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

AMARA O'NEILL, on behalf herself and all
those similarly situated,

Plaintiff,

vs.

ROBINSON PHARMA INC., a California
Corporation; TOMMY NGUYEN, an
individual; and DOES 1-20, inclusive,

Defendants.

Case No. 30-2020-01176039-CU-OE-CJC

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT;
APPOINTMENT OF SETTLEMENT
ADMINISTRATOR; APPROVAL OF
CLASS NOTICE PACKET; REQUEST
FOR A CONTINUED STAY ON ALL
NON-SETTLEMENT ACTIVITY AND
SETTING OF FINAL APPROVAL
HEARING**

Date: April 11, 2024

Time: 2:00 p.m.

Judge: Hon. Melissa R. McCormick

Dept.: CX104

Reservation No. 74183465

Action Filed: December 23, 2020

Trial Date: None set

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1 **I. INTRODUCTION AND SUMMARY OF SETTLEMENT.**

2 Plaintiff Amara O'Neill ("Plaintiff") seeks preliminary approval of her proposed class
3 action and PAGA settlement (the "Settlement") against Robinson Pharma, Inc. ("RPI" or
4 "Defendant").¹ **Subject to Court approval, Plaintiff and the already certified Class² have**
5 **settled their class and PAGA claims against RPI for \$3,495,000.00.** The Settlement resolves the
6 wage and hour class action claims of Plaintiff and the 1,592 Class Members, the state of California
7 for the alleged violations of the Private Attorneys General Act Labor Code § 2698 et seq.
8 ("PAGA"), and Class Counsel against RPI based upon the factual allegations in the third amended
9 complaint filed in this Court. Plaintiff's lawsuit is referred to herein as the "Action."

10 The Settlement satisfies all of the criteria for preliminary settlement approval and falls well
11 within the range of possible approval. Accordingly, Plaintiff requests that the Court grant
12 preliminary approval of the Settlement, direct the distribution of the notice of settlement to the
13 Class, continue the stay of all non-settlement related activity and schedule a final approval hearing.

14 For the Court's convenience in analyzing this Settlement, these are the pertinent facts,
15 figures, and terms of the Settlement:

- 16 ➤ **Certified Class Definition:** The "Class" is defined as All non-exempt employees
17 employed by Robinson Pharma Inc. in California from January 29, 2017 to
18 November 17, 2022 (the "Class Period") that did not opt-out.
19 ➤ **Class and PAGA Settlement Period:** January 29, 2017 through July 1, 2023 (the
20 "Settlement Period").

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23 ¹ A copy of the fully executed Settlement Agreement, including its exhibits, is attached as
24 **Exhibit "1"** to the Declaration of Torey Joseph Favarote in Support of Plaintiff's Motion for
25 Preliminary Approval of Class and PAGA Action Settlement ("Favarote Decl."), ¶ 3, **Exh. "1"**.
26 The proposed notice to the class (the "Notice") is attached to the Settlement Agreement as Exhibit
27 A. All references to "Exhibits" in this Motion are to the exhibits attached to the Favarote
28 Declaration unless otherwise noted.

² Plaintiff's Class was certified on November 17, 2022, and the Class opt-out notice was
approved by the Court on January 10, 2023. (Favarote Decl. ¶¶ 5, 13, Exh. 2.) Ultimately 1,592
people did not opt-out of the Class. The "Class" is defined as "All non-exempt employees
employed by Robinson Pharma Inc. in California from January 29, 2017 to the date of certification
[November 17, 2022]."

➤ **Class and PAGA Members³:** 1,592 individuals who worked for RPI during the Class Period and did not opt-out (“Class Members”).

➤ **Principle Settlement Terms:**

- Total Settlement: \$3,495,000.00;
- PAGA Apportionment: \$800,000.00, 75% (\$600,000.00) to the LWDA and 25% (\$200,000.00) to the aggrieved Class Members;
- Class Counsel Fees: \$1,165,000.00 (33.33% of the gross settlement)
- Class Counsel Costs: Up to \$30,000.00
- Class Representative Enhancement Award: Up to \$10,000.00
- Settlement Administration Costs: Up to \$20,000.00

➤ **Net Settlement Amount:**

- \$1,670,000.00 for approximately 160,000 workweeks with an average distribution of \$1,048.99 per Class Member.⁴

This Settlement was reached after extensive formal and informal discovery, motion practice, and litigation including: (1) Plaintiff’s motion for class certification which was granted on November 17, 2022; (2) Plaintiff’s motion to approve a class notice, which became moot via a stipulation by the Parties that was approved by the Court on January 10, 2023; (3) Plaintiff’s prosecution of two person most knowledgeable depositions over the course of three days; (4) Plaintiff’s filing of two motions to compel class discovery which were granted on July 17, 2023 with sanctions against the Defendant; (5) RPI’s verified responses and supplemental responses to four sets of special interrogatories, four sets of requests for production of documents, and two sets of form interrogatories; (6) dozens of meet and confer letters and calls regarding Plaintiff’s requests for production of documents and interrogatories; (7) RPI’s production of more than 44,000 pages of documents; (8) a thorough analysis of the time and payroll records produced for the Class

³ The Settlement settles the class and PAGA claims of those who did not opt-out of the certified Class for the Settlement Period of January 29, 2017 to July 1, 2023.

⁴ The minimum Settlement award is expected to be \$10.44 for a single workweek worked with the maximum award at approximately \$3,497.40 for a Class Member who worked the full Settlement period of January 29, 2017 through July 1, 2023, i.e. 335 workweeks.

Members; (9) a full day mediation; and (10) almost 3 years of hard fought litigation. (Favarote Decl. ¶¶ 13-14, 16, 21-22.)

