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

MONICA MONTALBO, individually, and
on behalf of other members of the general
public similarly situated;

Plaintiff,

vs.

HM.CLAUSE, INC. DBA HARRIS
MORAN SEED COMPANY, a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

MONICA MONTALBO, individually, and
on behalf of other aggrieved employees
pursuant to the California Private Attorneys
General Act;

Plaintiff,

vs.

HM.CLAUSE, INC., DBA HARRIS
MORAN SEED COMPANY, a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. CV-20-004516 [Lead]
[Consolidated with Case No. CV-20-
005703]

ASSIGNED FOR ALL PURPOSES TO:
JUDGE: SONNY S. SANDHU
DEPT.: 24

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Edwin Aiwazian); Declaration of
Proposed Class Representative (Monica
Montalbo); and [Proposed] Order filed
concurrently herewith]

Date: October 14, 2021
Time: 8:30 a.m.
Department: 24

Complaint Filed: October 13, 2020
Trial Date: None Set

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

PLEASE TAKE NOTICE that on October 14, 2021 at 8:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Sonny S. Sandhu in Department 24 of the Superior Court of California for the County of Stanislaus, located at 800 11th Street, Modesto, California 95354, Plaintiff Monica Montalbo (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Settlement Agreement and Stipulation to Resolve Class Action and PAGA Claims (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwarzian, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Costs to Class Counsel, Enhancement Award to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Monica Montalbo as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving ILYM Group, Inc. as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests

1 for the Attorneys' Fees and Costs to Class Counsel, Enhancement Award for Plaintiff,
2 and Settlement Administration Costs to Settlement Administrator.

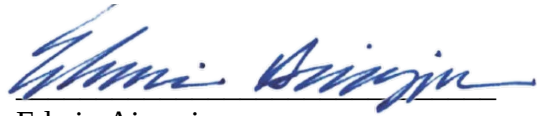
3 This motion is made pursuant to Rule 3.769 of the California Rules of Court, which
4 provides for approval by the Court of the settlement of a putative class action and allows the
5 Court to preliminarily certify a class for settlement purposes.

6 This motion is based upon the following memorandum of points and authorities, the
7 Settlement Agreement, the Declarations of Proposed Class Counsel (Edwin Aiwazian) and
8 Proposed Class Representative (Monica Montalbo) in support thereof, the pleadings and other
9 records on file with the Court in this matter, and such evidence and oral argument as may be
10 presented at the hearing on this motion.

11 Dated: September 21, 2021

LAWYERS for JUSTICE, PC

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13 By:



14 Edwin Aiwazian
15 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Monica Montalbo (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Settlement Agreement and Stipulation to Resolve Class Action and PAGA Claims (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant HM.Clause, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of nine hundred fifty thousand dollars and no cents (\$950,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Participating Class Members which will be distributed from the Net Settlement Amount²; (2) the Enhancement Award of seven thousand five hundred dollars and no cents (\$7,500.00) to Plaintiff.³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or \$332,500.00, and reimbursement of litigation costs and expenses not to exceed thirty thousand dollars and no cents (\$30,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed twelve thousand dollars and no cents (\$12,000.00);⁵ and (5) the amount of one hundred thousand dollars and no cents (\$100,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$75,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$25,000.00) will be distributed to Aggrieved Employees on a *pro rata* basis.⁶

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¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwazian (“Aiwazian Decl.”), § 16.

² *Id.*, § 17.

³ *Id.*, § 13.

⁴ *Id.*, § 4.

⁵ *Id.*, §§ 31 & 48.b.

⁶ *Id.*, § 22.

