsion Decl. ¶¶16-
16 22.)

17 Counsel for the parties have investigated the relevant law as applied to the facts discovered, the
18 alleged claims of Plaintiff and potential defenses thereto, and the damages claimed by Plaintiff. Armed
19 with this extensive body of knowledge and analysis, the Parties engaged in their first mediation with a
20 skilled mediator. At all times, the negotiations leading to the Settlement have been adversarial, non-
21 collusive and at arm's length. (*Id.*). Although the action did not settle during the mediation, additional
22 discovery was conducted and more information was discovered, which allowed for the parties to reach a
23 settlement. (*Id.*)

24 **B. The Strength of Plaintiff's Case and Complexities of Further Litigation**

25 Plaintiff believes that the Settlement Class claims in this action are legally meritorious and present
26 a reasonable probability of a favorable determination on behalf of the class. At the same time, there is
27 undeniably significant litigation risk avoided by the proposed Settlement, at trial and in the appellate
28 courts.

1 Liability remains highly contested by Defendant, who deny they have engaged in any violations
2 of the law, and further deny any liability or engagement in wrongdoing of any kind associated with the
3 claims alleged in the Action by Plaintiff or any Class Member. Defendant contends that at all times, they
4 complied with all wage-and-hour laws in connection with the employment and/or retention of services of
5 Plaintiff and the Class Members. Defendant further contends that Cross-Defendant is partly liable for any
6 damages that Plaintiff, and the Class Members, suffered.

7 Plaintiff's counsel understood and appreciated the defenses and position of Defendant but believed
8 Plaintiff would ultimately succeed in the action. In light of the strongly divergent views, the parties, with
9 the assistance of the mediators, discovery, depositions, and document production, were able to negotiate
10 a fair settlement, considering the costs and risks of continued litigation, certifying the class, and trial. The
11 negotiations were at all times conducted professionally and at arm's length and have produced a result
12 that the Parties believe to be in their respective best interests.

13 The Parties have also considered the uncertainty and risk of the outcome of a motion for class
14 certification, trial and delays inherent in such litigation. Plaintiff is also aware of the burdens of proof
15 necessary to establish liability for the claims asserted in the action, the defenses thereto, the difficulties in
16 establishing damages. As well as the hurdle of getting this class action certified as Defendant contend that
17 Plaintiff would not be able to get the class certified.

18 In evaluating the settlement, the Court will seek a reasonable estimate of the nature and amount of
19 recovery that each class member could have obtained if the Plaintiff had prevailed in the litigation.
20 Numerous decisions summarize a trial court's task when considering whether to approve the settlement of
21 a putative class action. As one Court stated:

22 "The trial court has broad discretion to determine whether the settlement is fair.
23 [Citation.] It should consider relevant factors, such as the strength of plaintiffs' case,
24 the risk, expense, complexity and likely duration of further litigation, the risk of
maintaining class action status through trial,

25 the amount offered in settlement, the extent of discovery completed and the stage of
26 the proceedings, the experience and views of counsel, the presence of a governmental
participant, and the reaction of the class members to the proposed settlement."

1 (*Cellphone Fee Termination Cases* (2009) 180 Cal.App.4th 1110, 1117-18, quoting *Dunk v. Ford Motor*
2 *Co.* (1996) 48 Cal.App.4th 1794, 1801.)

3 The court's consideration of relevant factors, however, does not transform the settlement approval
4 “into a trial or rehearsal for trial on the merits.” (7-Eleven Owners for Fair Franchising v. Southland Corp.
5 (2000) 85 Cal.App.4th 1135, 1145, quoting *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d
6 1268, 1276.) The record need only provide the trial court with an understanding of the amount that is in
7 controversy and the realistic range of outcomes of the litigation.

8 Because settlements are inherently a compromise, once the parties have provided it with the
9 requisite “basic information,” the trial court must only “satisfy itself that the class settlement is within the
10 ‘ballpark’ of reasonableness.” (*Tech-Bilt, Inc. v. Woodward-Clyde & Assoc.* (1985) 38 Cal.3d 488, 499-
11 500.)

12 Here, in preparation for the mediation, Plaintiff calculated Defendant’s potential liability to Class
13 Members to be in excess of the settlement amount. Plaintiff’s valuation assumed that Plaintiff prevailed
14 in establishing liability on the merits. (Yadidsion Decl. ¶¶ 41-65.)

15 The realistic range of outcomes for this litigation was discounted due to the present state of the
16 law regarding alleged unpaid work, meal and rest break claims, and the other claims brought in the Action,
17 Defendant’s defenses for each claim, and the likelihood of prevailing at trial and any appeals. (Yadidsion
18 Decl. ¶¶ 41-65.) Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon*
19 *v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.

20 **1. Kullar v. Footlocker Analysis.**

21 To allow this Court to make an informed assessment pursuant to *Kullar v. Foot Locker Retail, Inc.*
22 (2008) 168 Cal.App.4th 116, Plaintiff’s Counsel provides the following assessment of the case and
23 settlement. Plaintiff’s Counsel believes the settlement is a very good one for the class members. In this
24 case, Plaintiff sought unpaid wages and statutory penalties as well as equitable remedies such as
25 restitution. In preparation for mediation, Plaintiff reviewed all relevant facts, documentation, evidence and
26 legal authority and prepared a damages model for this action; if Plaintiff were to prevail on the merits of
27 each of her claims, assuming 25% liability for meal period violations for the violations found by Plaintiff’s
28 expert, 100% liability for rest period damages, a reasonable amount of unpaid overtime, a reasonable

1 amount of unpaid rest breaks that were deducted from Class Members' time worked, 100% recovery for
2 waiting time penalties under *Labor Code* section 203 (which would amount to approximately
3 \$373,127.00), 100% *Labor Code* section 226 violations, 100% violation pursuant to PAGA
4 (approximately \$1,031,800.00), total recoverable potential damages would be approximately
5 \$3,255,255.25. (Yadidsion Decl. ¶ 41.)

