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

MAGDALENA CRUZ, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

SPS TECHNOLOGIES, LLC dba AIR
INDUSTRIES COMPANY, a Pennsylvania
limited liability company; PRECISION
CASTPARTS CORP.; an Oregon corporation;
AIR INDUSTRIES CORPORATION, a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. 30-2021-01202173-CU-OE-CJC

*[Assigned for all purposes to the Hon. Glenda
Sanders, Dept. CX101]*

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

Date: September 23, 2022
Time: 1:30 p.m.
Dept. CX101

[Complaint Filed: May 21, 2021]
[Trial Date None Set]

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on
3 September 23, 2022, at 1:30 p.m. in Department CX 101 of the above-entitled Court, located at 751
4 West Santa Ana Blvd, Santa Ana, CA 92701, Plaintiff Magdalena Cruz (“Plaintiff”), individually and
5 on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

- 6 1. Preliminary approval of the proposed class settlement of this lawsuit;
7 2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification
8 of the following Class defined as follows:

9 All current and former non-exempt, hourly employees of Defendant SPS
10 Technologies, LLC dba Air Industries Company who worked in California at any
11 time between September 20, 2019 and the date of preliminary approval.

- 12 3. Preliminary appointment of Plaintiff Magdalena Cruz as Class Representative;
13 4. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of
14 Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
15 5. The scheduling of a hearing to consider whether the Settlement should be finally approved
16 and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties
17 payable to the California Labor Workforce Development Agency, and attorneys’ fees and
18 costs to Class Counsel;
19 6. Appointment of ILYM Group as the third-party Settlement Administrator for mailing
20 notices; and
21 7. Approval of the proposed Notice of Class Action and PAGA Settlement, Allocation Form,
22 Request For Exclusion Form and Objection Form and an order that they be mailed to the
23 proposed Class Members as provided in the Class and Representative Stipulation of
24 Settlement.

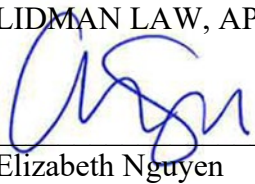
25 This Motion is based on this notice of motion, the memorandum of points and authorities, the
26 declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Plaintiff Magdalena
27 Cruz, and Sean Hartranft of ILYM Group and the exhibits attached thereto, the pleadings and other
28

1 papers filed in this action, and on any further oral or documentary evidence or argument presented at
2 the time of hearing.

3
4 Dated: June 8, 2022

Respectfully submitted,
LIDMAN LAW, APC

5
6 By:



Elizabeth Nguyen
Attorney for Plaintiff
Magdalena Cruz

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Magdalena Cruz (“Plaintiff”) brought this class and representative action against
4 Defendant SPS Technologies, LLC dba Air Industries Company (hereinafter “SPS” or “Defendant”)
5 alleging various wage and hour and related violations. Plaintiff’s primary allegations are that SPS: (1)
6 failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide
7 all legally required meal periods; (4) failed to authorized and permit all legally required rest periods; (5)
8 failed to provide accurate, itemized wage statements; (6) failed to pay all wages owed upon termination;
9 (7) engaged in unlawful business practices; (8) is liable for civil penalties under the Labor Code Private
10 Attorneys General Act of 2004 (“PAGA”).

11 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
12 class action settlement,¹ in which SPS has agreed to pay Five Hundred Fifty Thousand Dollars and Zero
13 Cents (\$550,000.00) to the following Class:

14 All current and former non-exempt, hourly employees of Defendant SPS
15 Technologies, LLC dba Air Industries Company who worked in California at any
16 time between September 20, 2019 and the Preliminary Approval Date.

17 Significantly, Class Members do not need to file a claim. All Class Members will automatically
18 receive a payment unless they affirmatively opt-out. After deducting the amounts to be requested for
19 administration costs, Plaintiff’s Enhancement, attorneys’ fees and costs, and payment of PAGA penalties,
20 the remaining Net Settlement Amount (“NSA”) of approximately \$279,166.67 will be distributed to all
21 Class Members who do not opt-out. There are approximately 691 Class Members, rendering the average
22 payment to Class Members to be approximately **\$404.00**². The lowest estimated individual payment is
23 approximately \$5.26 (if a Class Member worked one week during the relevant time period)³ and the

24
25 ¹ The Class and Representative Stipulation of Settlement (“Settlement”) is attached to the Declaration of Elizabeth Nguyen as
26 Exhibit 2. The proposed Notice of Class Action and PAGA Settlement, Allocation Form, Request For Exclusion Form and
Objection Form are attached to the Settlement as Exhibits A. All defined terms in this motion have the same definitions as
used in the Settlement.

27 ² This amount does not include the Aggrieved Employee PAGA Share for Aggrieved Employees.

28 ³ For Settlement, the Parties estimated that there are 48,192 workweeks worked by the Class Members during the Class Period
and the escalator clause would be triggered if there were more than 53,031 workweeks. Based on the Class Period being
September 20, 2019 through September 23, 2022 (approximate date for hearing on motion for Preliminary Approval), the pro

1 highest estimated individual payment is approximately \$825.82.⁴

2 This proposed Settlement is well-within the range of possible approval in light of the significant
3 legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible
4 monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiff
5 respectfully requests that the Court grant preliminary approval of the Settlement.