Plaintiff also seeks to provisionally certify the following Class for settlement purposes, which Defendant does not oppose:

All current and former employees who worked in a non-exempt or hourly-paid position for HM.Clause, Inc. within the State of California during the Class Period (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately three hundred and four (304) individuals.⁸

Class Members who do not submit a timely and valid request to be excluded from the Settlement (“Participating Class Members”) will receive a share of the Net Settlement Amount (“Individual Settlement Payment”) on a *pro rata* basis based upon the number of weeks a Participating Class Member was employed during the Class Period (“Workweeks”).⁹ All current and former employees who worked in a non-exempt or hourly-paid position for HM.Clause, Inc. within the State of California during the PAGA Period (“Aggrieved Employees”) will receive a share of the PAGA Payment minus the LWDA Payment (“Individual PAGA Payment”) on a *pro rata* basis based upon the number of weeks an Aggrieved Employee was employed during the PAGA Period (“PAGA Workweeks”).¹⁰

The Settlement resolves the Class Released Claims of Plaintiff and Participating Class Members, and PAGA Released Claims of Aggrieved Employees, against the Released Parties.¹¹

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant HM.Clause researches, breeds, and wholesales seeds for products including beans, broccoli, cabbage, cauliflower, corn, lettuce, melons, peppers, pumpkins, squash, and tomatoes. Plaintiff Monica Montalbo is a former employee of Defendant.

On October 13, 2020, Plaintiff filed her putative class action entitled *Monica Montalbo v. HM.Clause, Inc. dba Harris Moran Seed Company*, against Defendant in the Superior Court of California for the County of Stanislaus, Case No. CV-20-004516 (“Montalbo Class Action”),

⁷ Settlement Agreement, § 6. “Class Period” is defined as the period of time from October 13, 2016 to the date of the order approving Plaintiff’s Motion for Preliminary Approval of Class Action Settlement. *See id.*, § 7.

⁸ *Id.*, § 47.

⁹ *Id.*, §§ 17, 33 & 48.e.

¹⁰ *Id.*, §§ 3, 22, 25, 48.d & 48.e. “PAGA Period” is defined as the period of time from October 13, 2019 to the date of the order approving Plaintiff’s Motion for Preliminary Approval of Class Action Settlement. *See id.*, § 23.

¹¹ *See id.* at § 21 & 30, for the full scope of the “PAGA Released Claims” and “Class Released Claims”, respectively, and *id.* at § 29 for the definition of the “Released Parties.”

alleging violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174, 1194, 1197.1, and 2802 and California Business & Professions Code § 17200, et seq. on behalf of other current and former employees who worked for Defendant in California as non-exempt or hourly-paid employees.

On December 14, 2020, Defendant filed an Answer denying all allegations alleged in the Montalbo Class Action Complaint for Damages filed on October 13, 2020 (“Class Complaint”).

On December 16, 2020, Plaintiff filed her representative action entitled *Monica Montalbo v. HM.Clause, Inc. dba Harris Moran Seed Company*, against Defendant in the Superior Court of California for the County of Stanislaus, Case No. CV-20-005703 (“Montalbo PAGA Action”) alleging Defendant violated the California Labor Code and therefore owes civil penalties under the Private Attorneys General Act, California Labor Code § 2698, et seq. (“PAGA”) on behalf of aggrieved hourly-paid or non-exempt employees who worked for Defendant in the State of California;

On June 1, 2021, Defendant filed an Answer denying all allegations alleged in the Complaint for Enforcement Under The Private Attorneys General Act, California Labor Code § 2698, et seq. filed on December 16, 2020 (“PAGA Complaint”).

Plaintiff’s core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, et seq. and conduct that gives rise to penalties pursuant to PAGA. Plaintiff contends that she, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys’ fees.

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Defendant has denied, and continues to deny, any liability and wrongdoing of any kind associated with any of the allegations in both the Montalbo Class Action and in the Montalbo PAGA Action, and further denies that the actions are appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

On June 11, 2021, Defendant filed a Notice of Related Case in both the Montalbo Class Action and in the Montalbo PAGA Action. The Montalbo Class Action was pending in Department 24 of the above-captioned Court before Honorable Judge Sonny S. Sandhu, and the Montalbo PAGA Action was pending in Department 21 of the above-captioned Court before Honorable John R. Mayne.

The Parties have actively litigated the Montalbo Class Action since it was commenced on October 13, 2020, and the Montalbo PAGA Action since it was commenced on December 16, 2020.

