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

CHARLES RHYU, as an individual and on  
behalf of all others similarly situated,

Plaintiffs,

v.

ATIEVA USA, INC., an unknown entity;  
ATIEVA, INC., a California corporation;  
Lucid USA, Inc. a Corporation, and DOES  
1 through 50, inclusive,

Defendants.

Case No. RG20084138

[Assigned for All Purposes to the Hon. Evelio  
Grillo, Dept. 21]

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

Date: January 24, 2023

Time: 10:00 a.m.

Dept.: 21

**Reservation ID. 602949033645**

Complaint Filed: December 30, 2020

FAC Filed: February 24, 2021

SAC Filed: June 9, 2021

Trial Date: None Set

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**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE THAT, on January 24, 2023 at 10:00 a.m. before the Honorable Evelio Grillo, judge presiding in Department 21 of the above-referenced Court, Plaintiff CHARLES RHYU ("Plaintiff") will and hereby does move the Court for an Order (1) preliminarily approving the Stipulation and Settlement of Class Action and PAGA Claims ("Settlement Agreement"); (2) provisionally certifying a settlement class and appointing William L. Marder of Polaris Law Group, Edward W. Choi of the Law Offices of Choi & Associates, APLC, Dennis Hyun of Hyun Legal, APC, and Larry W. Lee of Diversity Law Group, P.C. as Class Counsel and Plaintiff as the class representative; (3) approving ILYM Group, Inc. ("Administrator") as the third-party claims administrator; (4) approving and directing distribution to the Class of the Class Notice Packet; and (5) setting a final fairness and approval hearing.

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

The basis for this Motion, filed without any opposition from Defendant, is that the proposed settlement is fair, adequate, and reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity of class members to participate in, opt out of, or object to the settlement.

This Motion will be based on the Memorandum of Points and Authorities attached hereto, the Stipulation and Settlement of Class Action and PAGA Claims ("Settlement" or "Settlement Agreement") and the proposed Class Notice Packet, and the supporting Declarations of Larry W. Lee, William L. Marder, Dennis S. Hyun, Edward W. Choi, Charles Rhyu, Sean Hartranft filed herewith and upon the oral arguments of counsel (should there be any) and on the complete records and file herein.

DATED: December 21, 2022

LAW OFFICES OF CHOI & ASSOCIATES, APLC

By: 

Edward W. Choi  
Attorneys for Plaintiff and the Class

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1 Based on their own independent investigation and evaluation, the Parties and their  
2 respective counsel are of the opinion that settlement for the consideration and on the terms set  
3 forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interests of  
4 the Class and Defendant in light of all known facts and circumstances and the expenses and risks  
5 inherent in litigation. (Choi Decl. at ¶11).

## 6 **II. BACKGROUND OF THE SETTLEMENT**

### 7 **A. Investigative Background**

8 Defendant provided the number of violative wage statements furnished to the settlement  
9 members during the relevant time period. (Choi Decl. at ¶8). This data allowed Plaintiff's counsel  
10 to calculate the maximum exposure in Labor Code penalties. (*Id.*).

### 11 **B. Summary of the Current Settlement**

12 The Stipulation provides for up to \$90,000.00 as the Gross Settlement Amount.  
13 (Settlement Agreement at 21:19-16). The settlement payments to each Class Member will depend  
14 on the number of wage statements each Class Member received that included overtime wages  
15 during the Class Period. (*Id.* at III(11)). The reason for such allocation is so that the Class  
16 Members who allegedly suffered higher damages will be allocated greater recovery.

17 Defendants represent that there are approximately 2,335 wage statements containing  
18 overtime/double-time wages during the Class Period. (Settlement Agreement at III(19)). Class  
19 Members may opt-out of the Settlement if they so choose. According to discovery performed,  
20 Plaintiff alleges that the potential maximum liability exposure for Defendant was approximately  
21 \$220,900.00 for Labor Code penalties plus associated PAGA penalties of approximately  
22 \$583,750.00 for a total of \$804,560.00. (Choi Decl. at ¶9). Defendants maintain that these figures  
23 were unrealistically high based on, among other factors, Defendants' good faith defenses and that  
24 a Court would not impose the maximum amount of penalties that may otherwise be available to  
25 the Class. (*Id.* at ¶10).