II. BACKGROUND.

A. PROCEDURAL BACKGROUND.

RPI is a family owned and operated vitamin and supplement manufacturer in Orange County California. (Declaration of Amara O'Neill "O'Neill Decl." ¶ 2.) RPI employed Plaintiff as a non-exempt hourly employee. (O'Neill Decl. ¶ 3.) As part of Plaintiff's job duties Plaintiff was required to visit and work at nearly all parts of RPI's operations. (O'Neill Decl. ¶ 3.)

Plaintiff filed her original complaint on December 23, 2020, wherein she alleged various claims relating to sexual harassment, sexual assault, and wrongful termination which are not part of the Settlement. (Favarote Decl. ¶ 11.)

On January 29, 2021, Plaintiff amended her complaint to include class claims for various wage and hour violations including a failure to pay wages, failure to reimburse necessary business expenses, failure to pay all wages at termination, and failure to provide accurate wage statements. (Favarote Decl. ¶ 11.) On February 25, 2021, Plaintiff gave notice to the LWDA of her Labor Code claims and then amended her complaint on May 13, 2021 to include a claim under PAGA. (Favarote Decl. ¶ 12.) The LWDA did not respond or otherwise express any intent to investigate Plaintiff's claims within 60 days. (Id.)

On August 18, 2022, Plaintiff moved for class certification which was granted by the Court on November 17, 2022. (Favarote Decl. ¶ 13.) The Court certified the following class and subclasses:

The Class: All non-exempt employees employed by Robinson Pharma Inc. in California from January 29, 2017 to the date of certification [November 17, 2022].

(Favarote Decl. ¶ 13, Exh. 2.)

Following certification, the parties entered a stipulation on the class notice and its distribution on January 10, 2023, which the Court approved on that same day. (Favarote Decl. ¶ 13.) After notice, approximately 1,592 people did not opt out of the Class and are covered by the

1 Settlement. (Id.)

2 After the class notice period ended Plaintiff promptly moved to conduct additional class
3 discovery. (Favarote Decl. ¶ 14.) On April 28, 2023, Plaintiff was forced to file motions to
4 compel responses to that discovery. (Id.) On July 13, 2023, the Court granted Plaintiff's motions
5 to compel and awarded Plaintiff \$3,750.00 in sanctions. (Favarote Decl. ¶ 14, Exh. 4.)

6 On May 22, 2023, Plaintiff filed a supplemental PAGA letter with the LWDA adding
7 supplemental information in connection with her original PAGA letter. (Favarote Decl. ¶ 15, Exh.
8 5.) On September 22, 2023, Plaintiff provided another supplemental PAGA letter to the LWDA.
9 (Favarote Decl. ¶ 15, Exh. 6.) The LWDA did not respond or otherwise express any intent to
10 investigate Plaintiff's claims within 60 days of either of these letters. (Id.)

11 On August 9, 2023, the Parties participated in a full-day mediation before mediator Gail A.
12 Glick, Esq. of Judicate West. (Favarote Decl. ¶ 16.) At the end of a full day of negotiations, the
13 mediation ended with a mediator's proposal which was accepted by both parties two days later on
14 August 11, 2023. (Id.) On August 25, 2023, the parties requested a stay on all non-settlement
15 activity in this and all related matters which the Court granted on August 28, 2023⁵. (Favarote
16 Decl. ¶ 17.)

17 On October 27, 2023, the parties reached a finished long form settlement agreement.
18 (Favarote Decl. ¶ 18, Exh. 1.) On November 8, 2023, the parties stipulated to the filing of a third
19 amended complaint in connection with the Settlement that was reached as a result of the mediation.
20 (Favarote Decl. ¶ 19.) The Court approved that stipulation on November 9, 2023. (Id.) Plaintiff
21 filed her third amended complaint on December 1, 2023. (Id.) Plaintiff timely provided the third
22 amended complaint to the LWDA on December 6, 2023. (Id.)

23 On December 11, 2023, the Court approved a continuation of the stay on all non-settlement
24 activities in this and all related matters. (Favarote Decl. ¶ 20.)

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27 ⁵ The Court on March 29, 2023 related this case to four other later filed cases which are
28 listed below in section III(A).

1 **B. DISCOVERY AND INVESTIGATION OF FACTS.**

2 Plaintiff has engaged in extensive discovery and investigation since the inception of her
3 Action as detailed in the concurrently filed declaration of Torey Joseph Favarote (“Class
4 Counsel”). Class Counsel’s investigation into the class claims includes taking the deposition of
5 two person most knowledgeable deponents over the course of three days; reviewing all of RPI’s
6 policies, procedures and practices applicable during the Class Period; reviewing more than 44,000
7 pages of documents produced in response to 77 requests for production, 34 special interrogatories,
8 more than 40 form interrogatories, and two successful motions to compel responses and production
9 of documents; hiring a data firm to manually enter more than 10,000 pages of paper time records
10 which were not stored in electronic manipulatable format; and performing a detailed analysis on
11 the records produced in the Action. (Favarote Decl. ¶¶ 21-22.) Class Counsel’s office, via a
12 Vietnamese speaking staff member, also conducted dozens of interviews and an investigation into
13 various occurrences throughout the litigation including as to RPI’s policies and practices as
14 experienced by the Class Members and RPI’s conduct throughout the Class Period, speaking to
15 dozens of current and former employees in both English and Vietnamese. (*Id.*)

16 All of this information, obtained through extensive formal and informal discovery before
17 and after class certification prepared Class Counsel with a substantial basis to assess the strengths
18 and weaknesses of the Action before the meditation.

19 **III. SUMMARY OF THE PROPOSED SETTLEMENT.**

20 **A. PROCEDURAL TERMS.**

21 As part of the Settlement Agreement the parties have agreed to request a continuation of the
22 stay on non-settlement activities in the Action and the below related cases that are also pending
23 before this Court, while the approval process is ongoing.