6 **II. SUMMARY OF THE LITIGATION**

7 **A. THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARMS-LENGTH 8 NEGOTIATIONS**

9 **1. The Parties**

10 SPS manufactures high-strength precision fasteners used by leading airframe, engine, spacecraft,
11 and missile manufacturers. *See* Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶ 10. Plaintiff, a
12 former employee, was employed by SPS as a non-exempt Operator from approximately 1997 through
13 approximately July 31, 2020. *See* Declaration of Magdalena Cruz (“Cruz Decl.”), ¶ 2. During her
14 employment, Plaintiff worked out of SPS’s facility in Garden Grove, California. *Id.*

15 **2. Procedural History**

16 On March 16, 2021, Plaintiff submitted a letter to the California Labor & Workforce Development
17 Agency (“LWDA”) and SPS of her intention of filing a PAGA claim based on certain labor code
18 violations. Nguyen Decl., ¶ 10, Exh. 1. On May 21, 2021, after exhausting her administrative remedies,
19 Plaintiff filed a representative class action complaint against SPS in Orange County Superior Court.⁵ *Id.*
20 Subsequently, on May 23, 2022, pursuant to the Parties’ joint stipulation and as part of the Parties’
21 negotiated resolution, Plaintiff filed a First Amended Class and Representative Action Complaint for the
22 following causes of action: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages
23 owed; (3) failed to provide all legally required meal periods; (4) failed to authorized and permit all legally
24 required rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to pay all wages

25

rata share per workweek is approximately at least \$5.26/workweek (\$279,166.67 estimated NSA/53,031 workweeks). Thus, if
26 a Class Member worked one week during the Class Period, his/her pro rata share would be \$5.26.

27 ⁴ This is based on the assumption that a Class Member worked the entire time between September 20, 2019 and September 23,
28 2022, which is approximately 157 workweeks. Therefore, the employee would receive approximately \$825.82 (157 x \$5.26).
However, the class period goes through the date of preliminary approval which has yet to be determined. Accordingly, the
highest estimate payment is likely to be slightly lower.

⁵ Plaintiff initially filed this action against two other companies, Precision Castparts Corp and Air Industries Corporation.
However, on July 7, 2021 and September 21, 2021, Plaintiff submitted a request for dismissal and the Court entered the
dismissal without prejudice against these two entities. Therefore, SPS remains the only Defendant in this action.

1 owed upon termination; (7) engaged in unlawful business practices; (8) is liable for civil penalties under
2 the PAGA. *Id.*

3 Plaintiff will also serve the instant Motion and proposed Settlement on the LWDA on the same
4 date she files this Motion and will submit a supplemental declaration showing the submission. Nguyen
5 Decl., ¶ 35.

6 **3. Discovery**

7 The Parties engaged in written discovery. Plaintiff propounded and SPS responded to document
8 requests, form and special interrogatories. After agreeing to participate in early mediation, SPS informally
9 produced the time records and payroll data for the entire putative class, as well as its wage and hour
10 policies and other relevant documents and information relevant to the claims alleged in advance of
11 mediation. Nguyen Decl., ¶ 11. After the detailed review of the payroll and time records and other
12 documents and policies produced by SPS, Class Counsel drew on their extensive experience in similar
13 cases to assess the strengths and weaknesses of Plaintiff's case. *Id.* This discovery allowed the parties to
14 assess the merits and value of Plaintiff's claims and SPS's defenses thereto, if a settlement could not be
15 reached.

16 **4. Arms-Length Negotiations**

17 On February 9, 2022, after extensive research and analysis, a mediation was held with Lou Marlin,
18 Esq. a well-respected wage and hour class action mediator. Nguyen Decl., ¶ 12. During mediation, the
19 parties vigorously debated their opposing legal positions with respect to PAGA and class claims, the
20 likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. Nguyen
21 Decl., ¶ 12. Ultimately, the Parties agreed in principle on a class-wide resolution. *Id.* In the months that
22 followed, the parties finalized the terms of settlement and executed the Class and Representative
23 Stipulation of Settlement ("Settlement"). *Id.*

24 Further SPS provide a declaration confirming the data and representations made during the Parties'
25 mediation concerning the claims and allegations that were not yet asserted but were evaluated, mediated
26 and ultimately settled were true and correct.

27 //

28 //

//

1 **III. ARGUMENT**

2 **A. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**

3 California Rule of Court 3.769 conditions settlement of a class action on court approval, which is
4 generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil
5 Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322 requires trial court to
6 determine “that the settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler*
7 *Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 requires the trial court to determine “whether a proposed
8 settlement is fundamentally fair, adequate, and reasonable”).

9 As further explained below, the Class satisfies the criteria for certification of a settlement class
10 under California law because: (1) the Class is so numerous that joinder would be impractical; (2) common
11 questions of law and fact predominate over individual questions such that class certification is the most
12 efficient and desirable way to maintain this litigation; (3) Plaintiff’s claims are typical of the claims of
13 the Class; and (4) Plaintiff and her counsel will fairly and adequately represent Class Members’ interest.
14 *See* Cal. Civ. Proc. § 382.

15 **1. Numerosity is Satisfied.**

16 Here, there are approximately 691 Class Members, and is therefore sufficiently numerous as to
17 make joinder impracticable. *See* Nguyen Decl., ¶ 14; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574
18 (holding a class representing 10 beneficiaries of a trust sufficiently numerous). Thus, numerosity is
19 satisfied.

20 Further, a class is “ascertainable” where the members “may be readily identified without
21 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target Corp.*
22 (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class is defined
23 as “all current and former non-exempt employees of Defendant SPS Technologies, LLC dba Air
24 Industries Company who worked in California at any time between September 20, 2019 and the
25 Preliminary Approval Date.” Nguyen Decl., ¶ 14.

26 Moreover, Aggrieved Employees means any and all persons who are or were non-exempt
27 employees employed by Defendant in California at any time during the PAGA Period of September 20,
28 2019 through the Preliminary Approval Date.