On June 10, 2021, the Parties participated in a formal, full day mediation conducted by Lynn S. Frank, Esq. (the “Mediator”), a respected mediator of complex wage and hour actions, and with the assistance of the Mediator’s evaluations, the Parties ultimately reached the Settlement described herein to resolve the Montalbo Class Action as well as the Montalbo PAGA Action in their entirety.

The Parties sought to consolidate the Montalbo Class Action and the Montalbo PAGA Action to effectuate and facilitate the settlement approval process, and to conserve the Court’s and Parties’ resources during the settlement approval process. On July 8, 2021, an order was entered by this Court, ordering that the Montalbo Class Action and the Montalbo PAGA Action be consolidated for purposes of settlement approval procedures and designating the Montalbo Class Action as the lead case.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to resolve the Class Released Claims of Plaintiff and Class Members who do not submit a timely and valid Opt-Out Request to be excluded from the Settlement (i.e., Participating Class Members), and the PAGA Released Claims of Aggrieved Employees, with respect to the

Released Parties.¹² Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount, which equals three hundred thirty two thousand five hundred dollars and no cents (\$332,500.00) and reimbursement of costs and expenses in an amount not to exceed thirty thousand dollars and no cents (\$30,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are not to exceed twelve thousand dollars and no cents (\$12,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) payment to the California Labor and Workforce Development Agency of its 75% share of the allocation for penalties under the Private Attorneys General Act ("PAGA Payment") in the amount of one hundred thousand dollars and no cents (\$100,000) (i.e., \$75,000 out of \$100,000.00) ("LWDA Payment"); (4) payment to the Aggrieved Employees of their 25% share of the PAGA Payment (i.e., \$25,000 out of \$100,000.00); and (5) payment in the amount of up to seven thousand five hundred dollars and no cents (\$7,500.00) to Plaintiff Monica Montalbo ("Enhancement Award").¹³ The Parties have agreed to retain ILYM Group, Inc. ("ILYM" or "Settlement Administrator") to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Participating Class Member's *pro rata* portion of the available Net Settlement Amount ("Individual Settlement Payments"), in accordance with the Settlement Agreement and as follows:

- a. Individual Settlement Payments will be calculated from the Net Settlement Amount based on the respective number of Workweeks, rounded up.¹⁴
- b. The Settlement Administrator will calculate each Participating Class Member's share of the Net Settlement Amount by dividing the Participating Class Member's Workweeks by the total number of Workweeks for all Class Members and multiplying this figure by the Net Settlement Amount.¹⁵

¹² See Settlement Agreement, §§ 21 & 30, for the full scope of the "PAGA Released Claims" and "Class Released Claims", respectively, and *id.* at § 29 for the definition of the "Released Parties."

¹³ Settlement Agreement, §§ 20 & 46.

¹⁴ *Id.*, § 48.e.

¹⁵ *Ibid.*

The Parties have also agreed that the Settlement Administrator will determine each Aggrieved Employee's *pro rata* portion of 25% of the PAGA Payment ("Individual PAGA Payments"), in accordance with the Settlement Agreement and as follows:

- a. Individual PAGA Payments will be calculated from 25% of the PAGA Payment based on the respective number of PAGA Workweeks, rounded up.¹⁶
- b. The Settlement Administrator will calculate each Aggrieved Employee's share of 25% of the PAGA Payment by dividing the Aggrieved Employee's PAGA Workweeks by the total number of PAGA Workweeks for all Aggrieved Employees and multiplying this figure by 25% of the PAGA Payment.¹⁷

Each Participating Class Member's Individual Settlement Payment will be allocated as follows: ten percent (10%) as wages, which will be reported on an IRS Form W-2; forty-five percent (45%) as non-wage damages, which will be reported on an IRS Form 1099, if applicable; and forty-five percent (45%) as statutory penalties, which will be reported on an IRS Form 1099, if applicable.¹⁸ The PAGA Payments will be considered penalties and will be reported on an IRS Form 1099.¹⁹ The Individual PAGA Payment will be considered 100% civil penalties, and will be reported as such to each Aggrieved Employees on an IRS Form 1099, if applicable.²⁰ All settlement payments paid to Participating Class Members, Aggrieved Employees, and the Plaintiff, will be paid in a net amount after the employee and employer's share of applicable state and federal payroll taxes, withholdings, and contributions, have been deducted.²¹