- 24 • Cecilia Padilla v. Robinson Pharma, Inc., Orange County Superior Court Case No.
25 30-2021-01183520, filed on February 4, 2021;
- 26 • Manh Nguyen v. Robinson Pharma, Inc., Orange County Superior Court Case No.
27 30-2021-01224817, filed on October 4, 2021;

28 ///

- Ridvan Ali Olivares v. Robinson Pharma, Inc., Orange County Superior Court Case No. 30-2022-01256198, filed on April 22, 2022; and
- Ridvan Ali Olivares v. Robinson Pharma, Inc., Orange County Superior Court Case No. 30-2022-01267160, filed on June 28, 2022.

The Court has already approved such a stay and a continuance of that stay on August 28, 2023 and on December 11, 2023. (Favarote Decl. ¶¶ 17, 20.)

The Settlement resolve the claims at issue in this Action and the above listed cases for the Class Members.⁶

B. PRINCIPLE TERMS.

RPI will pay a total of \$3,495,000.00 (the “Gross Settlement Amount”) to settle the class and PAGA claims raised in the third amended complaint on behalf of the 1,592 members of the certified Class. The Settlement does not settle the class or PAGA claims of those who opted out of the Class or who are not otherwise Class Members.

From the Gross Settlement Amount will be paid: (a) \$1,670,000.00 in *pro rata* awards to the Class Members based on the number of workweeks worked between January 1, 2017 and July 1, 2023 (“The Net Settlement Amount”); (b) \$600,000.00 to the LWDA for its 75% share of the \$800,000.00 PAGA payment; (c) up to \$10,000.00 for Plaintiff’s requested class representative enhancement award; (d) up to \$1,165,000.00 (33.33% of the Gross Settlement Amount) for Class Counsel’s requested attorneys’ fees; (e) up to \$30,000.00 for Class Counsel’s litigation costs; and (f) up to \$20,000.00 for the settlement administration costs to the parties’ agreed upon settlement administrator ILYM Group Inc.⁷ (“Settlement Administrator”). No part of the Gross Settlement Amount will revert to RPI, and RPI will also be responsible for paying the employer’s portion of

⁶ None of the named class or PAGA representatives in the above noted cases opted out of the Class and thus all of them are included in the Settlement. Named plaintiffs in the above related cases: Cecilia Padilla, Manh Nguyen, Ridvan Ali Olivares and Filognio Cruz Gomez (a belatedly added plaintiff in the Olivares actions), are on the Class List provided by the notice administrator following the mailing of the certification notice and opt-out period.

⁷ As discussed in the declaration of Class Counsel, ILYM Group Inc. is a reputable and experienced settlement administrator who Class Counsel has experience with and who has already been entrusted in this case to distribute the class opt-out notice in both English and Vietnamese following certification. (Favarote Decl. ¶ 69.)

1 payroll taxes for the wages portion of the Settlement awards to the Class Members.

2 The Class Member awards will be distributed to the Class Members as follows:

3 “The Net Settlement Amount shall be allocated among Class Members by reference to the
4 number of workweeks all Class Members worked during the Class Period. Each workweek
5 worked by Class Members who were current employees as of July 1, 2023, will be equal to one
6 (1) settlement share. Each workweek worked by Class Members who were former employees as of
7 July 1, 2023, will be equal to one and one tenth (1.10) settlement shares.⁸ The total number of
8 settlement shares for all Class Members will be added together and the resulting sum will be
9 divided into the Net Settlement Amount to reach a per share dollar figure. That figure will then be
10 multiplied by each Class Member’s number of settlement shares to determine the Class Member’s
11 *pro rata* portion of the Net Settlement Amount (the “Individual Class Member Award”). As
12 discussed above, 25% of each Individual Class Member Award shall, for tax purposes, be
13 designated as wages and shall be reported using a Form W-2, and 75% of each Individual Class
14 Member Award shall, for tax, purposes be designated as non-wages and shall be reported using a
15 Form 1099.” (Settlement § 31, Favarote Decl. ¶ 3, Exh. 1.)

16 In the event of a dispute regarding the number of workweeks worked under the Settlement a
17 Class Member may produce evidence to establish the dates s/he contend s/he worked during the
18 Class Period. However, unless the Class Member can produce convincing evidence proving they
19 worked more workweeks than shown by RPI’s records, their Settlement award shall be determined
20 based on RPI’s records and the Class List which will be submitted under the penalty of perjury.
21 The Settlement Administrator shall inform counsel of both parties of all disputes it receives and
22 RPI will review its records to provide additional information to the Settlement Administrator as
23 necessary for any such disputes. The parties will meet and confer to resolve any disputes, however
24 if no resolution can be reached the workweeks stated in the Class List shall prevail. (Settlement
25 § 26, Favarote Decl. ¶ 3, Exh. 1.) Should the Court request it, Plaintiff can also provide a full

26
27 ⁸ The additional allocation of .1 for former employees is done to account for the additional
28 claim for waiting time penalties that this group has compared to the current employees. There are
an estimated 1,011 former employees that fall into this group.

1 report of all disputes received in connection with her request for final approval of the Settlement.

2 The average Settlement award to a Class Member is expected to be approximately
3 \$1,048.99. The minimum Settlement award is expected to be \$10.44 for a single workweek
4 worked with the maximum award at approximately \$3,497.40 for a Class Member who worked the
5 full Settlement Period of January 29, 2017 through July 1, 2023, i.e. 335 workweeks.

6 Once the judgment becomes final, the Class Members will release their respective claims
7 against RPI and its related entities for the claims that are plead in the third amended complaint.

8 **C. ADDITIONAL TERMS.**

9 Within 14 days of entry of preliminary approval RPI will provide the Class List to the
10 Settlement Administrator. RPI will also submit a declaration submitted under the penalty of
11 perjury that all Class Members are included and their information on the Class List is true and
12 correct to the best of the declarant's personal knowledge. (Settlement § 22, Favarote Decl. ¶ 3,
13 Exh. 1.)