26 As part of the Stipulation, Defendant does not object to Plaintiff's Counsel's request for  
27 attorney's fees up to 33 1/3% of the total settlement sum, equal to \$30,000.00 and Plaintiff  
28 counsel's actual costs. (Settlement Agreement 3:14-19; III(7)). Also as part of the Settlement

1 Agreement, Defendant does not object to Named Plaintiff's request for an enhancement of  
2 \$2,500.00 including a waiver of Civil Code §1542. (Settlement Agreement 11:17-18:2, III(4)).  
3 Additionally, the Settlement Agreement calls for \$10,000.00 to be paid for PAGA penalties, 75%  
4 of which, or \$7,500.00 will be paid to the California Labor and Workforce Development Agency  
5 ("LWDA"), as required by the PAGA, and 25%, or \$2,500.00 will be allocated to the net  
6 settlement amount for distribution to class members. (Settlement Agreement at 8:4-6) Finally, the  
7 Settlement Agreement also provides for the payment of the Administrator in the amount of  
8 \$5,990.00. (Settlement Agreement at 13:4-6, III(8)). Plaintiff solicited multiple bids from  
9 settlement administrators. (Choi Decl. at ¶12). The lowest bid received was from ILYM Group  
10 for a fee of \$5,990.00 to administer the settlement. (*Id.*). ILYM Group is a highly qualified and  
11 experienced class action administrator. (See Declaration of Sean Hartranft).

12 **C. The Settlement is Fair, Reasonable, and Adequate**

13 Based on their own respective independent investigations and evaluations, the Parties and  
14 their respective counsel are of the opinion that settlement for the consideration and on the terms  
15 set forth in their Agreement are fair, reasonable, and adequate and is in the best interests of the  
16 Class and the Defendant in light of all known facts and circumstances and the expenses and risks  
17 inherent in litigation. (Choi Decl. at ¶11; Declaration of Larry W. Lee ("Lee Decl.") at ¶ 2;  
18 Declaration of Dennis S. Hyun ("Hyun Decl.") at ¶7; Declaration of William L. Marder ("Marder  
19 Decl.") at ¶¶ 2-5).

20 Defendant denies any liability or wrongdoing of any kind associated with the claims  
21 alleged by Plaintiff, and further denies that, for any purpose other than that of settling this lawsuit,  
22 this action is appropriate for class and/or representative treatment, denies that Plaintiff or any  
23 member of the Class suffered any injury or damage, and contends that a trial court would not  
24 award the maximum amount of exposure under any of Plaintiff's theories of liability.

25 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App.  
26 4th 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has  
27 conducted sufficient discovery and the settlement is reasonable in light of the strengths of the  
28 plaintiff's claims. As discussed herein, Plaintiff's counsel has conducted extensive discovery and

1 investigation and, in light of the strength and weaknesses of Plaintiff's claims, Plaintiff's  
2 attorneys submit that this settlement is fair pursuant to *Kullar*.

3 The standard of review for class settlements is whether the Settlement is within a range of  
4 reasonableness. As Professor Newberg comments:

5 "Recognizing that there may always be a difference of opinion as to the  
6 appropriate value of settlement, the courts have refused to substitute their  
7 judgment for that of the proponents. Instead the courts have reviewed  
8 settlements with the intent of determining whether they are within a range  
9 of reasonableness...."