6 Thus, the settlement before the Court amount to approximately 23.81% of the maximum total
7 damage exposure. (Yadidsion Decl. ¶70.) If the PAGA claims are excluded from the settlement, the
8 settlement before the Court would amount to approximately 34.86% of the total damage exposure. (*Id.*)
9 In seeking approval, a settling party must provide sufficient information to "enable the court to make an
10 independent assessment of the adequacy of the settlement terms." (*Kullar v. Foot Locker Retail, Inc.*
11 (2008) 168 Cal. App. 4th 116, 131–32.) However, "[i]t is well-settled law that a cash settlement amounting
12 to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." (*See*
13 *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco* (9th Cir. 1982) 688 F.2d 615,
14 628.) "The proposed settlement is not to be judged against a hypothetical or speculative measure of what
15 might have been achieved by the negotiators." (*Id.* at 625.) "Estimates of a fair settlement figure are
16 tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected
17 delay in recovery (often measured in years)." (*In re Toys R Us-Delaware, Inc.—Fair & Accurate Credit*
18 *Transactions Act (FACTA) Litig.* (C.D. Cal. 2014) 295 F.R.D. 438, 453.) In other words, in valuing the
19 claims within a **realistic range of outcomes**, the settling plaintiff should discount the value of the settled
20 claims for risks such as changes in the law, the probability of success, and other factors.⁷

21 Settling parties are not however required to partake in a hypothetical accounting exercise: [*Kullar*
22 does not . . . require any such explicit statement of [maximum] value; it requires a record which allows
23 "an understanding of the amount that is in controversy and the realistic range of outcomes of the
24 litigation." (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal. App. 4th 399, 409–10; quoting *Kullar*

25
26 ⁷ Federal district courts also recognize that there is an inherent "range of reasonableness" in determining
27 whether to approve a settlement "which recognizes the uncertainties of law and fact in any particular case
28 and the concomitant risks and costs necessarily inherent in taking any litigation to completion." (*Id.* at
188 (quoting *Newman v. Stein* (2d Cir 1972.) 464 F.2d 689, 693). *See Nat'l Rural Telecomm. Coop. v.*
Directv, Inc. (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("well settled law that a proposed settlement may be
acceptable even though it amounts to only a fraction of the potential recovery").

1 168 Cal. App. 4th at 120.)) Overall, the most important factor in determining whether a settlement is fair
2 and reasonable is the strength of the case for plaintiffs on the merits balanced against the amount offered
3 in the settlement. (*Id.* at 409, fn.6 [quoting *Kullar*, 168 Cal. App. 4th at 130].)

4 Courts have determined that settlements are, of course, reasonable even where plaintiffs recover
5 only a portion of their actual losses. (*See Behrens v. Wometco Enters., Inc.* (S.D. Fla. 1988) 118 F.R.D.
6 534, 542, *aff'd*, (11th Cir. 1990) 899 F.2d 21 “[T]he fact that a proposed settlement amounts to only a
7 fraction of the potential recovery does not mean the settlement is unfair or inadequate.”)) Indeed, “[a]
8 settlement can be satisfying even if it amounts to a hundredth or even - a thousandth of a single percent
9 of the potential recovery.” (*Id.*; see also *City of Detroit v. Grinnell Corp.* (S.D. N.Y. 1972) 356 F.Supp.
10 1380, 1386 [a recovery of 3.2% to 3.7% of the amount sought is “well within the ball park”], *aff'd* in part,
11 *rev'd* on other grounds, (2d Cir. 1974) 495 F.2d 448; *Martel v. Valderamma* (C.D. Cal. 2015) 2015 U.S.
12 Dist. LEXIS 49830 * 17 [approving a settlement of \$75,000 when potential damages were \$1.2 million];
13 *In re Toys R US FACTA Litig.* (C.D. Cal. 2014) 295 F.R.D. 438, 453 [approving settlement with vouchers
14 (not cash) potentially worth a maximum of three percent (3%) if all possible claims were actually made,
15 or \$391.5 million aggregate voucher potential where the class could have recovered \$13.05 billion.]) *See*
16 4 William B. Rubenstein et al., *Newberg on Class Actions* (5th ed. 2016) § 13:15 (the range of
17 reasonableness percentage could be as low as 1/100th or 1/1000th of 1%); *Ma v. Covidien Holding, Inc.*,
18 (C.D. Cal. Jan. 31, 2014, No. SACV 12-02161-DOC) 2014 WL 360196 at *5 (finding a settlement worth
19 9.1% of the total value of the action “within the range of reasonableness”); *Balderas v. Massage Envy*
20 *Franchising, LLC*, (N.D. Cal. July 21, 2014, No. 12-CV-06327 NC) 2014 WL 3610945 at *5 (granting
21 preliminary approval of a net settlement amount representing 5% of the projected maximum recovery at
22 trial); *Glass v. UBS Fin. Servs., Inc.* (N.D. Cal. Jan. 26, 2007, No. C-06-4068 MMC) 2007 WL 221862,
23 at *9, *aff'd*, 331 Fed. Appx. 452 (9th Cir. 2009) (approving a settlement of an action claiming unpaid
24 overtime wages where the settlement amount constituted approximately 25% to 35% of the estimated
25 actual loss to the class).