14 Within twenty-one (21) days of receiving the Class List the Settlement Administrator will
15 mail the Notice, attached as Exhibit A to the Settlement, to all Class Members via regular first class
16 mail using the most current known mailing addresses identified in the Class List or through a
17 National Change of Address ("NCOA") database search. (Settlement § 23, Favarote Decl. ¶ 3,
18 Exh. 1.) As the majority of the Class Members speak Vietnamese as their primary language, the
19 Notice will be distributed in both English and Vietnamese. (*Id.*) Based on the records produced,
20 the experiences of Plaintiff, and Class Counsel's investigation speaking to dozens of Class
21 Members, an English and Vietnamese translation of the notice should be sufficient to fully inform
22 the Class Members. (Favarote Decl. ¶ 32, O'Neill Decl. ¶ 4.)

23 For any envelopes returned as non-deliverable on or before thirty (30) days after mailing,
24 the Settlement Administrator will use any forwarding address provided to re-mail the returned
25 envelope and, if no forwarding address is provided, will perform a skip trace to identify an address
26 to which the envelope may be forwarded. The Settlement Administrator will remail the notice
27 packet within five (5) days after receipt of the returned envelope. (Settlement § 23, Favarote Decl.
28 ¶ 3, Exh. 1.) The Settlement Administrator will maintain a report of the date of such re-mailings of

1 the notice packet. (Id.)

2 Class Members will have forty (40) days to respond with any objections to the Settlement.
3 (Settlement § 6, Favarote Decl. ¶ 3, Exh. 1.) While Plaintiff understands the Court often favors a
4 sixty (60) day period, Plaintiff believes that a forty (40) day period is sufficient in this case because
5 the Class Members have already decided to be a part of the Class and must only decide whether
6 they intend to object. The objection process is simple and straightforward, and only requires that
7 the Class Member send a signed written explanation of their objection with the case name, case
8 number, and their name, address, and telephone number to the Settlement Administrator and the
9 parties' counsel. (Settlement § 24, Favarote Decl. ¶ 3, Exh. 1.) Furthermore, the Notice provides
10 all material terms of the Settlement, the number of workweeks worked by each individual Class
11 Member, and each Class Member's projected Settlement award. Class Counsel will also make sure
12 that the Claims Administrator has a webpage with the Notice and other Settlement documents
13 pursuant to the Court's guidelines for approval of class action and PAGA settlements.

14 In addition to filing these papers and the Settlement Agreement with the LWDA, Class
15 Counsel will provide any judgment within 10 days to the LWDA. (Favarote Decl. ¶ 35.)

16 **IV. THE SETTLEMENT SHOULD BE GIVEN PRELIMINARY APPROVAL.**

17 **A. CLASS ACTION SETTLEMENTS ARE SUBJECT TO COURT**
18 **REVIEW AND APPROVAL UNDER THE CALIFORNIA RULES OF**
19 **COURT.**

20 California Rule of Court 3.769 requires court approval for class action settlements.⁹
21 "Before final approval, the court must conduct an inquiry into the fairness of the proposed
22 settlement." Cal. R. Ct. 3.769(g). Rule 3.769 further requires a noticed motion for preliminary
23 approval of class settlements:

- 24 (a) A settlement or compromise of an entire class action, or of a cause of
25 action in a class action, or as to a party, requires the approval of the
26 court after hearing. ...

27 ⁹ The California Supreme Court has authorized California's trial courts to use Federal Rule
28 of Civil Procedure 23 and cases applying it for guidance in considering class issues. *See Vasquez*
v. Superior Court, 4 Cal. 3d 800, 821 (1971); *Green v. Obledo*, 29 Cal. 3d 126, 145-46 (1981).
Where appropriate, Class Counsel cites Federal Rule 23 and federal case law in addition to
California law.

1 (c) Any party to a settlement agreement may serve and file a written
2 notice of motion for preliminary approval of the settlement. The
3 settlement agreement and proposed notice to class members must be
4 filed with the motion, and the proposed order must be lodged with
5 the motion.

6 Cal. R. Ct. 3.769(a), (c).

7 Courts act within their discretion in approving settlements that are fair, not collusive, and
8 take into account “all the normal perils of litigation as well as the additional uncertainties inherent
9 in complex class actions.” *In re Beef Indus. Antitrust Litig.*, 607 F.2d 167, 179-80 (5th Cir. 1979),
10 *cert. denied sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n*, 452 U.S. 905
11 (1981) (citation omitted). Where a settlement is reached on terms agreeable to all parties, a court
12 should disapprove of the settlement “only with considerable circumspection.” *Jamison v. Butcher*
13 *& Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975).

14 **B. THE SETTLEMENT IS FAIR ADEQUATE AND REASONABLE.**

15 In deciding whether to approve a proposed class action settlement under California Code of
16 Civil Procedure section 382, a court must find that a proposed settlement is “fair, adequate and
17 reasonable.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing *Officers for*
18 *Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied*, *Byrd v. Civil Serv.*
19 *Comm’n*, 459 U.S. 1217 (1983)). The Court must consider all relevant factors, such as the
20 following:

21 the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
22 further litigation, the risk of maintaining class action status through trial, the
23 amount offered in settlement, the extent of discovery completed and the stage of the
24 proceedings, the experience and views of counsel, the presence of a governmental
25 participant, and the reaction of the class members to the proposed settlement. *Id.*
26 The court’s primary function is to determine that the settlement is not the product
27 of fraud, overreaching, or collusion, and taken as a whole, is fair, reasonable and
28 adequate to all concerned. *Id.*

A proposed class action settlement is *presumed* fair under the following circumstances:

(i) the parties reached settlement after arm’s-length negotiations; (ii) investigation and discovery
were sufficient to allow counsel and the court to act intelligently; (iii) counsel is experienced in
similar litigation; and (iv) the percentage of objectors is small. *Dunk*, 48 Cal. App. 4th at 1802.
The Favarote and O’Neill declarations filed with this motion demonstrate that: (i) the Settlement

1 was the product of serious, informed, and non-collusive negotiations conducted at arm's-length and
2 facilitated by a respected and experienced neutral mediator; (ii) the parties have engaged in both
3 extensive formal discovery and extensive motion practice such that the parties and their counsel are
4 able to make an informed recommendation about the Settlement; and (iii) the certified Class is
5 represented by counsel experienced in wage-and-hour class actions.¹⁰

6 Thus, the Settlement at this time is entitled to the presumption that it is fair and in all other
7 respects proper, and should be preliminarily approved.