The Individual Settlement Payment and Individual PAGA Payment checks issued to Participating Class Members and Aggrieved Employees will become void and no longer available if not cashed within one hundred eighty (180) calendar days after mailing.²² If an Individual Settlement Payment and/or Individual PAGA Payment check is not cashed by the expiration of the 180-day period, the funds from voided checks will be transferred to Legal Aid at Work (formerly known as Legal Aid Society Employment Law Center) for use in its Workers' Rights Clinic.²³

¹⁶ Settlement Agreement, § 48.f.

¹⁷ *Ibid.*

¹⁸ *Id.*, § 50.a.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Id.*, § 50.

²² *Id.*, § 55.c.

²³ *Ibid.*

Class Members who wish to exclude themselves from the Settlement must submit a valid and timely opt-out request to the Settlement Administrator (“Opt-Out Request”).²⁴ To be timely, an Opt-Out Request must be postmarked no later than sixty (60) calendar days after the Settlement Administrator first mails the Class Notice (“Notice Period”), in the case of a re-mailed Class Notice, the Notice Period will be extended fifteen (15) calendar days.²⁵ An Opt-Out Request must: (i) contain the Class Member’s full name (including his/her full name at the time of employment for Defendant), current address, last four digits of Social Security Number, and signature; (ii) the name and case number of the Class Action; (iii) a written request clearly expressing the Class Member’s desire to be excluded from (or opt out of) the Class Settlement; and (iv) be returned so that it is postmarked on or before the expiration of the Notice Period.²⁶ A Class Member who submits a valid and timely Opt-Out Request will not participate in or be bound by the Settlement and Final Approval Order and Judgment.²⁷ If any Class Member who is also an Aggrieved Employee submits an Opt-Out Request and opts out of the Settlement, he or she shall still receive their Individual PAGA Payment and will still release the PAGA Released Claims.²⁸

Only Class Members who do not submit an Opt-Out Request (i.e., Participating Class Member) have standing to object to the Settlement.²⁹ Participating Class Members who wish to object to the Settlement must mail to the Settlement Administrator, postmarked by the close of the Notice Period, written objections to the Settlement (“Objections”).³⁰ To be valid, an Objection must be timely and must contain at least the following: (i) the objecting Class Member’s full name (including his/her full name at the time of employment for Defendant), current address, and signature; (ii) the name and case number of the Class Action; (iii) a statement of the specific reasons why the objector believes the Class Settlement is unfair or objects to the Class Settlement, and (iv) signature of the objecting Class Member or the Class

²⁴ Settlement Agreement, § 53.

²⁵ *Id.*, §§ 19 & 51.d.

²⁶ *Id.*, § 53.

²⁷ *Id.*, § 27.

²⁸ *Id.*, § 48.d.

²⁹ *Id.*, § 54.

³⁰ *Ibid.*

Member's legally authorized representative.³¹ Class Members who have not objected in writing may still appear and be heard at the Final Approval Hearing.³²

Class Members who wish to dispute the number of Workweeks and/or PAGA Workweeks the Class Notice allocates to them must submit a written dispute sent via U.S. mail to the Settlement Administrator postmarked no later than the expiration of the Notice Period ("Workweek Dispute").³³ To be valid, a Workweek Dispute must contain the following: (i) the Class Member's full name (including his/her full name at the time of employment for Defendant), current address, telephone number, last four digits of Social Security number, and signature; (ii) the name and case number of the Class Action; (iii) the number of Workweeks and/or PAGA Workweeks the Class Member maintains is correct; and (iv) documents to demonstrate that Defendant's calculation of the Workweeks and/or PAGA Workweeks for the Class Member is incorrect.³⁴

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

³¹ Settlement Agreement, § 54.a.