26 Collectively, the damages were broken down as follows:
27
28

1 **a. Meal and Rest Break Valuation**

2 Through the documents and information provided by Defendant during the litigation, there are
3 approximately 117 Class Members. (Yadidsion Decl. ¶ 45.)

4 Plaintiff alleged that Defendant consistently failed to provide timely and uninterrupted meal breaks
5 to Class Members. *See Brinker Restaurant Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004, 1040 (“[T]he wage
6 order’s meal period requirement is satisfied if the employee (1) has at least 30 minutes uninterrupted, (2)
7 is free to leave the premises, and (3) is relieved of all duty for the entire period.”). (Yadidsion Decl. ¶ 46.)

8 Defendant disagreed with Class Counsel’s interpretation of the law and facts. Defendant contended
9 that Class Members were provided their meal periods, and in fact received their meal periods. Defendant
10 argued they have a high facial meal period compliance rate and that all policies and practices complied
11 with California law. (Yadidsion Decl. ¶ 47.)

12 Based on their expert’s findings, Class Counsel estimated Defendant’s maximum total potential
13 exposure on the meal break claim at approximately \$148,384.25. Defendant contends that its meal break
14 policy was valid and many individualized issues would apply making certification of this claim difficult
15 to achieve. (Yadidsion Decl. ¶ 48.)

16 Plaintiff contended that Defendant did not provide Class Members with paid 10-minute rest breaks
17 for every four hours or major fraction thereof. Class Members were required to work through their rest
18 breaks, and through their entire shifts, and not paid for rest breaks longer than ten minutes. (Yadidsion
19 Decl. ¶ 49.)

20 Defendant maintained that they did authorize and permit Class Members to take duty-free rest
21 breaks. Defendant also pointed out that, unlike meal periods, rest breaks need not be recorded and
22 Defendant disputes all allegations that breaks were not received. As these considerations would likely
23 depress the damages *vel non* ultimately awarded, Class Counsel applied an appropriate discount to the
24 rest-break claim. (Yadidsion Decl. ¶ 50.)

25 Class Counsel’s expert estimated Defendant’s maximum total potential exposure on the rest break
26 claim at approximately \$763,974.00. Class Counsel believes that Plaintiff’s rest break claim appears to be
27 the strongest claim due to what appears to be a practice of not paying wages for rest breaks longer than
28 ten minutes. Class counsel, however, took into consideration and applied a discount to account for

1 Defendant's arguments that Defendant's rest break policy was valid, rest breaks need not be recorded and
2 can be waived by the employees, and many individualized issues would apply making certification of this
3 claim difficult to achieve, and the potential of not prevailing at trial. (Yadidsion Decl. ¶ 51.)

4 **b. Minimum Wages and Unpaid Overtime/Wages**

5 Plaintiff alleged that Defendant failed to pay Plaintiff and Class Members minimum wages for all
6 hours worked, in violation of minimum wage laws. Plaintiff contended that Class Members were not paid
7 all wages they were owed including for all worked performed and for all overtime hours worked. Plaintiff
8 contended he, and the Class Members, were not paid all wages due to Defendant's policies and procedures
9 of rounding time worked. (Yadidsion Decl. ¶ 42.) Plaintiff also contended he, and the Class Members,
10 were not paid for rest breaks that were taken by Plaintiff and the Class Members. (Yadidsion Decl. ¶42.)

11 Defendant contended that they paid for all reported hours worked, and that they paid proper
12 minimum wages. Defendant also maintained that the allegations regarding failure to pay wages for hours
13 worked in excess of eight hours in a day did not constitute a basis for violation of *Labor Code* § 510.
14 Defendant maintained that Class Members were instructed to clock in before attending to any work duties
15 and to stop all work upon clocking out. Defendant contends that they paid for all reported hours worked,
16 that Class Members were trained to record all hours worked, and that it paid proper overtime and minimum
17 wages to Class Members. Defendant argued that given their written policies and practices, any unrecorded
18 hours were likely subject to individualized inquiry and unlikely to be certified. Defendant also argued that
19 any non-payment of rest breaks taken was due to Cross-Defendant's actions and not Defendant's actions,
20 although it did not factor into Plaintiff's assessment of Defendant's liability and damages. (Yadidsion
21 Decl. ¶43.) Given the difficulty in certifying this claim, Class Counsel had to apply a significant discount
22 to damages based on this theory. (Yadidsion Decl. ¶ 43.)

23 Based on the above detailed facts, Class Counsel estimated Defendant's potential exposure on
24 unpaid wages claims to be approximately \$246,961.00. (Yadidsion Decl. ¶ 44.)

25 **c. Failure to Pay Final Wages**

26 Plaintiff further alleged that, in failing to pay the California Class Members their minimum wages,
27 overtime wages, and premium pay for deficiently provided meal periods and rest breaks, all discussed
28 above, Defendant willfully failed to pay these the California Class Members all wages due and certain at

1 the time of termination or within seventy-two (72) hours of resignation, as required under *Labor Code* §
2 203. (Yadidsion Decl. ¶ 55.)