8 **1. The Settlement Is the Result of Serious, Informed, Non-Collusive**
9 **Negotiations.**

10 The Settlement was reached as a result of the extensive arm's-length negotiations facilitated
11 by experienced mediator Gale A. Glick, Esq. of Judicate West. Though cordial and professional,
12 the settlement negotiations have been adversarial and non-collusive in nature. The Settlement
13 reached is the product of substantial effort by the parties and their counsel after almost three years
14 of very hard-fought litigation. While Plaintiff believes she has a high probability of success at
15 securing a judgment at trial, after securing new counsel RPI was able to present a number of
16 additional facts and arguments which raise doubts as to how much more could be obtained at trial
17 over the current settlement amount of \$3,495,000.00, while taking into consideration the risk of
18 decertification, manageability and evidentiary issues, as well as prolonged continued litigation.
19 For example, Plaintiff has based much of her overtime, unpaid minimum/straight time wages, and
20 meal period claims on the fact that RPI's time records show an automatic deduction to time worked
21 without any meal period ever being provided. However, RPI prior to mediation produced
22 additional documentation which shows that some meal periods were actually provided which could
23 not only limit the value of these claims, but also raise manageability and evidentiary issues. Prior
24 to mediation, RPI also provided additional information which tended to show that Plaintiff's off the
25 clock claims and regular rate claims, while still valid, were not as widespread as Class Counsel
26 thought based on the production and discovery responses provided by RPI's prior counsel.

27 ¹⁰ The fourth factor—the number of objectors—cannot be known until after the Notice of
28 the Settlement has been disseminated to Class Members and they have had an opportunity to react
to it and respond.

1 Class Counsel also recognizes the inherent risks of protracted litigation including additional
2 motion practice which would include decertification and manageability motions, the risk created by
3 trial and possible appeals, and the incredible delay of continued protracted litigation. Therefore,
4 should litigation have progressed any further, each side would have incurred significant expense
5 and there would be a very significant delay in payment to the Class. These risks, when compared
6 to a good deal which secures \$3,495,000.00 for the Class, show that the Settlement is both fair and
7 the prudent choice.

8 Furthermore, the Settlement is limited to only those who are a part of the certified Class.
9 Non-class members and those who already opted-out are free to litigate their claims against RPI
10 without prejudice.

11 **2. The Extent of Discovery and the Stage of the Proceedings**
12 **Support Settlement.**

13 Class Counsel has thoroughly investigated and evaluated the factual strengths and
14 weaknesses of the Action before reaching the Settlement and engaged in sufficient investigation
15 and formal discovery along with motion practice, as described above, to support the Settlement.
16 (Favarote Decl., ¶ 13-14, 16, 21-22.) Class Counsel's investigation included speaking to dozens of
17 Class Members both in English and via a Vietnamese speaking staff member, 77 document
18 requests which resulted in more than 44,000 documents which Class Counsel analyzed, two PMK
19 depositions over the course of three days, 34 special interrogatories, more than 40 form
20 interrogatories, two successful motions to compel responses and production of documents; and
21 hiring a data entry firm to manually enter more than 10,000 pages of paper time records which
22 were not stored in electronic manipulatable format suitable for analysis. The Settlement amount is,
23 of course, a compromise figure but it is a very favorable compromise for the certified Class. It
24 took into account risks related to liability, damages, and all of the defenses asserted by RPI. This
25 litigation, therefore, has reached the stage where the parties "certainly have a clear view of the
26 strengths and weaknesses of their cases" sufficient to support the Settlement. *In re Warner*
27 *Commc'ns Sec. Litig.*, 618 F. Supp. 735, 745 (S.D.N.Y. 1985), *aff'd* 798 F.2d 35 (2d Cir. 1986).

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1 **3. Class Counsel is Experienced in Similar Litigation.**

2 Class Counsel has significant experience in high value wage and hour litigation, and has
3 represented tens of thousands of workers in classes and settlements over his 25 year legal career.
4 This includes the following actions over the last few years in which Class Counsel secured a
5 significant recovery for other non-exempt California workers:

- 6 • Joshua Loughrie et al. v. Target Corporation., San Bernardino Superior
7 Court Case No. CIVDS1804580 (\$33 Million)
8 • Arthur Barnes/Ornelas et. al. v. Target Corp., San Bernardino Superior Court
9 Case No. CIVDS2007761 (\$14 Million)
10 • Andre Stokes et. al. v. Exact Staff Inc., San Bernardino Superior Court Case
11 No. CIVDS1924628 (\$3 Million)
12 • Miguel Coba v. DSC Logistics Inc., San Bernardino Superior Court Case
13 No. CIVDS1929135 (\$1.9 Million)
14 • Charmelle Fossett v. Brady Corporation et. al., US Central District of
15 California Court Case No. 5:16-cv-02572 PA (SPx) (\$1.2 Million)

16 Class Counsel represents that he is qualified to evaluate the class claims and to evaluate
17 settlement versus trial on a fully informed basis. Counsel on both sides share the view that this is a
18 fair and reasonable settlement in light of the complexities of the Action, the scope of the litigation,
19 and uncertainties of protracted litigation. Given the risks inherent in litigation and the defenses
20 asserted, this Settlement is fair, adequate, and reasonable and in the best interests of the Class, and
21 should be preliminarily approved.