4 Newberg on Class Actions, at §11.45.

9 In the present case, the gross settlement of \$90,000.00 is for approximately 2,335 wage  
10 statements. This amounts to approximately \$38.54 per wage statement at issue. Indeed, an  
11 "apples to apples" comparison can be made between this settlement and the settlement in  
12 *McKenzie v. Federal Express Corp.*, 2012 US Dist Lexis 103666 (C.D. Cal. July 2, 2012), which  
13 involved a gross settlement amount of \$8,250,000 for 484,928 wage statements which amounted  
14 to approximately \$17.00 per wage statement. Not only did the *McKenzie* case involve the same  
15 exaction violations as alleged in the current case, the District Court found that the *McKenzie*  
16 settlement to be fair, reasonable and adequate. *Id.* at \*6. The current settlement is more than  
17 double the amount per wage statement that was approved in prior similar wage statement case.  
18 Thus, the logical conclusion is that the current settlement is indeed, fair, reasonable and adequate.

19 Similarly, based on this class size of approximately 252 Class Members and the  
20 \$90,000.00 recovery, Class Members will be entitled to recover, on average, up to over \$115.12  
21 each after deductions for fees and costs. (Choi Decl. ¶9). The amount any particular class  
22 member will be entitled to recover will be greater or lower than this average depending on the  
23 number of applicable wage statements he or she received during the Class Period, with some  
24 entitled to receive more, and others less. This is fair, as it directly allocates greater recovery to  
25 individual Class Members who have allegedly suffered greater harm. Furthermore, Class  
26 Members may choose to exclude themselves from this settlement and not participate in the  
27 settlement.

### **III. LEGAL ANALYSIS**

#### **A. The Class at Issue**

The proposed settlement class is described above. The Parties have exchanged information regarding the identity of the members of this proposed Class. Based on the review of such data, there are approximately 252 individuals that comprise the Class. The Parties have further agreed and stipulated that the Class be certified on a provisional, non-mandatory basis for the purposes of this settlement only. (Choi Decl. at ¶8).

For purposes of this settlement, the Named Plaintiff is an adequate Class Representative, as his claims are typical and common of the Class. Specifically, Named Plaintiff worked as a non-exempt employee for Defendant during the specific Class Period identified herein. (See Declaration of Charles Rhyu (“Rhyu Decl.” at ¶ 2.) Moreover, Plaintiff asserts that he received violative wage statements during the class period. (Rhyu Decl. at ¶ 2).

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

Any settlement of class litigation must be reviewed and approved by the Court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the class members for their comment or objections. The Manual for Complex Litigation (Third) § 30.41 states:

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

Thus, the preliminary approval by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement

offer, or is presumptively valid subject only to any objections that may be raised at a final hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).

The procedures for the parties’ submission of a proposed settlement for preliminary approval by the court also are discussed in 4 *Newberg on Class Actions*:

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

*Id.* at § 11.24. Here, the Parties have reached such an agreement and have submitted to this Court in connection with this Motion a copy of the Settlement Agreement fully setting forth the agreement reached among the Parties. The Settlement Agreement sets forth all terms of the agreement reached by the Parties, which include, among other things, the method for calculating the Participating Class Members’ Individual Settlement Payments.

### **C. Procedures for Settlement Before Class Certification**

The parties also may, at the preliminary approval stage, request that the court provisionally approve certification of the class – conditional upon final approval of the settlement. “[P]re-certification settlements are routinely approved if found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 240. Accord *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1803 (although the settlement was reached before any “adversary certification,” the court was satisfied that it was “fair, adequate and reasonable”). See, also, *In re Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984)<sup>2</sup> (“many courts have employed this practice in the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals”).

The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal. . . . may be set out in conditional orders granting tentative approval to the various items submitted to the

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

1 court. Three basic rulings are often conditionally entered at this preliminary  
2 hearing. These conditional rulings may approve a temporary settlement class, the  
3 proposed settlement, and the class counsel's application for fees and expenses.

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

5 In addition to such terms as class identification, settlement amount and payment  
6 procedures, the Settlement Agreement reached among the Parties contains a provision pursuant to  
7 which the Parties stipulate to the Court's provisional certification of the Class, but do so for the  
8 purposes of this settlement only.