³² *Id.*, § 54.

³³ *Id.*, § 52.

³⁴ *Ibid.*

Courts review class action settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later detailed review after the period during which notice is distributed to class members for their comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th Ed. 2002). This procedure, which is commonly utilized by both federal and state courts, assures class members of the protection of procedural due process safeguards and enables a court to fulfill its role as the guardian of the interest of the settlement class.

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

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

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make this fairness determination, courts must consider several relevant factors, including “the strength of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the

proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d at 1027 (citation omitted).

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

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

The Parties have actively litigated the Montalbo Class Action since it was commenced on October 13, 2020, and the Montalbo PAGA Action since it was commenced on December 16, 2020. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.³⁵

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of thousands of pages of documents and data produced by Defendant.³⁶ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff’s employment records, a detailed sampling of Class Members’ time and pay data, Defendant’s Employee Handbook, Defendant’s operations and employment practices, forms such as Meal Break Waivers, procedures (including, but not

³⁵ Aiwazian Decl., ¶¶ 11-13.

³⁶ *Id.*, ¶ 12.

limited to, Meal Break Violations & Penalties for Non-Exempt Employees), and policies (including, but not limited to, Time Keeping Policy and Meal Period and Rest Break policy), among other information and documents.³⁷ Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.³⁸ Class Counsel propounded multiple sets of formal written discovery requests on Defendant and noticed the depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure, job duties, and affirmative defenses.³⁹ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.⁴⁰ Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.⁴¹

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Lynn S. Frank, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.⁴² Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴³ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴⁴ Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and Defendant's counsel felt strongly about their ability to prevail on the merits and

³⁷ Aiwazian Decl., ¶ 12.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Id.*, ¶ 11.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴⁵ After conducting investigations, significant formal and informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴⁶

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.⁴⁷ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴⁸ Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Class Members' employment with Defendant and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.⁴⁹ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁵⁰

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

The Settlement, which provides for a Gross Settlement Amount of nine hundred fifty thousand dollars and no cents (\$950,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁵¹ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of information.⁵² The Settlement takes into account the potential risks and rewards inherent in any

⁴⁵ Aiwazian Decl., ¶¶ 11, 16-18.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Id.*, ¶¶ 6-7

⁵¹ *Id.*, ¶¶ 11, 13, 14 & 21.

⁵² *Id.*, ¶¶ 11-13.

case and, in particular, in the case at issue.⁵³ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵⁴

Assuming that the Attorneys' Fees and Costs, Enhancement Award, Settlement Administration Costs, and PAGA Payment are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be four hundred sixty-eight thousand dollars and no cents (\$468,000.00).⁵⁵ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class Members, in accordance with the Settlement Agreement. The amount of each Participating Class Member's Individual Settlement Payment will be calculated based on his or her Workweeks and the amount of each Aggrieved Employee's Individual PAGA Payment will be calculated based on his or her PAGA Workweeks.⁵⁶ There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁵⁷ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

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⁵³ Aiwasian Decl., ¶¶ 16-18.

⁵⁴ *Id.*, ¶¶ 11, 13, & 21.

⁵⁵ *Id.*, ¶ 14.

⁵⁶ Settlement Agreement, § 48.e.

⁵⁷ Aiwasian Decl., ¶¶ 11, 13, & 21.

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

2 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
3 conducted significant formal and informal discovery and exchanged thousands of pages of
4 documents, data, and information prior to mediation.⁵⁸ The discovery and information that Class
5 Counsel obtained from Defendant and through other sources allowed Class Counsel to develop
6 valuation models in order to evaluate the potential value and merit of the claims, and perform a
7 complete evaluation of Defendant’s defenses thereto.⁵⁹ As outlined in the Declaration of Edwin
8 Aiwazian, Class Counsel performed an extensive analysis of each and every claim pursuant to
9 *Kullar* prior to entering into the Settlement.⁶⁰