1 **2. Commonality is Satisfied.**

2 The focus in a certification dispute is not the merits, but rather on what types of questions,
3 “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court*
4 (*Rocher*) (2004) 34 Cal.4th 319, 327.

5 Here, Class Members’ claims arise from SPS’s common, uniform policies and practices that
6 applied to Class Members during the class period. Nguyen Decl., ¶ 15. Specifically, Plaintiff alleged that
7 SPS’s common and uniform policies and practices resulted in the following violations: (1) failure to pay
8 all minimum wages owed; (2) failure to pay all overtime wages owed; (3) failure to provide all legally
9 required meal periods; (4) failure to authorized and permit all legally required rest periods; (5) failure to
10 provide accurate, itemized wage statements; (6) failure to pay all wages owed upon termination; (7)
11 unlawful business practices; and (8) liability for civil penalties under the Labor Code Private Attorneys
12 General Act of 2004 (“PAGA”). *Id.* As a result of the common and uniform policies and practices that
13 applied to all Settlement Class members, their claims involve common questions of law and fact.

14 These alleged practices result in common questions as to the affected Class Members. *See e.g.,*
15 *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726.

16 **3. Typicality is Satisfied.**

17 The typicality requirement is satisfied where class representatives have claims that are typical of
18 those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341,
19 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class
20 in a consumer class action).

21 Here, Plaintiff’s claims are typical of those held by the Class. First, Plaintiff was employed by
22 SPS during the Class Period as a non-exempt employee and was subject to SPS’s wage and hour policies
23 at issue in this case. *See Cruz Decl.*, ¶ 2. Second, Plaintiff was allegedly injured by the same challenged
24 policies that allegedly injured the Settlement Class as a whole. For example, Plaintiff asserts that she,
25 like Class Members, was not provided all legally required minimum and overtime wages, was not
26 provided with all required meal periods, was not permitted and authorized to take all required rest periods,
27 did not receive meal and rest period premium wages when she was not provided complaint meal and rest
28 periods, was not paid all wages upon separation of her employment with Defendant, and was not provided
with accurate, itemized wage statements. *Id.* Given that SPS’s policies and practices applied to all non-

1 exempt employees, Class Members possess a similar interest and have suffered similar alleged injuries
2 as Plaintiff. Accordingly, because Plaintiff's claims and those of the Class all arise from the same
3 conduct, typicality is satisfied.

4 **4. Adequacy is Satisfied.**

5 The adequacy requirement examines conflicts of interest between named parties and the class(es)
6 they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155 (2007)
7 Cal.App.4th 676, 697.

8 Here, there are no apparent conflicts of interest between Plaintiff and the Settlement Class she
9 seeks to represent. Indeed, Plaintiff's interests are aligned with those of the Settlement Class members,
10 as they all seek monetary relief under the same facts and legal theories. Additionally, Class Counsel does
11 not have any conflict of interest with the Settlement Class. *See McGhee v. Bank of America* (1976) 60
12 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication that Class Counsel were not
13 qualified and the named plaintiff had no interests antagonistic to those of the proposed class).

14 Further, Class Counsel also have extensive experience in wage and hour class action litigation and
15 have vigorously litigated this case. *See* Nguyen Decl., ¶¶2-8; Declaration of Scott M. Lidman ("Lidman
16 Decl."), ¶¶ 2-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8; Declaration of Milan Moore
17 ("Moore Decl."), ¶¶ 2-4.

18 **B. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE 19 PROPOSED CLASS ACTION SETTLEMENT BECAUSE IT IS FAIR, 20 ADEQUATE, AND REASONABLE**

21 Settlement is the preferred means of dispute resolution, particularly in complex class action
22 litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in
23 evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See*
24 *e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the
25 Settlement agreement was negotiated at arm's-length by class counsel and with the assistance of an
26 experienced wage and hour class action mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168
27 Cal.App.4th 116, 130.

28 **1. The Preliminary Approval Standard is Met**

To make a fairness determination, the Court should consider several factors, including: "the
strength of plaintiffs' 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, [and] the experience and views of counsel.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 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 v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 230, 245. As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors.

a. Risk, Expenses, Complexity, and Duration of Further Litigation

Although the parties engaged written discovery and informal discovery throughout this action, the parties still had significant discovery to complete in formal litigation had the matter not settled. Nguyen Decl., ¶ 34. Moreover, the initial action was a representative PAGA action and faced the prospect of appeals in the wake of an adverse summary judgment ruling. *Id.* This Settlement avoids those risks and the accompanying expense. *Id.* Thus, this factor supports preliminary approval.

b. Overview of the Settlement Agreement

If the Court approves this Settlement, SPS will pay a Gross Settlement Amount (“GSA”) of \$550,000.00.⁶ Nguyen Decl., ¶¶ 13, Exh. 2 (Settlement, ¶ II.S). Significantly, this Settlement is **non-reversionary**, and no Class Member will have to submit a claim form to receive an Individual Settlement Payment. *Id.* (Settlement at ¶ III.H.3). Each Class Member will automatically receive a Settlement Payment unless he or she affirmatively opts out of the Settlement. *Id.* The monetary terms of the Settlement are summarized below:

Gross Settlement Amount (“GSA”):	\$550,000.00
Minus Court-approved attorneys’ fees (1/3 of GSA):	\$183,333.33
Minus Court-approved, verified costs (up to):	\$30,000.00
Minus Court-approved Class Representative Enhancement (up to):	\$5,000.00
Minus Settlement Administration Costs:	\$15,000.00
Minus LWDA payment:	\$37,500.00
Net Settlement Amount (“NSA”):	\$279,166.67

⁶ The Settlement includes an escalator clause based on the Parties estimate that there are 48,192 workweeks worked by the Class Members during the Class Period. If the number of workweeks worked by Class Members during the Class Period is more than ten percent (10%) greater than this figure (i.e., there are more than 53,011 workweeks), Defendant agrees to increase the Gross Settlement Amount on a proportional basis (i.e., if there was an 11% increase in the number of workweeks worked by Class Members, Defendant would increase the Gross Settlement Amount by 1%). See Settlement, ¶ III.C.2.