9 **D. The Settlement is Fair and Reasonable and Not the Result of Fraud or Collusion**

10 Courts presume the absence of fraud or collusion in the negotiation of settlement unless  
11 evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars*  
12 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In*  
13 *re Chicken Antitrust Litig.*, 560 F.Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their  
14 judgment for that of the proponents, particularly where, as here, settlement has been reached with  
15 the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*  
16 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F.Supp.  
17 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F.Supp. 471 (S.D.N.Y. 1979); *In re Armored Car*  
18 *Antitrust Litig.*, 472 F.Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. &*  
19 *Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

20 While the recommendations of counsel proposing the settlement are not conclusive, the  
21 Court can properly take them into account, particularly where, as here, they have been involved in  
22 discovery and negotiations for some period of time, appear to be competent, have experience with  
23 this type of litigation, and have exchanged substantial evidence from the opposing party. See  
24 *Newberg on Class Actions*, *supra*, §11.47; *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 528  
25 (quoting *In re Paine Webber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997) (“[s]o long  
26 as the integrity of the arm's length negotiation process is preserved, however, a strong initial  
27 presumption of fairness attaches to the proposed settlement . . . [citations] and ‘great weight’ is  
28 accorded to the recommendations of counsel, who are most closely acquainted with the facts of  
the underlying litigation”).

1 Here, both Plaintiff's and Defendant's counsel have a great deal of experience in wage and  
2 hour class action litigation. Plaintiff's counsel has been approved as class counsel in a number of  
3 wage and hour class actions. (Choi Decl. at ¶14; Lee Decl. at ¶6; Marder Decl. at ¶13; Hyun Decl.  
4 ¶¶ 3-6). Moreover, Plaintiff's counsel conducted an extensive investigation of the factual  
5 allegations involved in this case since the inception. (Choi Decl. at ¶¶7-9). Each side has apprised  
6 the other of their respective factual contentions, legal theories and defenses, resulting in extensive  
7 arms-length negotiations taking place among the Parties. Defendants provided the number of  
8 wage statements along with documents for the Class for Plaintiff to review and analyze in  
9 response to Plaintiff's request. (Choi Decl. at ¶8).

10 The settlement for each participating Class Member is fair, reasonable and adequate, given  
11 the inherent risk of litigation, the risk relative to class certification and the costs of pursuing such  
12 litigation through trial and appeal. The settlement is the result of extensive arms-length  
13 negotiations between counsel for the Parties.

14 Plaintiff believes that a class can be certified; however, Plaintiff also believes in the  
15 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff  
16 involved in not prevailing on one or more of the causes of action or theories alleged in his  
17 Complaint and in the possibility of non-certification. Defendant adamantly disputes the ability of  
18 Plaintiff to certify a class and disputes liability and corresponding damages as well.

19 The settlement is a compromise for the alleged damages of absent Class Members for the  
20 claims asserted in the Complaint. The settlement also compensates Plaintiff for his claims and  
21 provides him an additional incentive payment, thus taking into consideration the risks, time, effort  
22 and expenses incurred by said Plaintiff in coming forward to provide invaluable information,  
23 negotiate and litigate this matter on behalf of all Class Members.

24 Despite the asserted fairness of the settlement terms, any potential Class Member, upon  
25 reviewing the "Class Notice" may object to the terms of the settlement as set forth in the  
26 Settlement Agreement or submit a request for exclusion (*i.e.*, opt out) from the settlement.  
27 Moreover, potential Class Members, upon providing proper notice to the Parties and the Court,  
28

1 may attend the final fairness and approval hearing for the purpose of objecting to one or more of  
2 the settlement terms set forth in the Settlement Agreement.