22 Experienced counsel, operating at arm's length, have weighed the strengths of the case,
23 examined all of the issues and risks of litigation, and endorse the proposed Settlement. The view
24 of the attorneys actively conducting the litigation "is entitled to significant weight" in deciding
25 whether to approve the settlement. *Fisher Bros. v. Cambridge-Lee Indus, Inc.*, 630 F. Supp. 482,
26 488 (E.D. Pa. 1985); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*,
27 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

28 ///

1 Accordingly, Plaintiff submits the Settlement, having satisfied the three requirements of
2 *Dunk* at this stage, sufficient for the Court to grant preliminary approval.

3 **4. The Settlement Is Fair and Reasonable Based on the Risks and**
4 **Costs of Further Litigation.**

5 As noted above Plaintiff and Class Counsel have concluded it was reasonable to enter into
6 the Settlement rather than continue to trial. RPI's new counsel has somewhat "righted the ship"
7 and in addition to denying liability have produced new evidence that tends to show that the
8 damages in this matter are not as high as Class Counsel originally believed based on prior
9 discovery. Additionally, there are significant legal uncertainties associated with cases such as this,
10 as they can require protracted litigation to resolve. It is Plaintiff's position that the Court's
11 certification order is entirely correct, and the Class in this matter remains certifiable. However,
12 RPI's counsel will no doubt attempt to decertify some or all of the Class claims. Plaintiff must also
13 consider that decertification and manageability motions and reversals following trial are a
14 legitimate risk in light of the U.S. Supreme Court decision in *Wal-Mart Stores, Inc. v. Dukes*, 564
15 U.S. 338, 349-50 (2011). Plaintiff is also cognizant that RPI's production of new documents,
16 regardless of prior representations and verified responses that all relevant documents have been
17 produced, also present a wildcard risk and will entail many evidentiary motions which will take an
18 incredible amount of time to sort out while the Class Members wait for relief. Finally, Plaintiff is
19 also aware that RPI would likely appeal any judgment further introducing risk and years of more
20 expensive litigation with a privately held family business.

21 Plaintiff also acknowledges that continued litigation will likely not significantly increase
22 the recovery for the Class but will increase costs and risks. RPI has provided evidence and some
23 updated discovery responses which shows that they have significantly overhauled their
24 employment practices as a result of Plaintiff's years of litigation. RPI's documents verified under
25 the penalty of perjury show that RPI has changed timekeeping and payroll systems, is no longer
26 rounding time, is paying meal period premiums for unprovided meal periods and rest breaks, has
27 eliminated their automatic deduction policy, and is issuing new wage statements generated by a
28 reputable servicer, ADP. These changes which will benefit current and future employees are due
to Plaintiff's lawsuit, and will limit any growth of damages should the case continue to be litigated

1 and proceed to trial. In light of the above uncertainties and considering the costs of continued
2 litigation, the compromise of \$3,495,000.00 is not only reasonable, but is the prudent decision on
3 behalf of the Class.

4 While this amount could be less than what might be won at trial, a settlement is not judged
5 *solely* against what might have been recovered had a plaintiff prevailed at trial, nor does a
6 settlement have to provide 100% of the damages sought to be fair and reasonable. *See Wershba v.*
7 *Apple Computer, Inc.*, 91 Cal. App. 4th 224, 246, 250 (2001) (“Compromise is inherent and
8 necessary in the settlement process ... [E]ven if the relief afforded by the proposed settlement is
9 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to
10 a class settlement because the public interest may indeed be served by a voluntary settlement in
11 which each side gives ground in the interest of avoiding litigation.”) (internal quotation marks and
12 citation omitted); *Officers for Justice*, 688 F.2d at 628 (“It is well-settled law that a cash settlement
13 amounting to only a fraction of the potential recovery will not . . . render the settlement inadequate
14 or unfair.”).

15 **5. The Settlement Is a Reasonable Compromise of Claims.¹¹**

16 **a. Plaintiff’s Unpaid Minimum/Straight Wage Claims.**

17 Plaintiff’s minimum wage claim is based on a number of unlawful practices the primary of
18 which is RPI’s now former practice of automatically deducting 30 minutes of time worked
19 whenever an employee did not clock out for a meal period and making hand edits (largely
20 deductions) to its employees’ time records. RPI’s automatic deduction policy also automatically
21 deducted time from its employees’ time worked when they would clock in early from a lunch to
22 ensure that 30 minutes went unpaid.¹² However, prior to mediation RPI produced evidence that it
23 has some records of actually providing meal periods¹³ which contradicts the automatic deductions.
24 These records could substantially reduce the value of Plaintiff’s unpaid minimum/straight wage

25 ¹¹ See Favarote Decl., ¶¶ 36-59, for a full *Kullar* analysis by Plaintiff of the claims alleged
26 in the Actions.

27 ¹² For example, if the employee clocked in after 25 minutes of a meal period RPI’s payroll
28 software would automatically deduct 5 minutes from the employee’s time worked.

¹³ These records also purport to show the start and stop times of provided rest breaks for
some Class Members.

1 claims.

2 Plaintiff's minimum/straight wage claims are also based on rounding of employee time and
3 employees having to perform the following work-related activities while off the clock: responding
4 to work related communications; donning and doffing protective gear; attending meetings and
5 orientations; completing work related paperwork; and going through security and Covid-19
6 screenings. RPI alleges that it has always paid for all time worked, however its person most
7 knowledgeable witness has admitted that it did not permit the Class Members to submit timecard
8 corrections during part of the Class Period. RPI also had a practice of rounding time, shaving time,
9 and paying only for scheduled time. However, RPI did also credit employees with up to seven
10 additional minutes of paid time when they showed up on time for their shifts, and promptly closed
11 or had employees exit after their shifts were over, again not invalidating Plaintiff's unpaid wage
12 claims but mitigating its value.