10 **VI. CERTIFICATION OF THE CLASS IS APPROPRIATE.**

11 For settlement purposes, the requisites for establishing class certification are met, and
12 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁶¹
13 California Code of Civil Procedure Section 382 “authorizes class actions when the question is
14 one of a common or general interest, of many persons, or when the Parties are numerous, and it
15 is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*
16 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies
17 “both [1] an ascertainable class and [2] a well-defined community of interest among class
18 members.” *Id.*

19 The Class is ascertainable and numerous as to make it impracticable to join all Class
20 Members, and there are common questions of law and fact that predominate over any questions
21 affecting any individual Class Member. Further, Plaintiff’s claims are typical of the claims of
22 the Class Members, and Class Counsel will fairly and adequately protect the interests of the
23 Class. Finally, prosecution of separate actions by individual Class Members would create the
24 risk of inconsistent or varying adjudications, and a class action is superior to other available
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27 ⁵⁸ Aiwazian Decl., ¶¶ 11-13 & 18.

28 ⁵⁹ *Id.*, ¶ 18.

⁶⁰ *Id.*, ¶¶ 11-13 & 16-18.

⁶¹ Settlement Agreement, § I.

means for the fair and efficient adjudication of the case. The Class is amenable to class certification for settlement purposes as discussed below.

A. The Class Is Ascertainable and Sufficiently Numerous.

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

This action involves a class of approximately three hundred and for (304) individuals.⁶² This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant’s employment records regarding non-exempt retail employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

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

⁶² Aiwazian Decl., ¶ 9.

1 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
2 of recovery’ is likely to prove compatible with class treatment.” *Capitol People, supra*, 155
3 Cal.App.4th at 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at 327). Furthermore,
4 the commonality inquiry centers on the “reasonableness” of the defendant’s labor policies as
5 applied to the potential class. *Ghazaryan, supra*, 169 Cal.App.4th at 1534.

6 Here, Plaintiff contends that common issues of fact and law predominate as to each of
7 the claims alleged and asserted in the Class Complaint as well as the PAGA Complaint. Based
8 on the documents and information obtained through formal and informal discovery and
9 exchange of information in this case, Plaintiff contends, and Defendant disputes, that Class
10 Members were subject to the same or similar job duties and uniform operations and employment
11 practices, policies, and procedures during the time period at issue.⁶³ Plaintiff contends that her
12 claims arise from Defendant’s systematic scheme, with respect to Plaintiff and the Class
13 Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours
14 worked, failing to provide compliant meal and rest periods and associated premium pay, failing
15 to timely pay wages during employment and upon termination of employment, failing to provide
16 complaint wage statements, failing to keep requisite payroll records, and failing to reimburse
17 necessary business-related expenses.⁶⁴

18 Plaintiff also contends that Defendant’s payroll and recordkeeping practices with respect
19 to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶⁵
20 As a result, Plaintiff claims that all of the Class Members were uniformly not paid all
21 compensation due to them from Defendant during the time period at issue.⁶⁶

22 Plaintiff maintains that the outcome of this litigation would be determined by
23 Defendant’s alleged employment policies and procedures that applied across its non-exempt and
24 hour-paid employees who worked in California during the Class Period. Accordingly, the Court
25 should certify the Class for settlement purposes only.

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27 ⁶³ Aiwazian Decl., ¶ 16.

28 ⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

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

Class Counsel has diligently litigated the matter and was actively preparing the matter for class certification and trial.⁶⁷ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendant. Class Counsel also noticed the depositions of Defendant's Person Most Knowledgeable designees. Class Counsel reviewed thousands of pages of documents and data⁶⁸ and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁶⁹ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁷⁰

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁷¹

The Settlement establishes a Gross Settlement Amount of nine hundred fifty thousand dollars and no cents (\$950,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$332,500.00) and an amount not to exceed thirty thousand dollars and no cents (\$30,000.00) for costs and expenses.⁷² The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the

⁶⁷ Aiwazian Decl., ¶¶ 11-13.

⁶⁸ *Id.*, ¶ 12.

⁶⁹ *Ibid.*

⁷⁰ *Id.*, ¶ 11.