3 **E. The Settlement Meets the *Kullar* Factors**

4 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App.  
5 4th 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has  
6 conducted sufficient discovery and the settlement is reasonable in light of the strengths of the  
7 plaintiff's claims. As discussed herein, Plaintiff's counsel has conducted meaningful discovery  
8 and investigation and, in light of the strength and weaknesses of Plaintiff's claims, Plaintiff's  
9 attorneys submit that this settlement is fair pursuant to *Kullar*.

10 **1. Strengths and Weaknesses of the First Cause of Action for Violation**  
11 **of Labor Code Section 226(a).**

12 Although Plaintiff believes that a class can be certified, Plaintiff also believes in the  
13 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff  
14 involved in not prevailing on one or more of the causes of action or theories alleged in the  
15 operative Second Amended Complaint, the possibility of non-certification and potential for  
16 appeals. (Choi Decl. at ¶11).

17 Further, some courts have ruled that a finding of liability for violation of Labor Code  
18 section 226(a) requires that the plaintiff and class members demonstrate an "actual injury."  
19 Under this line of cases, an actual injury is shown where "there is a need for [] additional  
20 documentation." *Raines v. Coastal Pac. Food Distribs., Inc.*, 23 Cal. App.5th 667, 676 (2018)  
21 (internal citations omitted); *see also Hernandez v. BCI Coca-Cola Bottling Co.*, 554 Fed. App'x  
22 661, 662 (9th Cir. 2014) (finding that a wage statement does not violate Section 226(a) if "a  
23 plaintiff employee can ascertain the required information by performing simple math, using  
24 figures on the face of the wage statement"). Defendant will almost certainly argue that the  
25 absence of a common "actual injury" serves as a barrier to class certification.

26 Defendant, moreover, will argue that any alleged omission of information from the wage  
27 statements was not a "knowing and intentional failure" by Defendant to comply with Labor Code  
28 section 226(a), and penalties are therefore unwarranted. *See Harris v. Vector Mktg. Corp.*, 656 F.

1 Supp. 2d 1128, 1145--46 (N.D. Cal. 2009) (summary adjudication warranted on Section 226(e)  
2 claim where dispute existed as to whether plaintiff was independent contractor or employee and  
3 record lacked evidence that conduct was knowing or willful); *Woods v. Vector Mktg. Corp.*, 2015  
4 U.S. Dist. LEXIS 67303, at \*8-\*9, \*12-\*14 (N.D. Cal. May 22, 2015) (finding that when the  
5 defendant made a good faith claim that the employee was properly classified as exempt its  
6 failure to provide accurate wage statements was not knowing and intentional).

7 Defendant would have also argued that its wage statements were lawful pursuant to  
8 *General Atomics v. Superior Court*, 64 Cal. App. 5th 987 (2021). The Court may have agreed  
9 with any of these arguments, such that Plaintiff could have lost.

## 10 **2. Strengths and Weaknesses for PAGA Penalties.**

11 For the purpose of PAGA liability, a plaintiff need not establish the “knowing and  
12 intentional” and “injury” elements of section 226(e) to prevail. *See Lopez v. Friant & Associates,*  
13 *LLC*, 15 Cal. App. 5th 773, 784-85 (2017). Nonetheless, the trial court has the discretion to  
14 reduce PAGA civil penalties “if, based on the facts and circumstances of the particular case, to  
15 do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”  
16 *See Cal. Labor Code §2699(e)(2); Delgado v. New Albertson's, Inc.*, 2010 WL 11507599 at \*7  
17 (C.D. Cal. March 15, 2010) (explaining that court's discretion to reduce penalties under PAGA  
18 protects defendants from unconstitutionally excessive penalties).<sup>3</sup>

19 Plaintiff is not blind to the fact that Defendant could be persuasive to the Court at trial  
20 and that the penalties herein could be substantially reduced. Thus, for comparison purposes, the  
21 following are some examples of PAGA awards, which were awarded after an actual trial. In  
22 *Fleming v. Covidien, Inc.*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011), while  
23 plaintiff ultimately prevailed in a PAGA trial predicated on a violation of Labor Code section  
24