13 **b. Plaintiff's Overtime Claim.**

14 Plaintiff's overtime claim follows much of the same analysis as Plaintiff's
15 minimum/straight wage claims, and is mitigated for many of the same reasons as explained above,
16 especially the new records which RPI provided prior to the mediation. In addition to the above
17 unlawful practices, RPI's uniform policy was to not pay overtime at its employees' regular rates of
18 pay and to not pay overtime on the seventh consecutive day of work in the workweek. Both of
19 these practices appear uniform, however both also appear to have been corrected by RPI in the
20 beginning of 2022 as a result of Plaintiff's litigation. Additionally, the issuances of bonuses were
21 infrequent and employees were not regularly scheduled to work seven days in a workweek. RPI
22 will also have a case-by-case argument to make for each bonus being discretionary, some of which
23 it is likely to win, adding additional risk of manageability to the claim. This issue is further
24 complicated by a lack of written policies on the subject which would require extensive testimony to
25 determine liability and damages.

26 **c. Plaintiff's Meal Period Claim.**

27 Much like Plaintiff's unpaid wage claims, the primary thrust of Plaintiff's meal period claim
28 is RPI's former automatic deduction policy and that its records showed no evidence of a meal

1 period ever being provided to the Class Members. RPI's presentation of new records before
2 mediation show that some meal periods and rest breaks were provided, and that it could produce
3 dozens of "happy camper" witnesses (i.e., current employees) to testify that they and the Class
4 Members did in fact receive meal periods and rest breaks. This presents a risk to the value of that
5 theory of recovery, but Plaintiff's meal period claim remains valid as it is plain from the records
6 that many employees did, albeit not regularly suffer short and late meal periods, and were not
7 provided second meal periods. Still this new evidence raises a decertification and/or manageability
8 risk. It also makes trying this claim potentially very time-consuming as it would require comparing
9 two or more sets of paper records combined with extensive testimony.

10 Additionally, it is RPI's written policy that employees are not permitted to leave the
11 premises for meal periods, and RPI's person most knowledgeable testified that RPI never paid a
12 meal period premium prior to 2021. RPI has since changed its policies and its records show that it
13 does now pay meal period premiums. RPI also denies that employees have ever been required to
14 remain on call during meal periods especially the majority of workers on the manufacturing floor
15 who take their breaks at the same time, and has produced evidence that its written policy regarding
16 leaving the premises has never been enforced.

17 **d. Plaintiff's Rest Break Claim.**

18 Plaintiff's rest break claim is based on RPI's alleged policy of not permitting its employees
19 to leave the premises during rest breaks, being on call for rest breaks, and not being provided with
20 uninterrupted full 10-minute rest breaks. Prior to mediation RPI's provided evidence which shows
21 a record of rest breaks and many of the individuals Class Counsel spoke to in its investigation
22 confirm that they regularly received rest breaks and only rarely received short or late rest breaks.
23 RPI denies that employees have ever been required to remain on call during rest breaks, and has
24 provided evidence that its written policy regarding leaving the premises has never been enforced.
25 Bringing this claim to trial would be even more difficult than the meal period claim as it would
26 require extensive review of these new paper records showing break times to be compared to
27 handwritten paper log books and would likely entail extensive conflicting testimony that would
28 bring the manageability of this claim into question.

1 **e. Plaintiff's Reimbursement Claim.**

2 Plaintiff's reimbursement claim is centered largely on the required use of the Class
3 Members' personal cellular telephones to communicate with managers on work related issues and
4 personal vehicles. While there is evidence of the Class Members being required to use their
5 personal cellular telephones, Plaintiff acknowledges that it could be difficult to collect substantial
6 evidence because it would rely on obtaining and sorting through text messages and emails,
7 extensive testimony, and likely a survey for ascertaining the scope of liability and damages.
8 Additionally, while Class Members were at times required to use their personal vehicles it appears
9 that largely this was to drive between RPI facilities, which are closely grouped together and did not
10 require significant travel.

11 **f. Plaintiff's Derivative Class and PAGA Claims.**

12 Plaintiff's claim for the failure to provide accurate itemized wage statements pursuant to
13 Labor Code § 226; claim for failure to timely pay all wages pursuant to Labor Code §§ 204 and
14 210; claim for failure to maintain accurate payroll records pursuant to Labor Code §§ 226, 558 and
15 1198; claim for failure to pay all wages due upon termination under Labor Code § 203; claim for
16 unfair business practices in violation of Business & Professions Code §§ 17200 et seq.; and claim
17 for civil penalties pursuant to PAGA are largely derivative of her other claims. Since these claims
18 are derivative, they entail the same risks as the claims outlined above.

19 **g. Plaintiff's Other PAGA Claims.**

20 Plaintiff's additional PAGA claims for failing to provide seating, suitable temperature
21 controls, failing to pay sick leave days at the appropriate rate, and unlawful background checks
22 support the Settlement's robust \$800,000.00 allocation to PAGA. However, RPI denies liability
23 for these claims and raises the defense that its operations do not reasonably allow the use of seats
24 for many positions because its manufacturing work requires frequent movement, that many of its
25 products require careful temperature control, and that even if Plaintiff prevailed on the other claims
26 the penalties for these claims would be limited.

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h. Class Counsel Believes the Settlement Is A Good Deal for the Class and the LWDA.