⁷¹ *Id.*, ¶¶ 6-7.

⁷² Settlement Agreement, §§ 4 & 48.a.

1 results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement
2 that Class Counsel has achieved for the Class Members, and (6) the other cases that Class
3 Counsel had to turn down in order to devote its time and efforts to this matter. The proposed
4 Class Notice provides Class Members with information about the amount allocated toward the
5 Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought,
6 as provided for by the Settlement.⁷³

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

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

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28

⁷³ Settlement Agreement, Exh. A.

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; see also *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45% of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷⁴

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

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE.

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

The proposed Class Notice⁷⁵ describes the Settlement, the deadlines and procedures to mail an Objection, Opt-Out Request, and/or Workweek Dispute, and the date and time set for

⁷⁴ Aiwazian Decl., ¶ 19.

⁷⁵ Settlement Agreement, Exh. A.

the Final Approval Hearing.⁷⁶

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class members to make an informed decision about their participation.” *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷⁷ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁸ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Payment and their Individual PAGA Payment is calculated and the number of Workweeks and PAGA Workweeks credited to them.⁷⁹

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

**IX. APPOINTMENT OF ILYMM GROUP, INC. AS THE SETTLEMENT
ADMINISTRATOR**

The Parties have selected ILYM Group, Inc. to administer the Settlement.

Using best efforts to mail it as soon as possible, and in no event later than fifteen (15) calendar days after receiving the Class List, the Settlement Administrator will mail the Class Notice, in English and in Spanish, to all Class Members via First-Class U.S. mail.⁸⁰ If a Class Notice is returned as undeliverable with no forwarding address, the Settlement Administrator will promptly search for a more current address for the Class Member in the National Change of Address database and re-mail the Class Notice to the Class Member on or before the

⁷⁶ Settlement Agreement, Exh. A.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Id.*, § 51.c.

1 expiration of the Notice Period.⁸¹ Class Members who receive a re-mailed Class Notice shall
2 have their Notice Period extended fifteen (15) calendar days.⁸² The Settlement Administrator
3 will receive and process Opt-Out Requests, Objections, and Workweek Disputes.⁸³

4 The Settlement Administrator will calculate the amounts of the Individual Settlement
5 Payments and Individual PAGA Payments; deduct and transmit applicable state and/or federal
6 taxes in connection with the wage portion of Individual Settlement Payments; mail the
7 Individual Settlement Payment and Individual PAGA Payment checks to Participating Class
8 Members and Aggrieved Employees; issue W-2 and 1099 forms; calculate and disburse the
9 Attorneys' Fees and Costs, Enhancement Award, and PAGA Payment; and perform such other
10 tasks necessary to effectuate the terms of the Settlement Agreement.⁸⁴ The Settlement
11 Administration Costs are not to exceed twelve thousand dollars and no cents (\$12,000.00) and
12 will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸⁵

13 Accordingly, Plaintiff respectfully requests that the Court appoint ILYM Group, Inc. as
14 the Settlement Administrator and direct the mailing of the Class Notice to the Class Members
15 in the manner outlined and based on the proposed deadlines as described herein and set forth in
16 the Settlement Agreement.

17 **X. PROPOSED DEADLINES FOR THE NOTICE PROCESS**

18 At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for
19 the notice and settlement administration process. *Newberg*, at § 11.26. The notice process
20 entails mailing of the Class Notice, in the form approved by the Court, to all known and
21 reasonably ascertainable Class Members based on Defendant's records.⁸⁶

22 No later than ten (10) business days after the Court enters the Order granting preliminary
23 approval of the Settlement, Defendant will provide to the Settlement Administrator a list of
24 Class Members that identifies each Class Member by full name, Social Security Number, and
25

26 ⁸¹ Settlement Agreement, § 51.d.

27 ⁸² *Id.*, §§ 51.d, 52, 53 & 54.

28 ⁸³ *Id.*, §§ 52, 53 & 54.

⁸⁴ Settlement Agreement, § 48; Aiwazian Decl., ¶ 15.