3 *Labor Code* § 203 provides that if an employer willfully fails to pay an employee all wages due at
4 termination or within 72 hours of resignation, then that employee's wages shall continue as a penalty until
5 paid for a period of up to thirty (30) days from the date they were due. Because Class Members stopped
6 working for Defendant but again were not paid their full compensation for the reasons discussed above,
7 Class Members did not receive all wages due upon termination of employment. (Yadidsion Decl. ¶ 56.)

8 Defendant argued that, under *Labor Code* § 203, employers are only obligated to pay waiting-time
9 penalties if they "willfully" fail to pay wages due and owing at the time of termination or resignation. As
10 Title 8, California Code of Regulations, § 13520 states:

11 A willful failure to pay wages within the meaning of Labor Code Section 203 occurs when
12 an employer intentionally fails to pay wages to an employee when those wages are due.
13 However, a good faith dispute that any wages are due will preclude imposition of waiting
time penalties under Section 203.

14 A "good faith dispute" that any wages are due occurs when an employer presents a
15 defense, based in law or fact, which, if successful, would preclude any recovery on the
16 part of the employee. The fact that a defense is ultimately unsuccessful will not preclude
a finding that a good faith dispute did exist. Defenses presented which, under all the
circumstances, are unsupported by any evidence, are unreasonable, or are presented in bad
faith, will preclude a finding of a "good faith dispute."

17 Defendant maintained that because they had viable defenses in both law and fact, especially in light of the
18 *Brinker* holding, that waiting-time penalties could not be awarded and, in any case, such penalties were
19 subject to a three-year limitations period under *Labor Code* § 203(b). Defendant also argued that there is
20 no liability under *Labor Code* § 203 for violations of meal and rest break claims alone. *Ling v. P.F.*
21 *Chang's China Bistro* (2016) 245 Cal.App.4th 1242; *Kirby v. Immoos Fire Protection, Inc.* (2016) 53
22 Cal.4th 1244. (Yadidsion Decl. ¶ 57.)

23 Class Counsel's expert estimated Defendant's maximum total potential exposure on the section
24 203 claim at approximately \$373,127.00. Class Counsel applied a substantial discount on the waiting time
25 penalties due to the fact that Plaintiff would need to show willfulness can be proved. Additionally, Class
26 Counsel estimates it would be difficult to recover waiting time penalties given that it derives from the
27
28

1 unpaid wage and meal break claims which are both subject to many individualized issues making
2 certification of this claim difficult to achieve. (Yadidsion Decl. ¶ 58.)

3 **d. Wage Statement Violations**

4 Plaintiff also contended that Defendant failed to provide Class Members with accurate, itemized
5 wage statements in writing as required by California *Labor Code* § 226(a) because the wage statements
6 failed to accurately account for unpaid wages and overtime due to unlawful underreporting of hours and
7 off the clock work. Moreover, Plaintiff contended the wage statements failed to accurately account for
8 premium pay for deficiently provided meal and rest breaks which Defendant knew or reasonably should
9 have known were owed to Plaintiff and Class Members. As a direct and proximate cause of Defendant's
10 violation of *Labor Code* § 226(a), the Class Members suffered injuries, including among other things
11 confusion over whether they received all wages owed them. Pursuant to *Labor Code* §§ 226(a) and 226(e),
12 employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay
13 period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay
14 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
15 award of costs and reasonable attorneys' fees. (Yadidsion Decl. ¶ 52.)

16 Defendant contended that Plaintiff's claim for further *Labor Code* § 226(e) penalties would depend
17 in large part on their underlying meal and rest period and wage claims, and thus be subject to the same
18 defenses. Additionally, Defendant argued this claim has little or no value. *See Maldonado v. Epsilon*
19 *Plastics, Inc.* (2018) 22 Cal. App. 5th 1308, 1336-1337 (wage statements that accurately report wages
20 paid to employees do not violate *Labor Code* § 226, even if it is later determined that employer did not
21 properly pay all wages due). Defendant further contended that meal break violations, even if established,
22 could not be the predicate for a *Labor Code* § 226 wage statement claims. *See, e.g. Culley v. Lincare Inc.*
23 (E.D. Cal. 2017) 236 F.Supp.3d 1184, 1195-96; *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th
24 385, 392-393 (noting wage statement need only document compensation actually received and the hours
25 used to calculate that compensation). Defendant further contended that *Labor Code* § 226(e) penalties are
26 not automatic. Rather, the employee must show (1) that he or she "suffered injury" from the employer's
27 failure to provide compliant wage statements, *see Elliot v. Spherion Pacific Work, LLC* (2008) 572
28 F.Supp.2d 1169, 1181 (applying California law) (holding employee was not entitled to penalties because

no injury was shown), and (2) defendants' noncompliance was "knowing and intentional." Finally, because the damages for this cause of action are penalties, the statute of limitations only runs from one year prior to the filing of the original complaint. *See* Cal. Civ. Pro. § 340. (Yadidsion Decl. ¶ 53.)