Class Counsel is convinced that the Settlement is in the best interest of the Class and the LWDA based on the negotiations and a detailed knowledge of the issues present in the Action. RPI's defenses to many of the claims mitigate the value of those claims, and as noted Plaintiff's litigation has already caused a significant change in ending RPI's practices. Ultimately, after weighting the length and risks of trial and other normal perils of litigation and considering the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals, Class Counsel determined that the Settlement was best for the Class and the LWDA. It is Class Counsel's opinion that the \$3,495,000.00 Settlement with \$800,000.00 allocated to PAGA is not only well within the "ballpark" of reasonableness and should be granted preliminary approval, but it also vindicates California's interest in seeing its labor laws enforced and PAGA's goal of deterring labor code violations. That Plaintiff's litigation caused RPI to overhaul many of its labor practices also shows that this Settlement has vindicated PAGA's objective of deterring future Labor Code violations.

V. THE COURT SHOULD CONTINUE THE STAY ON ALL NON-SETTLEMENT ACTIVITY IN THIS ACTION AND ALL RELATED ACTIONS.

Plaintiff requests that the Court keep its stay on all non-settlement activity in place while the parties move through the Settlement approval process. The Settlement will simplify the issues in the remaining related cases. The Settlement ensures that Plaintiff will promptly and timely move through the approval process by setting forth a structure timeline so that there is no undue delay created by any party.

VI. THE PROPOSED SETTLEMENT TIMELINE.

Should the Court grant preliminary approval of the Settlement at the April 11, 2024, hearing, Plaintiff proposes the following Settlement timeline:

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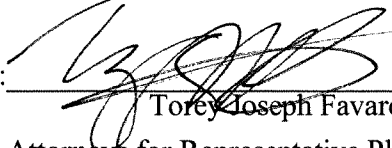
<u>Date</u>	<u>Event</u>
April 11, 2024	Court grants preliminary approval
April 25, 2024	Last day for RPI to provide Settlement Administrator with class data (14 days after preliminary approval order)
May 16, 2024	Last day for Settlement Administrator to mail out to Class Members Class Notice Packets (21 days after RPI provides the class list to Settlement Administrator)
June 25, 2024	Last day for Class Members to dispute information on Class Member Settlement Information Sheets (40 days after Class Notice is mailed) Last day for Class Members to file objections to Settlement (40 days after Class Notice is mailed)
July 9, 2024	Last day for Settlement Administrator to provide the parties with a written report which certifies the number of Class Members who have submitted an objection to the Settlement, along with copies of all such objections. (14 days after the response deadline)
July 23, 2024	Last day for Plaintiff to file with the Court a motion for a final approval of the Settlement, Class Counsel's attorney fees, Class Counsel's costs, and Plaintiff's class representative enhancement award (28 days after the response deadline)
August 15, 2024	Proposed Final approval hearing

VII. CONCLUSION.

Plaintiff and Class Counsel respectfully submit that the Settlement is in the best interests of the certified Class, as it is fair, adequate, and reasonable, and one that could ultimately be granted final approval. The Notice and related papers should be approved, ILYM Group Inc. should be appointed as Settlement Administrator, and the final approval hearing should be set for August 15, 2024 or the next date available to the Court.

Dated: January 5, 2024

GLEASON & FAVAROTE LLP
TOREY JOSEPH FAVAROTE

By: 

Torey Joseph Favarote

Attorneys for Representative Plaintiff
Amara O'Neill and the Certified Class

PROOF OF SERVICE

I, Thomas Steinhart, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is Gleason & Favarote, LLP, 4014 Long Beach Blvd., Suite 300, Long Beach, CA 90807.

On January 5, 2024, I served a copy(ies) of the following document(s):

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION
SETTLEMENT; APPOINTMENT OF SETTLEMENT ADMINISTRATOR; APPROVAL
OF CLASS NOTICE PACKET; REQUEST FOR A CONTINUED STAY ON ALL NON-
SETTLEMENT ACTIVITY AND SETTING OF FINAL APPROVAL HEARING**

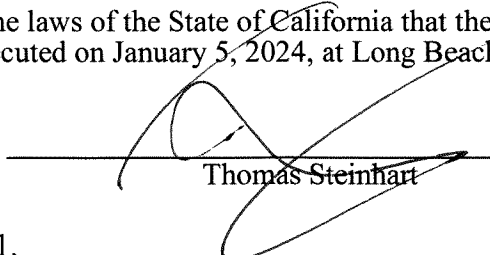
on the parties to this action as follows:

Attorney	Party(ies) Served	Method of Service
LAW OFFICE OF JARROD Y. NAKANO Jarrod Y. Nakano 4 Park Plaza, Suite 125 Irvine, California 92614 Tel: (949) 544-2640 jarrod@nakanolawfirm.com	Attorneys for Defendants ROBINSON PHARMA, INC. and TOMMY NGUYEN	One Legal, LLC
LAW OFFICES OF ETHAN H. NELSON Ethan H. Nelson 4 Park Plaza, Suite 1025 Irvine, CA 92614 Tel: (949) 229-0961 Fax: (949) 861-7122 EthanNelsonEsq@gmail.com	Attorneys for Defendants ROBINSON PHARMA, INC. and TOMMY NGUYEN	One Legal, LLC
Mark D. Kemple Ryan C. Bykerk Oscar E. Peralta Andrea Carmona GREENBERG TRAURIG, LLP 1840 Century Park East, Suite 1900 Los Angeles, CA 90067-2121 Tel: (310) 586-7700 Fax: (310) 586-7800 kemplem@gtlaw.com bykerkr@gtlaw.com oscar.peralta@gtlaw.com carmonaa@gtlaw.com	Attorneys for Defendants ROBINSON PHARMA, INC. and TOMMY NGUYEN	One Legal, LLC



[BY DESIGNATED ELECTRONIC FILING SERVICE] I hereby certify that the above-referenced document(s) were served electronically on the parties listed herein at their most recent known email address or email of record by submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at www.onelegal.com.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that this declaration was executed on January 5, 2024, at Long Beach, California.


Thomas Steinhart