1 Defendant shall pay the Gross Settlement Amount and the employer's side taxes within thirty (30)
2 days after the Final Settlement Date, which means the date on which the Final Judgment becomes final.
3 *See* Settlement, ¶ I.AA.

4 After deducting amounts for the Court-approved attorneys' fees and verified costs, Enhancement
5 to Plaintiff, Settlement Administrator costs, and the LWDA payment, the Net Settlement Amount
6 ("NSA") of at least **\$279,166.67** will be distributed to all Class Members who do not timely opt out.
7 Nguyen Decl., ¶ 13, Exh. 2. This amount does not include the \$12,500.00 Aggrieved Employee Share to
8 be paid to the Aggrieved Employees, who may not exclude themselves from their Aggrieved Employee
9 Payment Share.

10 There are approximately 691 total Class Members. Nguyen Decl., ¶ 14. the average Individual
11 Settlement Payments is approximately **\$404.00**. *Id.* The Individual Settlement Payments shall be
12 determined as follows: The identified Settlement Class Members shall receive a pro rata share of the
13 NSA. The individual Settlement Class Member's payment shall be calculated by the Settlement
14 Administrator by dividing the NSA by the total workweeks that have accrued for the Settlement Class
15 during the Class Period and multiplying that amount by the number of workweeks worked by the
16 individual Settlement Class Member during the Class Period. Settlement, ¶ III.H.4. As discussed above,
17 the lowest estimated individual payment is approximately \$5.26 (if a Settlement Class Member worked
18 one week during the relevant time period) and the highest estimated individual payment is approximately
\$825.82 (if the settlement is approved on September 23, 2022).

19 Class Members will have sixty (60) calendar days from the mailing of the Notice to opt-out or
20 object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying
21 the Settlement. *See* Settlement, ¶ II.W. Those Class Members who do not opt-out of the Settlement will
22 be bound by its terms and will release all claims against SPS included within the Settlement, for the period
23 September 20, 2019 through the date the Preliminary Approval Date. *See* Settlement, ¶ III.D.1.

24 Additionally, \$12,500.00 of the GSA is designated as the Aggrieved Employee PAGA Share. The
25 identified Aggrieved Employees shall receive a pro rata share of the Aggrieved Employee PAGA Share.
26 The individual Aggrieved Employee's payment shall be calculated by the Settlement Administrator by
27 dividing the Aggrieved Employee PAGA Share by the total workweeks that have accrued for the
28

Aggrieved Employees during the PAGA Period and multiplying that amount by the number of workweeks worked by the individual Aggrieved Employee during the PAGA Period. Settlement, ¶ III.H.2.

There are approximately 691 Aggrieved Employees and the average estimated Aggrieved Employee PAGA Share is \$18.09, with the lowest being approximately \$0.41⁷ (if an Aggrieved Employee only worked one pay period) and the highest being approximately \$32.39.⁸

Aggrieved Employees will automatically receive a pro rata share of the Aggrieved Employee PAGA Share and will release SPS from all claims for penalties pursuant to PAGA during the PAGA Period of September 20, 2019 through the Preliminary Approval Date. Settlement, ¶ III.D.3.

c. The Parties Engaged in Fair and Honest Negotiations.

This Settlement was a result of serious, informed, non-collusive negotiations with the assistance of a mediator. In connection with mediation, SPS produced the timekeeping and payroll data for the entire putative class. Plaintiff, with the assistance of an economist, conducted an analysis of the payroll data and time records produced by SPS, from which Class Counsel analyzed the potential exposure for Plaintiff's claims. Nguyen Decl., ¶ 11. After the detailed review of the payroll and time records and other documents and policies produced by SPS, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff's claims and SPS's defenses thereto, if a settlement could not be reached. *Id.*

On February 9, 2022, the parties participated in mediation with Lou Marlin, Esq., a preeminent wage and hour class action mediator. Nguyen Decl., ¶¶ 11-12. During mediation, the parties vigorously debated their opposing legal positions with respect to PAGA and class and allegations (which had not yet been plead), the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. The Parties ultimately agreed in principle on a class-wide and PAGA resolution and memorialized the agreement in a Memorandum of Understanding at mediation. *Id.* Since mediation, the

There are approximately 30,567 bi-weekly pay periods worked between September 20, 2019 and September 23, 2022. Therefore, the Aggrieved Employee PAGA Share is approximately \$0.41/pay period (12,500 / 30,567). Thus, if an Aggrieved Employee only worked on pay period, his/her pro rata share would be \$0.41.

⁸ This is based on the assumption that an Aggrieved Employee worked the entire time between September 20, 2019 and September 23, 2022, which is approximately 157 workweeks and received approximately 79 bi-weekly wage statements. Therefore, the employee would receive approximately \$32.39 (79 x \$.41). However, the PAGA Period goes through the date of preliminary approval which has yet to be determined. Accordingly, the highest estimate payment is likely to be slightly higher

1 Parties finalized the terms of settlement and executed the Settlement. Nguyen Decl., ¶ 12, Exhibit 2.

2 Thus, the proposed Settlement is entitled to an initial presumption of fairness as it is the result of
3 factual investigation and data analysis; the exchange of substantial information and class data, including
4 timekeeping and payroll records; arm's length negotiations by counsel; and mediation before an
5 experienced wage and hour class action mediator. *See* Nguyen Decl., ¶¶ 11-12; *See Kullar, supra*, 168
6 Cal.App.4th at 130.