⁸⁵ Settlement Agreement, §§ 46 & 48b.

⁸⁶ *Id.*, § 51.

last-known address; and provides the number of Workweeks worked by each Class Member during the Class Period and the number of PAGA Workweeks worked by each Aggrieved Employee during the PAGA Period (collectively, “Class List”).⁸⁷

Using best efforts to mail it as soon as possible, and in no event later than fifteen (15) calendar days after receiving the Class List, the Settlement Administrator will mail the Class Notice, in English and in Spanish, to all Class Members via First-Class U.S. mail.⁸⁸ If a Class Notice is returned as undeliverable with no forwarding address, the Settlement Administrator will promptly search for a more current address for the Class Member in the National Change of Address database and re-mail the Class Notice to the Class Member on or before the expiration of the Notice Period.⁸⁹ Class Members will have until the expiration of the Notice Period to mail an Opt-Out Request, Workweek Dispute, and/or Objection to the Settlement Administrator.⁹⁰

Within five (5) business days after the Effective Date, Defendant shall remit to the Settlement Administrator the Gross Settlement Amount of \$950,000 (the “Settlement Fund”).⁹¹ Within fifteen (15) business days after receipt of the Settlement Fund from Defendant, the Settlement Administrator shall distribute: (1) the Individual Settlement Payments to Participating Class Members; (2) the Individual PAGA Payments to Aggrieved Employees; (3) the Court-approved Enhancement Award to Plaintiff; (4) the Court-approved Attorneys’ Fees and Costs to Class Counsel; (5) the LWDA Payment to the LWDA; and (6) the Court-approved Settlement Administration Costs to itself.⁹²

The Individual Settlement Payment and Individual PAGA Payment checks will become void and no longer available if not cashed within one hundred and eighty (180) calendar days after mailing.⁹³ The funds from voided checks will be transferred to Legal Aid at Work (formerly known as Legal Aid Society Employment Law Center) for use in its Workers’ Rights

⁸⁷ Settlement Agreement, § 51.

⁸⁸ *Id.*, § 51.c.

⁸⁹ *Id.*, § 51.d.

⁹⁰ *Id.*, §§ 52, 53 & 54.

⁹¹ *Id.*, § 55.

⁹² *Id.*, § 55.a & 55.b.

⁹³ *Id.*, § 55.c.

Clinic.⁹⁴

**XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR
ENHANCEMENT AWARD**

Plaintiff Monica Montalbo respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Enhancement Award in an amount up to seven thousand five hundred dollars and no cents (\$7,500.00) to Plaintiff.⁹⁵ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Enhancement Award is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁶ Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would benefit the Class.⁹⁷ Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Award for her services on behalf of the Class, in addition to her Individual Settlement Payment and Individual PAGA Payment.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers for Justice, PC as Class Counsel; preliminary appoint and

⁹⁴ Settlement Agreement, § 55.c.

⁹⁵ *Id.*, § 15.

⁹⁶ Aiwazian Decl., ¶ 20; Declaration of Monica Montalbo in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Montalbo Decl."), ¶¶ 3-5.

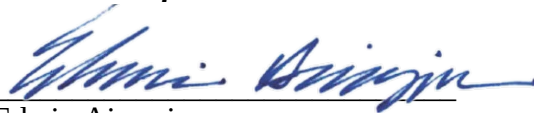
⁹⁷ Aiwazian Decl., ¶ 20; Montalbo Decl., ¶ 4.

1 designate Plaintiff Monica Montalbo as Class Representative; appoint ILYM Group, Inc. as
2 Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs,
3 Enhancement Award, PAGA Payment, and Settlement Administration Costs; approve the
4 proposed Class Notice; direct the Settlement Administrator to undertake the notice and
5 settlement administration process in conformity with the deadlines and procedures provided by
6 the Settlement Agreement; and schedule a Final Approval Hearing to take place in
7 approximately six (6) months.

8 Dated: September 21, 2021

LAWYERS for JUSTICE, PC

9
10 By:


Edwin Aiwanian
Attorneys for Plaintiff