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25 <sup>3</sup> As the California Supreme Court and Courts of Appeal have held, the purpose of PAGA is not  
26 to seek wages or recovery for the individual employees. *Arias v. Superior Court*, 46 Cal. 4th 969,  
27 986 (2009) (holding that an action to recover civil penalties “is fundamentally a law enforcement  
28 action designed to protect the public and **not** to benefit private parties”) (emphasis added);  
*Brown v. Ralphs Grocery Co.*, 197 Cal. App. 4th 489, 1499 (2011).

226(a), *i.e.*, inaccurate wage statements, the Court assessed only 17% of the maximum penalties— and this was after finding liability at trial. Similarly, Judge Carville of the Alameda Superior Court in the matter of *Parr v. Golden State Overnight*, Alameda Superior Court Case No. RG12618103, assessed PAGA penalties upon Defendant of approximately 7% of the total maximum penalties—again, this was only after plaintiff had prevailed at trial.

In fact, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539.

Further, Defendant fixed its wage statements as of November 2020. (Choi Decl. ¶8). Accordingly, the Parties cut off the release as of November 13, 2020. Defendant would have argued that it acted in good faith at all times, such that a reduction in PAGA penalties would be warranted. Given the current case is a settlement, as opposed to going through trial, Plaintiff believes that the PAGA allocation is appropriate.

#### **F. The Notice Procedure is Adequate**

Class Members will not be required to submit a claim form to receive compensation. Instead, this is a non-reversionary Settlement Agreement. Settlement Administrator will send a Class Notice to each Settlement Class Member by First Class U.S. Mail within ten (10) calendar days of receipt of the Settlement Class Data. (*Id.* at 16:20-22, III(10(d), 12(a)). To provide the best notice practicable, any Class Notice returned to the Settlement Administrator as non-deliverable with an updated mailing address affixed shall be sent by First Class U.S. Mail to the forwarding address affixed thereto within five court days. (*Id.* at 17:3-14, III(12)(a), (c)). If a Class Notice is returned as undeliverable without a forwarding address affixed thereto, the Settlement Administrator shall attempt to locate a current mailing address for the Settlement Class Member by skip tracing and will mail the Class Notice to the updated address identified. (*Id.* at 17:5-9, III(12)(c)).

1 Settlement Class Members will be provided 60 calendar days to opt out or object to the  
2 settlement. (*Id.* at 17:1-2, III(13)(a)-(b)). Any Class Member who does not opt-out of the  
3 settlement will be automatically issued his/her share of the settlement proceeds. Given that this  
4 is a non-reversionary settlement, the parties believe that 60 calendar days is sufficient time for  
5 class members to object or opt-out of the settlement. Further, Settlement Class Members will be  
6 notified of the Fairness/Final Approval hearing and will have an opportunity to appear at the  
7 Fairness hearing.

8 **G. Plaintiff Provided Notice of this Settlement to the LWDA**

9 On December 21, 2022, Plaintiff caused the Motion, Settlement Agreement and Release  
10 and Proposed Order to be uploaded to the LWDA's website. (Choi Decl. ¶15, Ex. A).

11 **IV. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR**  
12 **PRELIMINARY APPROVAL**

13 A court must approve the settlement or dismissal of a class action in order to prevent  
14 fraud, collusion or unfairness to the class. *Malibu Outrigger Bd. of Governors v. Superior Court*  
15 (1980) 103 Cal. App. 3d 573, 578-579; Cal. Civ. Code § 17871(f); *see also* Fed. R. Civ. P. 23(e).  
16 The purpose of this requirement is to protect class members, including the Named Plaintiff,  
17 whose rights may not have been properly or fully considered by the negotiating parties. *Officers*  
18 *for Justice v. Civil Service Com'n of City & County of San Francisco* 688 F.2d 615, 624 (1982).