7 Further, there are no deficiencies in the Settlement. The Settlement does not grant preferential
8 treatment to the class representative or segments of the class, and is within the range of possible approval,
9 as discussed in detail below. The Settlement will provide monetary relief to Settlement Class members.
10 The amounts proposed for Class Counsel's attorneys' fees and costs, and Class Representative
11 Enhancement are all reasonable and appropriate based on the facts of this case. Because the Settlement is
12 devoid of obvious deficiencies, this factor supports preliminary approval.

13 **d. Strength of Plaintiff's Case, Amount Offered in Settlement Given**
14 **Realistic Value of Claims and Risk of Class Certification.**

15 The Settlement provides a fair and reasonable monetary recovery for the Class in the face of
16 disputed claims. Although Plaintiff maintains that her claims are meritorious, Plaintiff acknowledges that
17 there were substantial risks and uncertainty in proceeding with litigation. As described below, SPS
18 presented multiple defenses to Plaintiff's claims, both on the merits and class certification. Thus, while
19 Plaintiff was prepared to litigate these claims through trial, success was far from certain.

20 Plaintiff's analysis of the maximum and realistic expected recoveries for each of the theories of
21 liability pled is set forth below:

22 Unlawful Rounding/Off-the-Clock: Plaintiff alleges that she and other Class Members were not
23 paid for all time worked. Nguyen Decl., ¶ 16. Specifically, Plaintiff alleges that SPS's timekeeping
24 policies and practices required Plaintiff and other non-exempt employees to clock in and begin working
25 approximately five (5) minutes before their scheduled start time and continue working approximately five
26 (5) minutes after the end of their scheduled end time for which they did not receive pay. *Id.* Thus, Plaintiff
27 alleges that SPS would unlawfully shave their work time and/or round their work time such that they
28 would not be fully paid for all time worked. *Id.* Plaintiff also alleges that this time shaving and/or
rounding practice utilized by SPS was not-even handed over time and would almost exclusively round

1 and shave in SPS's favor such that the employees were routinely underpaid for their time worked. *Id.*
2 Based on the records and information provided by SPS in connection with mediation and settlement, SPS's
3 rounding practice was in effect from September 20, 2019 until July 11, 2020, which is approximately
4 21,192 workweeks during the relevant time period. *Id.* Accordingly, SPS's exposure for its alleged
5 unlawful rounding is approximately \$383,448 (21,192 workweeks x .83 (50 mins workweek/10 mins per
6 shift) x \$21.80 (average hourly rate)). *Id.*

7 SPS contends that it compensated Class Members for all of their time worked. Nguyen Decl., ¶
8 17. SPS also contends that its rounding practices were lawful, and any unpaid time was *de minimis* and
9 therefore non-compensable. *Id.* SPS also contends that Plaintiff and the other non-exempt employees
10 were not working during these times and it ceased its rounding practices in July 2020. SPS further asserts
11 that Plaintiff would be unable to certify a rounding class given the individualized inquiries that would be
12 required, and also that SPS's rounding mechanism was, according to it, allegedly facially neutral. In light
13 of these defenses, Plaintiff discounted the maximum exposure by 45% for the risk of non-certification,
14 and an additional 30% to account for SPS's defenses on the merits, to arrive at an estimated exposure of
15 \$147,627.48. *Id.*

16 Unpaid Overtime: Plaintiff further alleges that she and other Class Members were not properly
17 compensated for all overtime hours worked. Nguyen Decl., ¶ 18. Specifically, for at least a portion of
18 the time period relevant to her claims, Plaintiff and other non-exempt employees received non-
19 discretionary bonuses and/or other forms of pay not excludable as a matter of law when calculating an
20 employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as
21 "Incentive Pay"). *Id.* Despite SPS's payment of Incentive Pay to Plaintiff and other non-exempt
22 employees, SPS failed to include all forms of Incentive Pay when calculating their regular rate of pay. In
23 addition, throughout Plaintiff's employment, Plaintiff alleges she and other non-exempt employees
24 worked shifts with varying pay rates. Thus, on the occasion when Plaintiff worked in excess of eight (8)
25 hours per workday and/or more than forty (40) hours per workweek, Plaintiff received various overtime
26 rates of pay for her overtime hours worked, depending on her shift. However, Plaintiff alleges that SPS
27 failed to use her weighted average of overtime pay (instead paying overtime at the rate of 1.5 times the
28 hourly rate in effect at the time the overtime was worked), reflecting Plaintiff's varying pay rates, when
calculating Plaintiff's regular rate of pay for a workweek, thereby causing Plaintiff to be underpaid for her

1 overtime hours worked. *Id.* Therefore, Plaintiff estimates SPS’s maximum exposure at approximately
2 \$58,659.36. *Id.*

3 SPS contends that it compensated non-exempt employees for all of their time worked. Nguyen
4 Decl., ¶ 19. SPS also contends that any bonuses paid were discretionary. *Id.* SPS further asserts that the
5 data confirms that it did not pay Plaintiff nor any other Class Members different rates of pay during the
6 same pay period during the Class Period, and therefore there is zero liability on this claim. *Id.* SPS also
7 contends that Plaintiff would be unable to certify a rounding class given the individualized inquiries that
8 would be required. *Id.* Accordingly, based on these risks, Plaintiff discounted the maximum exposure by
9 75% for the risk of non-certification, and an additional 90% to account for SPS’s defenses on the merits,
10 to arrive at an estimated exposure of \$1,466.48. *Id.*