Class Counsel's expert estimated Defendant's maximum total potential exposure on the section 226 claim at approximately \$288,000.00 (\$50 for each employee's first pay period and \$100 for each subsequent pay period with a \$4,000 employee maximum). Class Counsel applied a substantial discount on the wage statement penalties due to the fact that Plaintiff would need to show that they suffered an injury and that Defendant's noncompliance was knowing and intentional. Additionally, Class Counsel estimates it would be difficult to recover wage statement penalties given that it derives from the unpaid wage and meal break claims which are both subject to many individualized issues making certification of this claim difficult to achieve. (Yadidsion Decl. ¶ 54.)

e. Risks of Litigation Which Necessitated Settlement Discounts

Below, Plaintiff details the issues necessitating deductions to be taken from the maximum potential value to arrive at the Gross Settlement Value:

To establish liability for paystub violations and waiting time penalties, Plaintiff would first have to establish liability for the underlying claims. Plaintiff would have to establish that Defendant's conduct was willful to recover waiting time penalties. (*Labor Code* § 203.) This clarification of the law in 2020 has significant consequences for Plaintiff's class damage claims in the instant case. Initially, the thirty days of available waiting time penalties may not be recoverable in this instance in light of the fact that an employer's good faith mistaken belief that no wages are owed may negate a finding of willfulness. A good faith dispute that *any* wages are due "will preclude imposition of waiting time penalties under Section 203," and an employer's good faith mistaken belief that wages are owed may negate a finding of willfulness. California Code of Regulations, title 8, section 13520; *Road Sprinkler Fitters Local 669 v. G & G Fire Sprinklers, Inc.* (2002) 102 Cal.App.4th 765, 782. Accordingly, on remand from the Supreme Court's decision in *Troester v. Starbucks Corp.*, the district court granted summary judgment for Starbucks on the waiting time penalty claim, finding that a good faith dispute existed based on Starbucks' defense to the unpaid wage claim in reliance on the *de minimis* doctrine that had not previously been addressed by the California courts. *See Troester v. Starbucks Corp.* (C.D. Cal. 2019) 387 F.Supp.3d 1019, 1030.

1 Defendant contends, and would argue at the time of trial, that Defendant's actions were not willful as
2 Defendant believed its actions to be lawful in that they alleged to genuinely believe all employees were
3 paid for the hours worked. This genuine dispute could lead Plaintiff to not recover any damages for these
4 penalties.

5 Plaintiff also alleges that *Labor Code* section 1194.2 entitles the class to double the amount of
6 unpaid minimum wages as liquidated damages. But that section provides that:

7 (b) Notwithstanding subdivision (a), if the employer demonstrates to the
8 satisfaction of the court or the Labor Commissioner that the act or omission
9 giving rise to the action was in good faith and that the employer had
10 reasonable grounds for believing that the act or omission was not a violation
11 of any provision of the Labor Code relating to minimum wage, or an order
of the commission, the court or the Labor Commissioner may, as a matter
of discretion, refuse to award liquidated damages or award any amount of
liquidated damages not exceeding the amount specified in subdivision (a).

12 The courts have held that pursuant to *Labor Code* section 1194.2, an employee who has not received the
13 minimum wage is entitled to recover the amounts unlawfully withheld plus additional amounts as penalties
14 and liquidated damages only where *culpable conduct* is shown. *Brewer v. Premier Golf Properties* (2009)
15 168 Cal.App.4th 1243, fn. 8, citing *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 325–326. As
16 with the waiting time penalty claim discussed above, any potential finding of willfulness in this instance
17 is strongly undercut by Defendant's belief that their employees were properly classified as exempt
18 employees.

19 Finally, Plaintiff has a claim under *Labor Code* section 226(e), which provides that an employee
20 suffering injury as the result of a knowing and intentional failure to comply with section 226 is subject to
21 a penalty of up to \$100 per pay period up to \$4,000 per employee. Similar defenses appear to exist in
22 response to that claim, however, because Defendant contends Plaintiff cannot establish that its alleged
23 violation was "knowing and intentional" as the statute requires. In *Arroyo v. International Paper Co.*
24 (N.D. Cal. 2020), ___ F.Supp.3d ___, 2020 WL 887771 at *10-12, the district court held that an
25 employer's good faith belief that it is in compliance with section 226 precludes liability for the statutory
26 penalty provided by section 226(e).

1 **f. PAGA Penalties and Risks Associated with the PAGA Penalties**

2 The *Labor Code* Private Attorneys General Act, *Labor Code* § 2699 et seq., allows Plaintiff to
3 obtain civil penalties on behalf of themselves and other Class Members for Defendant’s violation of any
4 provision of the *Labor Code* enumerated under *Labor Code* § 2699.5. Where civil penalties are provided
5 in the statute, those civil penalties are recoverable; where no civil penalties are recoverable, *Labor Code*
6 § 2699(f) establishes civil penalties of one hundred dollars (\$100) for each aggrieved employee per pay
7 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period
8 for each subsequent violation. Pursuant to *Labor Code* § 2699(i), seventy-five (75) percent of the penalties
9 recovered must be allocated to the Labor and Workforce Development Agency (LWDA), with the
10 remaining twenty-five (25) percent allocated to the affected employees. The limitations period as for all
11 penalties is one year prior to the filing of the complaint. (Yadidsion Decl. ¶ 59.)