19 In determining whether to approve a settlement in a class action, the court must determine  
20 if the proposed settlement is "fair, adequate, and reasonable[.]" *Wershba v. Apple Computer*  
21 (2001) 91 Cal.App.4th 224, 244-245. This decision is within the trial court's broad discretion.  
22 *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438. As a California Court of Appeal  
23 noted, "pre-certification settlements are routinely approved if found to be fair and reasonable."  
24 *Ibid.*, at 240.

25 Here, the proposed Settlement is fair, adequate, and reasonable. It will result in both  
26 substantial monetary benefits to class members; it is non-collusive; and it was achieved as the  
27 result of informed, extensive, and arms' length negotiations and an informal exchange of data  
28 which allowed Plaintiff's counsel to perform a complete damage analysis. For the foregoing

1 reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed  
2 settlement, sign the proposed Order, approve and authorize mailing of the proposed Class Notice,  
3 and set a date for a final approval hearing.

4 In sum, Plaintiff respectfully requests this Court, as part of the preliminary approval  
5 process, do the following:

- 6 1. Review and approve the Settlement Agreement;
- 7 2. Consider whether the proposed settlement preliminarily appears to be fair and  
8 adequate, and whether the proposed class of settling plaintiffs preliminarily appears to meet the  
9 applicable certification criteria;
- 10 3. Review and approve the proposed Class Notice;
- 11 4. Direct notice to be given to the Class, and set a hearing for final review of the  
12 proposed Settlement;
- 13 5. Confirm Named Plaintiff as the Class Representative and confirm Larry W. Lee of  
14 Diversity Law Group, P.C., Edward W. Choi of the Law Offices of Choi & Associates, APLC,  
15 Dennis S. Hyun of Hyun Legal, APC, and William L. Marder of Polaris Law Group, P.C. as Class  
16 Counsel;
- 17 6. Approve ILYM Group, Inc. to serve as the Administrator to handle the notice  
18 procedure; and
- 19 7. Set a final approval hearing date on a date after July 2023.

20  
21 Respectfully Submitted,

22  
23 DATED: December 21, 2022

LAW OFFICES OF CHOI & ASSOCIATES, APLC

24  
25 By:   
26 Edward W. Choi  
27 Attorneys for Plaintiff and the Class  
28



# Superior Court of Alameda County Public Portal

## Make a Reservation

Rhyu VS Atieva USA, Inc.

Case Number: RG20084138 Case Type: Unlimited Civil Category: Other Employment Complaint Case  
Date Filed: 2020-12-30 Location: Rene C. Davidson Courthouse - Department 21

### Reservation

|                                                                       |                                                          |
|-----------------------------------------------------------------------|----------------------------------------------------------|
| Case Name:<br>Rhyu VS Atieva USA, Inc.                                | Case Number:<br>RG20084138                               |
| Type:<br>Motion re: (Preliminary Approval of Class Action Settlement) | Status:<br>RESERVED                                      |
| Filing Party:<br>Charles Rhyu (Plaintiff)                             | Location:<br>Rene C. Davidson Courthouse - Department 21 |
| Date/Time:<br>01/24/2023 10:00 AM                                     | Number of Motions:<br>1                                  |
| Reservation ID:<br>602949033645                                       | Confirmation Code:<br>CR-2HQVKN3GBBL2XGUNU               |

### Fees

| Description                 | Fee  | Qty | Amount |
|-----------------------------|------|-----|--------|
| Motion re: (name extension) | 0.00 | 1   | 0.00   |
| Court Technology Fee        | 1.00 | 1   | 1.00   |
| TOTAL                       |      |     | \$1.00 |

### Payment

|                             |                          |
|-----------------------------|--------------------------|
| Amount:<br>\$1.00           | Type:<br>Visa            |
| Account Number:<br>XXXX6929 | Authorization:<br>02602G |
| Payment Date:<br>1969-12-31 |                          |

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