11 Second Meal Period Violations: Plaintiff alleges that she and Class Members were not provided
12 with all legally-required off-duty meal periods. Nguyen Decl., ¶ 20. Specifically, Plaintiff alleges that she
13 and other Class Members were not timely provided all required second meal periods when they worked in
14 excess of 10.0 hours. *Id.* Based on the timekeeping data produced in connection with mediation, Plaintiff
15 contends that there were no recorded second meal periods. *Id.* Plaintiff also alleges that SPS failed to pay
16 meal period premium wages at the correct rate of pay. Therefore, Plaintiff calculated SPS’s maximum
17 exposure for the alleged second meal period violations at approximately \$1,823,069 ((83,627 shifts over
18 10.0 hours with non-compliant meal period x \$21.80 average hourly rate). *Id.*

19 SPS counters that it has always provided non-exempt employees with an opportunity to take legally
20 compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping records
21 were solely the result of employee choice, rather than any policy or practice of SPS. Nguyen Decl., ¶ 21.
22 SPS points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only
23 required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken, and that
24 they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard). SPS also
25 asserts that approximately 97% of the Class, including Plaintiff signed second meal period waivers and
26 that the Class preferred to waive the second meal period rather than worker a longer shift in order to take
27 a second 30 minute meal period. *Id.* SPS also contends that meal period premiums were paid at the base
28 rate of pay for only 789 of the relevant pay periods and is therefore *de minimis* such that the Court would
not try this claim on a class-wide or PAGA representative basis. Finally, SPS contends Plaintiff’s meal

1 period claim is not suited for class certification, since individual inquiries would be required to assess
2 which employees took non-compliant meal periods, how many meal periods were non-compliant or
3 missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal
4 period during a particular shift. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 45% for
5 the risk of non-certification, and an additional 70% to account for SPS's defenses on the merits (including
6 a potential inability to pay) to arrive at an estimated exposure of approximately \$300,806.39. *Id.*

7 Rest Period Violations: Plaintiff alleges that she and other Class Members were not authorized
8 and permitted to take all required paid rest periods due to SPS's rest period policies and practices that fail
9 to authorize and permit all rest periods for every four hours worked, *or major fraction, thereof*. Nguyen
10 Decl., ¶ 22. Specifically, Plaintiff alleges that due to work demands imposed by SPS, she was not
11 authorized and permitted to take third rest periods on shifts worked in excess of 10.0 hours. *Id.* Based
12 on the records provided by SPS in connection with mediation, 83,756 shifts were in excess of 10.0 hours.
13 *Id.* Accordingly, Plaintiff calculated SPS's maximum exposure at \$1,825,881 (83,756 shifts over 10
14 hours x \$21.80 average hourly rate). *Id.*

15 SPS contends it has always maintained and enforced lawful rest period policies and practices, and
16 that Class Members were authorized and permitted to take all off-duty rest periods in compliance with
17 California law. Nguyen Decl., ¶ 23. Further, SPS argues that Plaintiff's rest period claim is inherently
18 unsuited for class treatment as it requires an individualized inquiry into whether each Class Member was
19 in fact authorized and permitted to take a compliant rest period, which would devolve into an
20 unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 40%
21 for the risk of non-certification, and an additional 55% to account for SPS's defenses on the merits to
22 arrive at an estimated exposure of approximately \$492,987.87. *Id.*

23 Waiting Time Penalties: Plaintiff alleges that SPS is also liable for waiting time penalties under
24 Labor Code section 203 as a result of its failure to pay all wages. Nguyen Decl., ¶ 24. Based on the data
25 provided by SPS, there were approximately 341 Class Members who have separated their employment
26 with SPS during the relevant time period who could be entitled to waiting time penalties. *Id.* Therefore,
27 Plaintiff calculated SPS's maximum exposure for waiting time penalties at approximately \$1,784,112 (341
28 former employees x \$21.80 [average regular rate] x 30 days x 8 hours/day). *Id.*

SPS asserts it has strong defenses to the waiting time claim because there exist good-faith disputes

as to Plaintiff's underlying claims, precluding imposition of penalties. Nguyen Decl., ¶ 25. *See also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that "good faith dispute" over whether employee was exempt precluded imposition of waiting time penalties over contested wages owed). *Id.* Accordingly, Plaintiff discounted the maximum exposure by 45% for the risk of non-certification, and an additional 40% to account for SPS's defenses on the merits to arrive at an estimated exposure of approximately \$588,756.96. *Id.*

Wage Statement Violations: Plaintiff further alleges that SPS issued inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged unpaid wages and meal and rest period premium wages described above. Nguyen Decl., ¶ 26. Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a) because the wage statements issued to Class Members did not include all hours worked and the rate at which they were being paid. *Id.* Therefore, Plaintiff calculated SPS's maximum exposure for wage statement violations at approximately \$2,373,000 (($\50.00×350 current employees) + ($\$100.00 \times 23,555$ wage statements)). *Id.*

At mediation, SPS argued that meal and rest period claims cannot support a claim for wage statement penalties after *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App. 5th 444, review granted, and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (*see, e.g., Jones v. Spherion Staffing*, No. LA-CV-11-06462-JAK(JCx) (C.D. Cal. 2012) 2012 WL 3264081 at **8-9).⁹ Nguyen Decl., ¶ 27. SPS further argues that its alleged wage statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that she or any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. *Id.* As such, Plaintiff discounted the calculated exposure by 75% for a risk of non-certification and an additional 65% for a risk of being unsuccessful on the merits, to arrive at an estimated total of approximately \$207,637.50. *Id.*

PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Nguyen Decl., ¶ 28. Plaintiff calculated SPS's maximum exposure at \$2,390,500 (23,905 pay periods x \$100 initial violation rate). *Id.*; *see Amaral v. Cintas Corp.*

⁹ The California Supreme Court issued its decision in *Naranjo v. Spectrum Security Services, Inc.*, No. S258966, on May 23, 2022, 3 months after mediation and the MOU was signed.