12 The provisions of the *Labor Code* potentially triggering PAGA penalties in this case include but
13 are not limited to *Labor Code* §§ 203, 204, 226(a), 226.2, 226.7, 510, and 1194, Defendant asserted that
14 if PAGA penalties were mandatory, an employer’s PAGA liability would be huge because of the
15 possibility of collecting multiple civil penalties for a single violation, and thus such penalties would almost
16 always dwarf the damages available under the causes of action proper. However, PAGA penalties are not
17 mandatory but permissive. *Labor Code* § 2699(e)(2) states that “a court may award a lesser amount than
18 the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the
19 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
20 confiscatory.” See, e.g., *Lopez v. Friant & Assocs., LLC* (2017) 15 Cal. App. 5th 773, 788, rev. denied
21 (2018), (recognizing court’s ability to reduce PAGA penalties). Courts have held that situations similar to
22 the current one (e.g. injuryless violations, technical errors, and substantial compliance) should lead to
23 reductions in penalties. See *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112,
24 1134-1135 (2012) (holding that reduction was justified when employer “attempted to comply with the
25 law”); *Fleming v. Covdien, Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at *8-
26 9 (C.D. Cal. August 12, 2011) (reducing PAGA penalties more than 80% – from \$2.8 million to \$500,000
27 – when “employees suffered no injury” employers were “not aware” of the violation and “took prompt
28

steps to correct all violations once notified”). Defendant here maintained that it had a strong argument that it would be unjust to award maximum PAGA penalties. (Yadidsion Decl. ¶ 60.)

Furthermore, PAGA penalties are also derivative of each and every other claim, and Defendant therefore argued the PAGA claims would be subject to the same defenses to the underlying claims. Finally, under *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, it can be argued that penalties under PAGA could, at best, be awarded only at the rates obtainable for initial violations under the applicable statutes, because Defendant had never been notified of the alleged violations. *Id.* at 1208-1209. Moreover, Section 2699(e)(1) authorizes the Court to exercise the same discretion as the DLSE whether to award civil penalties. *Amaral* 163 Cal. App. 4th 1157, 1211-12. Therefore, if Labor Commissioner - on whose behalf Plaintiff are prosecuting this action for civil penalties - would not impose civil penalties in a case like this, the Court may not award civil penalties. Moreover, in *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1136, the Court of Appeal affirmed the trial court’s reduction of PAGA civil penalties by 30 percent, finding that awarding the full penalties would have been “unjust” because “...a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” (Yadidsion Decl. ¶ 61.)

Class Counsel estimated Defendant’s maximum total potential exposure on the PAGA claim at approximately \$1,031,800.00. Class Counsel applied discounts in light of the countervailing arguments with regard to the other causes of action, and moreover the Court’s power to award “a lesser amount than the maximum civil liability.” The parties also considered that the purpose of PAGA is to “achieve maximum compliance with state labor laws.” *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379. This makes the Settlement Agreement’s contemplated PAGA payment of \$50,000 appropriate. (Yadidsion Decl. ¶ 62.)

g. Trial and Manageability Issues

While Plaintiff was confident in the strength of his claims, as is always the case with a trial and certifying a class, Plaintiff needed to accept that there was a possibility that he would not prevail at certifying the Class and/or prevailing at trial.

Compromise is inherent and necessary in the settlement process. Thus, even if “the relief afforded

1 by the proposed settlement is substantially narrower than it would be if the suits were to be successfully
2 litigated,” this is no bar to a class settlement because “the public interest may indeed be served by a
3 voluntary settlement in which each side gives ground in the interest of avoiding litigation.” (*Id.* at p. 250
4 [quoting *Air Line Stewards, Loc. 550 v. American Airlines, Inc.*, (7th Cir.1972) 455 F.2d 101, 109].) The
5 Ninth Circuit observed “the very essence of a settlement is compromise, ‘a yielding of absolutes and an
6 abandoning of highest hopes.’” (*Officers for Justice v. Civil Serv. Commission* (9th Cir.1982) 688 F.2d
7 615, 624 (citation omitted).) Thus, when analyzing the amount offered in settlement, the Court should
8 examine “the complete package taken as a whole,” and the amount is “not to be judged against a
9 hypothetical or speculative measure of what might have been achieved by the negotiators.” (*Id.* at pp. 625,
10 628.)

11 Given the difficulties Plaintiff and the Class faces, in terms of adjudicating their claims on the
12 merits, the litigation discounts afforded by Plaintiff are reasonable and the settlement is fair, reasonable
13 and adequate.

14 In the present case, it is clear that the settlement before this Court is the best course of action as it
15 ensures fair, reasonable and adequate redress and recovery for the members of the class. Thus, it was
16 clearly reasonable for Plaintiff to negotiate a smaller certain award rather than seek the full recovery but
17 risk recovering nothing.

18 **C. The Settlement Agreement Has No Obvious Deficiencies**

19 This proposed Settlement Agreement has no obvious deficiencies. The Settlement Agreement
20 provides no preferential treatment for the Plaintiff or other settlement class members. The Plaintiff will
21 receive distributions from the settlement proceeds calculated in the same manner as the distributions to all
22 other Participating Class Members, plus any service payment award approved by the Court.

23 The proposed Settlement Agreement does not place Plaintiff’s interests ahead of the class as a
24 whole. Apart from a reasonable incentive payment for his efforts on behalf of the class, typical in class
25 action litigation (and subject to Court approval after notice to the Settlement Class), Plaintiff’s personal
26 recovery in this action and settlement will be the same as those with whom he shares a common set of
27 facts among the Settlement Class. Plaintiff has not in any way tried to leverage a class action for personal
28 agenda or gain.

1 Plaintiff contends that the proposed Settlement Agreement also does not place the attorneys'
2 interests ahead of class members' interests. Further, the Settlement Agreement provides only for a
3 maximum permissible amount of the request for any award of attorneys' fees and litigation expenses. Any
4 award of fees and expenses remains to be determined by the Court at the time of the fairness hearing and
5 must necessarily be found to be fair and reasonable to the Settlement Class based on applicable law.