No. 2 (2008) 163 Cal.App.4th 1157, 1207 (finding “initial” violation rate applies until employer is notified that it is violating a Labor Code provision).

SPS argues that Plaintiff’s PAGA claim will fail for the same reasons that her underlying claims will fail. Nguyen Decl., ¶ 29; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). SPS also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find SPS liable for any of Plaintiff’s claims. *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). *Id.* Therefore, Plaintiff discounted the maximum exposure figure by 65% for a risk of being unsuccessful on the merits, and an additional 65% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of \$292,836.25. *Id.*

e. **The Settlement Is Within the Range of Possible Approval**

Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Class would be approximately \$2,032,118.93. Nguyen Decl., ¶ 30. The proposed settlement of \$550,000.00 therefore represents approximately 27% of the reasonably forecasted recovery for the Class. *Id.* Preliminary approval is appropriate as the settlement will provide tangible monetary relief to Class Members, and will still provide an average recovery to Class Members of over \$400.00. *Id.*

The proposed settlement reflects approximately 27% of the estimated recovery to the Class could reasonably expect in light of the significant litigation risks, and will provide tangible monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement

1 Class members at trial”). Thus, Plaintiff submits that the proposed settlement is within the range of
2 possible approval, such that notice should be provided to the Class so that they can consider the
3 Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement
4 after the Class has had the opportunity to opt-out or object.

5 **f. The Experience and Views of Counsel**

6 “Parties represented by competent counsel are better positioned than courts to produce a
7 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
8 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent,
9 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class
10 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*
11 *Lidman Decl.*, ¶¶ 2-8; *Nguyen Decl.*, ¶¶ 2-8; *Haines Decl.*, ¶¶ 2-8. Class Counsel conducted an in-depth
12 review of SPS’s policies and timekeeping and payroll records, and drew on their extensive experience in
13 similar cases to assess the strengths and weaknesses of Plaintiff’s case. *See Nguyen Decl.*, ¶¶ 10-30. The
14 Settlement was also reached with the assistance of an experienced and respected wage and hour class
15 action mediator. *Id.* This factor strongly supports preliminary approval of the Settlement. *See Kullar,*
supra, 168 Cal.App.4th at 130.

16 **g. Attorneys’ Fees and Costs**

17 California courts recognize an appropriate method for awarding attorneys’ fees in class actions is
18 to award a percentage of the “common fund” created as a result of a settlement. *See e.g., Laffitte v. Robert*
19 *Half Int’l, Inc.* (2016) 1 Cal.5th 480, 506 (holding “the percentage of fund method survives in California
20 class action cases”). Class Counsel’s request for fees of one-third of the GSA is well within the range of
21 reasonableness, and indeed is considered the typical rate for common fund settlements. Historically,
22 courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the
23 case. *See 4 Newberg on Class Actions* § 14.6 (4th Ed. 2013).

24 Here, Class Counsel will also apply for an attorneys’ fees award of one-third of the GSA, which
25 is currently estimated to be \$183,333.33, and up to \$30,000 in verified costs reimbursement. *See*
26 *Settlement*, ¶ III.I.3; *Nguyen Decl.*, ¶ 31. Plaintiff submits the requested fee is fair compensation for
27 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.
28 *Id.* Further, Plaintiff has provided written approval of the split of attorneys’ fees in this action. *Nguyen*

Decl., ¶ 32. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing SPS's documents and policies, analyzing Class Members' timekeeping data and payroll records, preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. Nguyen Decl., ¶ 31. Class Counsel expects to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class members, preparing the final approval papers and attending the Final Approval hearing. *Id.*

Class Counsel submits that the request for attorneys' fees is reasonable when viewed as an overall percentage of the settlement in light of the substantial risks, significant work undertaken, the extremely positive results obtained for the class, and the efficiency with which the Parties conducted the litigation. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified litigation costs at the time of seeking final approval of the Settlement, which will include a lodestar analysis.

h. Administration Costs

ILYM Group's fees and expenses are estimated not to exceed \$15,000. *See* Declaration of Sean Hartranft in support of Plaintiff's Motion for Preliminary Approval filed concurrently herewith ("Hartranft Decl."). This request is reasonable in light of the proposed class size of approximately 691 Settlement Class members and the costs and expenses associated with administering the notices in both English and Spanish and distributing the awards.

i. Class Representative Enhancement

"[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94.

Here, as part of the Settlement, Plaintiff will separately apply for an Enhancement at the time of seeking final approval of the proposed class action settlement in the amount of \$5,000.00 for her services to the Class. Nguyen Decl., ¶ 33, Exh. 2 (Settlement, ¶ III.J); Cruz Decl., ¶¶ 3-10. As will be fully briefed at the time of final approval, Plaintiff's requested service award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual

1 information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss
2 the claims and theories at issue in the litigation, as well as the significant risks Plaintiff undertook by
3 agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed to a general
4 release of all claims and waiver of Civil Code § 1542. *See* Nguyen Decl., ¶ 33; Cruz Decl., ¶¶ 3-10;
5 Settlement ¶ III.J.

6 **j. PAGA Civil Penalties**

7 The parties have agreed to a PAGA award of \$50,000.00 and in accordance with California Labor
8 Code section 2699(i), the LWDA will receive 75% of the amount attributable to LWDA Payment – or
9 \$37,500.00. Settlement ¶ 4. This \$50,000 represents roughly 9.09% of the \$550,000.00 Gross Settlement
10 Amount and is within the range approved by Courts. *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV
11 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement
12 of 2 percent, or \$20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1
13 (S.D. Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom Comm’n*
14 *Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and
15 PAGA claims under which no money was allocated to the PAGA claims).

16 **k. Payroll Taxes**

17 The Settlement provides that the employer’s share of payroll taxes shall be paid separately from,
18 and in addition to, and the Gross Settlement Amount and will be due at the same time the Gross Settlement
19 Amount is paid. Settlement, ¶ I.AA.

20 **l. Settlement Payments Allocations**

21 The Settlement provides that all Settlement Payments to Settlement Class Members will be
22 allocated as follows: thirty-three percent (33%) to wages, subject to applicable withholdings, to be
23 reported on a W-2 form; and sixty-seven percent (67%) to penalties and interest, not subject to
24 withholdings and reported on a 1099 form to be issued by the Settlement Administrator. Settlement, ¶
25 III.H.7.

26 **m. Returned Notices**

27 To the extent that any notices are returned as undeliverable, ILYM will conduct one or more skip
28 traces, then send additional notices to any new addressed identified. perform a “skip trace” to track any
Class Member’s current mailing address. *See* Settlement ¶ III.F.3.

1 **n. Uncashed Funds**

2 The Settlement provides that Settlement Class Members with 180 days from the date the
3 Settlement Administrator mails the checks and any funds remaining after 180 days escheat to the
4 California Secretary of State-Unclaimed Property Fund under the unclaimed property laws in the name
5 of the Settlement Class Member. Settlement ¶ III.H.5. As all settlement funds will be distributed to the
6 Settlement Class Members, there will be no residue and it is unnecessary to designate *cy pres* recipients.

7 **C. SETTLEMENT IS DEVOID OF OBVIOUS DEFICIENCIES**

8 Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies.
9 The Settlement will provide monetary relief to participating Settlement Class Members. The amounts
10 proposed for Class Counsel’s attorneys’ fees and costs, and service award are all reasonable and
11 appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this
12 factor supports preliminary approval.

13 **D. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED NOTICE**
14 **TO SETTLEMENT CLASS MEMBERS**

15 Before the final approval hearing, the Court requires adequate notice of the settlement be given
16 to all class members. This Court should order distribution to the Settlement Class of the proposed Notice
17 (which is comprised of the Notice of Class Action and PAGA Settlement, Allocation Form, Request For
18 Exclusion Form and Objection Form) by first-class regular U.S. Mail, postage prepaid, using last known
19 mailing address information provided by SPS. *See* Settlement, Exh. A. The Notice Packets will be mailed
20 in both English and Spanish. This manner of giving notice is the “best notice practicable” under the
21 circumstances because it provides “individual notice to all members who can be identified through
22 reasonable effort.” *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Here, Plaintiff proposes
23 that the Settlement be administered by ILYM, an experienced class action settlement administrator. *See*
24 *generally* Hartranft Decl. and attached exhibits. Settlement Class Members’ addresses will be
25 ascertainable through SPS’s personnel and payroll records, which SPS will provide to ILYM within 20
26 calendar days of preliminary approval of the Settlement. *See* Settlement ¶ III.F.2. Within 7 calendar
27 days of receipt of the Settlement Class members’ addresses, ILYM will run the addresses through the
28 United States Postal Service Notice of Change of Address database (which provides updated addresses
for any individual who has moved in the previous four years and has notified the U.S. Postal Service of

1 a forwarding address) and mail the notices to Settlement Class Members in English and Spanish. *See*
2 Settlement ¶ III.F.3.

3 The content of the proposed Notice satisfies California Rule of Court 3.766(d) because it advises
4 Settlement Class Members of the nature of the claims, basic contentions and denials of the parties, and
5 the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the
6 procedures by which to do so, explains the recovery formula and expected recovery amount for each
7 Settlement Class Member, provides them the opportunity to contest their total workdays included in the
8 notice, and advises them that they will be bound by the terms of the Settlement if they do not opt-out.
9 *See* Nguyen Decl., Exh. 2 (Settlement, Exh. A). The proposed Notice will also notify Settlement Class
10 members of the final approval hearing date and provides Settlement Class members the contact
11 information for Class Counsel, and advises Settlement Class members that they may enter an appearance
12 through counsel if they wish to. This manner of giving notice satisfies California Rule of Court 3.766(e)
13 as the most reliable and cost-effective method of reaching Settlement Class members.

14 **E. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

15 Finally, this Court should set a hearing for final approval of the Settlement on a date appropriately
16 scheduled to follow the deadline by which Settlement Class members must file objections to the
17 Settlement or opt-out. *See* California Rule of Court 3.769.

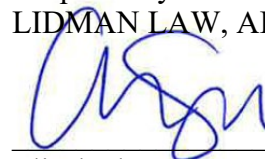
18 **IV. CONCLUSION**

19 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the
20 proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order Granting
21 Preliminary Approval of Class Action Settlement submitted concurrently herewith.

22 Dated: June 8, 2022

Respectfully submitted,
LIDMAN LAW, APC

23 By:



24 Elizabeth Nguyen
25 Attorney for Plaintiff MAGDALENA CRUZ
26
27
28