6 Again, each Settlement Class Member has the right to object and be heard regarding the amount
7 of fees and expenses requested. Any amounts not awarded by the Court as fees and expenses will remain
8 in the net settlement fund to be distributed to the class. Counsel will file a separate motion for approval of
9 the fee award sought herein, at the time of and in conjunction with the filing of the motion for final
10 approval, should preliminary approval be granted, and a final approval hearing scheduled by the Court.

11 **VII. THE CLASS REPRESENTATIVE ENHANCEMENT IS FAIR AND REASONABLE**

12 It is appropriate to provide a relatively modest additional incentive payment to the class
13 representative. See *Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp.
14 294.

15 Plaintiff is entitled to reasonable service payments for his efforts and initiative in bringing and
16 helping to prosecute this class action. Plaintiff spent significant time better apprising himself of his rights,
17 deciding whether remedial action should be taken, how it should be taken, searching for attorneys, and
18 contacting Class Counsel, who spent many hours with Plaintiff discussing his case and the law. (Yadidsion
19 Decl., ¶¶ 78-82) In the end, Plaintiff decided to vindicate not only his own rights but also those of his co-
20 workers by filing a class action lawsuit.

21 The courage it took to do this should not be underestimated. By suing Defendant, Plaintiff contends
22 he increased his risk of retaliation by prospective employers. (Jimenez Decl. ¶¶12-14.) Plaintiff's lawsuit
23 has now cost Defendant considerable resources, and Plaintiff contends such conduct will not be lost on a
24 prospective employer who has to choose between an applicant who has never sued a prior employer and
25 one who has. (*Id.*) Plaintiff contends this risk is particularly real in the information age, where employers
26 can, more easily than ever, perform background checks of prospective employees, sometimes with the
27 stroke of a key. (*Id.*)

1 But Plaintiff did not allow his fear of the potential repercussions of being a class representative
2 deter him from acting for the benefit of Class Members. (*Id.*) To the contrary, Plaintiff has been intimately
3 involved in this case since its inception. (Jimenez ¶8.) He have devoted a substantial amount of time to
4 helping Class Counsel effectively develop and prosecute this action at every stage of the litigation. (*Id.*)
5 Both before and after the filing of this lawsuit, Plaintiff conferred with Class Counsel to discuss every
6 aspect of this case; Plaintiff has provided Class Counsel with information about Defendant and about the
7 industry generally, reviewed documents, identified witnesses, consulted Class Counsel throughout the
8 litigation, participated in the mediation process, monitored the progress of the litigation with Class
9 Counsel, and reviewed and signed the settlement agreement. (Jimenez Decl.)

10 Plaintiff has spent a significant amount of time with Class Counsel detailing his knowledge of
11 Defendant's practices. (Jimenez Decl.) He has diligently, adequately, and fairly represented Class
12 Members, and has not placed his interests above any member of the putative class. (*Id.*) This sort of
13 payment to a class representative has been a common feature of settlements negotiated by Class Counsel
14 and has been routinely approved by trial courts. (Yadidsion Decl. ¶81.)

15 In light of the foregoing, Class Counsel believes that the incentive award in the amount of
16 \$7,500.00 to the Class Representative is fair and reasonable. (*Yadidsion Decl.* ¶82.)

17 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS** 18 **MEMBERS**

19 Constitutional due process requires that class members be provided with notice sufficient to give
20 them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank & Trust Co.* (1950)
21 339 U.S. 306. Proper notice must provide the class members with sufficient information to make an
22 informed decision as to whether to accept or object to the settlement. (*Id.* at 314.) The notice must apprise
23 the class members of the pendency of the action; reasonably convey information regarding the settlement
24 and the class members' rights, entitlements, and obligations; and afford class members the opportunity to
25 present their objections. (*Id.*)

26 The Notice Packet meets constitutional standards because it provides all the information a
27 reasonable person would need to make a fully informed decision about the settlement. It will notify all
28 class members of the terms of the settlement, of its effect on their rights, of their options as class members

(i.e., participate, object, opt out, do nothing), and of the consequences of exercising those options. (Yadidsion Decl., ¶¶ 71-73) Moreover, the Notice Packet will specifically direct any class members who have questions or concerns to contact the Settlement Administrator, ILYM Group, Inc., or Class Counsel. (*Id.*)

The standard for determining the adequacy of notice is whether the notice has “a reasonable chance of reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.) The Judicial Council of California’s Deskbook on the Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual notice by mail is preferred when possible and dissemination of combined certification/settlement notice is a common and accepted practice. (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820, 828.)

Here, the Notice Packet will be sent via first-class mail to each class member. (Yadidsion Decl., ¶ 71.) If any Notice Packets are returned undeliverable without a forwarding address, the Settlement Administrator will use the national change of address database and perform a skip trace to locate the class member and mail a new Notice Packet to him or her at the correct address. (*Id.*) Thus, most, if not all, class members will likely receive the Notice Packet.

Pursuant to controlling authority, the proposed Notice Packet and method of distribution fully comport with due process requirements. Therefore, the Court should approve the Notice Packet and direct that it be distributed as proposed herein.

IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT

Non-settling parties and third parties periodically may attempt to object to proposed class action settlements, but the right of non-settling parties to object at the final settlement approval hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class members have standing to object to a proposed settlement. “Beginning from the unassailable premise that settlements are to be encouraged, it follows that to routinely allow non-class members to inject their concerns via objection at the settlement stage would tend to frustrate this goal.” (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.) Since an application is being filed to obtain a good faith determination, no persons other than class members have standing to object to the proposed settlement. (*In re School Asbestos Litigation* (3rd Cir. 1990) 921 F.2d 1330.)

X. THE STIPULATED AWARD OF ATTORNEYS' FEES AND COSTS IS REASONABLE AND SHOULD BE APPROVED.

Under the Settlement Agreement, subject to approval by this Court, Class Counsel will seek an award of fees of no more than Two Hundred Seventy-One Thousand Two Hundred Fifty Dollars and Zero Cents (\$271,250.00), thirty-five percent of the Gross Settlement Amount, and not more than Sixteen Thousand Dollars and Zero Cents (\$16,000.00) in costs. The requested fees are fair compensation for a law firm involved in undertaking complex, risky, expensive, and time-consuming litigation solely on a contingent basis. (Yadidsion Decl. ¶¶ 75-77) Defendant will not oppose Class Counsel's fees and cost request.

California courts routinely look to the federal courts on class action approvals. The Ninth Circuit has recognized that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of the common fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Id.*) Accordingly, courts have discretion to choose either the percentage-of-the-fund method or the lodestar method. (*In re Wash. Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-96.)

Several courts have, however, expressed frustration with the "lodestar" approach for deciding fee awards, which usually involves wading through voluminous time records. Thus, the percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*In re Activision Securities Litigation*, (N.D. Cal. 1989) 723 F.Supp. 1373, 1378-79.) The Ninth Circuit has used the percentage of the common fund approach to determine the award of attorneys' fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79 (approving attorneys' fee of 33 1/3% of settlement fund).)

Class Counsel's application for attorneys' fees in light of the facts and circumstances surrounding this case is well within the range of reasonableness. Historically, courts have awarded percentage fees in

the range of 20% to 50% of the common fund, depending on the circumstances of the case. (*Newberg*, at §14.03; *see also In re Activision Securities Litigation*, 723 F. Supp. at 1378.) *Newberg* further notes: “[A]chievement of a substantial recovery with modest hours expended should not be penalized but should be rewarded for considerations of time saved by superior services performed.” (*Id.* at §§ 14-10:14-11.)

The attorneys’ fees request provided for in the Settlement Agreement is commensurate with judicial precedent. Both state and federal courts regularly approve fee awards equal to or greater than the percentage requested in this case. (*See, e.g., In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common fund); *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (awarding plaintiff’ counsel 32.8% of the common fund created to settle the litigation); *In re Ampicillin Antitrust Litigation* (D. D.C. 1981) 526 F.Supp. 494 (awarding 45% of \$7.3 million settlement fund); *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to counsel of one-third (1/3) of recovery achieved).)

In wage and hour class actions in particular, California trial courts have customarily approved attorney’s fees consistent with or greater than the percentage of the common fund requested in this case. (*See Evans v. Coca-Cola*, Los Angeles County Super. Ct. Case No. BC 220525 (Hon. Richard C. Hubbell) (Dec. 2001) (approving an award of attorneys’ fees of at least 33-1/3% of the settlement); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super. Ct. Case No. BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los Angeles County Super.Ct. Case No.BC 278170 (April 2004) (Hon. David M. Minning); *Josiah Eaton v. Adolph Coors Company* (2003) Orange County Super. Ct. Case No. 01CC00140 (Hon. Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County Super.Ct. Case No.BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper Restaurants*, Orange County Super.Ct. Case No.02CC10201 (2006) (Hon. Ronald L. Bauer).)

Here, Class Counsel has borne the entire risk and costs of litigation and will not receive any compensation until recovery is obtained. (*See Yadidsion Decl.*, ¶¶ 75-77) The Court should also consider the benefit obtained by Class Counsel on behalf of class members. Thus, the requested award for Class Counsel is reasonable.

XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY APPROVAL

The parties respectfully request this Court, as part of the preliminary approval process, to grant the following relief and make the following orders:

1. Review and approve the Settlement Agreement;
2. Review and approve the Notice Packet, attached to the Settlement Agreement as Exhibit A;
3. Consider and determine that the proposed class action settlement as set forth in the Settlement Agreement preliminarily appears fair, reasonable, and adequate;
4. Enter an order conditionally certifying the action as a class action for settlement purposes only and preliminarily approving the proposed class action settlement and the Settlement Agreement;
5. Approve and appoint Danny Yadidsion of Labor Law P.C. to serve as Class Counsel for settlement purposes;
6. Approve and appoint ILYM Group, Inc. as the Settlement Administrator to handle the notice and claims procedures as set forth in the Settlement Agreement;
7. Approve the proposed settlement's allocation of funds to claims made under PAGA;
8. Order Defendant to disclose to ILYM Group, Inc. the names, last-known addresses, telephone numbers, dates of employment, and social security numbers of class members as set forth in the Settlement Agreement;
9. Order that ILYM Group, Inc. mail the Notice Packet to class members; and
10. Set a date for the Final Approval Hearing.

DATED: September 30, 2022

Respectfully Submitted,
LABOR LAW PC

By: /s/ Patrick Martinez

Danny Yadidsion, Esq.
Patrick D. Martinez, Esq.
Attorneys for Plaintiff WALTER R. JIMENEZ,
individually, and on behalf of the putative class