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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF LOS ANGELES

16 HENDERSON DONIS as an individual and
17 on behalf of others similarly situated,

18 Plaintiffs,

19 v.

20 BATTLE-TESTED STRATEGIES, LLC, a
21 California Limited Liability Company, and
22 Does 1 through 50, Inclusive,

23 Defendants.

Case No.: 21STCV21052

*Assigned for all purposes to the
Hon. Elihu M. Berle, Dept. SS6*

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR AN
ORDER: (1) CONDITIONALLY
CERTIFYING A SETTLEMENT CLASS;
(2) PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT; (3)
APPROVING NOTICE OF CLASS
ACTION SETTLEMENT; (4)
APPOINTING CLASS COUNSEL AND
CLASS REPRESENTATIVES; AND (5)
SETTING HEARING FOR FINAL
APPROVAL**

*[Notice of Motion; Declarations of Shadie L.
Berenji, Jennifer Kramer, and Robert
Ackermann; and [Proposed] Order filed
concurrently herewith]*

Date: May 1, 2023

Time: 8:30 a.m.

Dept.: SS9

Action Filed: June 4, 2021

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This motion seeks the Court’s preliminary approval of a proposed class action and Private
4 Attorneys General Act (“PAGA”) settlement reached on behalf of employees of BATTLE-
5 TESTED STRATEGIES, LLC (“BTS”), who also allege that they were jointly employed by
6 AMAZON.COM SERVICES, INC., AMAZON.COM SERVICES LLC, and AMAZON
7 LOGISTICS, INC. (the Amazon defendants are collectively referred to as “Amazon”) (BTS and
8 Amazon are collectively referred to as “Defendants”). The proposed settlement involves three
9 related wage-and-hour lawsuits: the instant one (the “*Donis* Action”) and two others that the
10 parties will seek to consolidate with this action.¹ The other two lawsuits are *Jahad Muhammad*
11 *v. Battle-Tested Strategies et al.*, initiated on July 14, 2021 (U.S. District Court, Central District
12 of California, Case No. 2:21-cv-07225-VAP-JPR; Los Angeles County Superior Court, Case No.
13 21STCV26093) (the “*Muhammad* Labor Code Action”),² and *Jahad Muhammad v. Battle-Tested*
14 *Strategies, LLC et al.*, initiated on September 21, 2021 (Los Angeles County Superior Court,
15 Case No. 21STCV34869) (the “*Muhammad* PAGA Action”). The *Donis* Action was originally
16 brought against Defendant BTS. The *Muhammad* Labor Code and PAGA Actions were brought
17 against both BTS and Amazon.

18 After a lengthy period of investigation and discovery, plaintiffs, aggrieved employees,
19 and proposed class representatives HENDERSON DONIS (“Plaintiff Donis”) and JAHAD
20 MUHAMMAD (“Plaintiff Muhammad”) (collectively, “Plaintiffs”) and Defendants (Plaintiffs
21 and Defendants collectively, “the Parties”) reached a proposed class action and PAGA settlement
22

23 ¹ As part of the Parties’ settlement of the *Donis* Action and the *Muhammad* Labor Code and PAGA
24 Actions, the Parties agreed to stipulate to the consolidation of the two *Muhammad* Actions into the
25 *Donis* Action and to the filing of a “consolidated” Second Amended Complaint in the *Donis* Action that
26 would incorporate the additional allegations and causes of action in the *Muhammad* Actions, and add
27 Plaintiff Muhammad and the Defendant Amazon entities as parties. Plaintiffs plan to submit that
28 stipulation to the Court shortly.

² As explained in more detail below, Plaintiff Muhammad filed the *Muhammad* Labor Code Action in
the Los Angeles County Superior Court, Case No. 21STCV26093. Defendant Amazon Services, Inc.
thereafter removed the *Muhammad* Labor Code Action to the United States District Court for the
Central District of California, where the case was assigned Case No. 2:21-cv-07225-VAP-JPR.

for their three actions, memorialized in the “Memorandum of Understanding”³ by and between Plaintiffs and Defendants (hereinafter incorporated by reference as “Settlement Agreement”).⁴ See Declaration of Shadie L. Berenji (“Berenji Decl.”), ¶ 29, Ex. A, filed concurrently herewith.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Overview of Plaintiffs’ Claims

This case involves the wage and hour claims of approximately 500 individuals who were employed by BTS as delivery drivers in California who delivered Amazon packages between October 3, 2019 and the present. Berenji Decl., ¶ 10. BTS owns and operates a California-based freight shipping and trucking company that transports products in California, including by delivering packages that were ordered through Amazon to both residences and businesses. *Ibid.* Plaintiffs allege that they were jointly employed by BTS and Amazon as full-time, hourly paid delivery associates who delivered Amazon packages. *Ibid.* Plaintiff Donis was employed from approximately March 15, 2020 to June 26, 2020. *Ibid.* Plaintiff Muhammad was employed from approximately September 2020 to January 2021. *Ibid.*

Plaintiffs allege that Defendants violated the California Labor Code, Industrial Welfare Commission (“IWC”) Wage Order 9-2001 (“IWC Wage Order 9”), and California Business and Professions Code section 17200 *et seq.* by failing to: (1) pay all regular and overtime wages owed; (2) timely pay all wages due at the separation of employment; (3) reimburse for all necessary business expenditures; (4) provide meal and rest periods; and (5) furnish accurate and itemized wage statements. *Id.* at ¶ 11. Plaintiffs also allege that Defendants were liable for penalties under the PAGA for these violations. *Ibid.*

Additionally, Plaintiffs allege that Defendants violated the Fair Credit Reporting Act (“FCRA”) by failing to make proper disclosures and obtain proper authorizations regarding

³ Despite Plaintiffs’ diligent efforts, Plaintiffs have been unable to obtain Defendants’ approval of a long-form settlement agreement. Therefore, Plaintiffs seek to enforce the Memorandum of Understanding, which has been fully negotiated and executed by the Parties and includes all the necessary terms for a class action settlement. Notwithstanding the foregoing, Plaintiffs will continue to diligently work on obtaining approval of a long-form settlement agreement and will immediately file it with the Court upon the Parties’ agreement to all the terms and its execution.

⁴ Unless indicated otherwise, all capitalized terms used herein have the same meaning as those defined by the Settlement Agreement.

1 background checks on prospective employees, as well as violating California's Investigative
2 Consumer Reporting Agencies Act ("ICRAA") by including extraneous information in their
3 background check disclosures and failing to timely provide copies of the background check
4 results to drivers who requested them. *Id.* at ¶ 12.

5 Defendants deny Plaintiffs' allegations, deny that this action is appropriate for class
6 treatment (other than specifically for settlement purposes), and deny that Plaintiffs and the
7 putative class are entitled to recover any of the requested damages or penalties. *Id.* at ¶ 23.

8 **B. Procedural History of Plaintiffs' Lawsuits**

9 **1. The *Donis* Action**

10 On June 14, 2021, Plaintiff Donis filed a Class Action Complaint for Damages and
11 Equitable Relief against BTS for violations of California wage and hour laws during his
12 employment with BTS. *Id.* at ¶ 13. Plaintiff Donis's complaint alleged BTS violated the
13 California Labor Code and Industrial Welfare Commission ("IWC") wage order by: 1) Failing
14 to Pay Wages; 2) Failing to Reimburse Expenses; 3) Failing to Provide Lawful Meal Periods; 4)
15 Failing to Provide Lawful Rest Periods; 5) Unfair Competition; and 6) Failing to Furnish
16 Accurate Itemized Wage Statements. *Ibid.*; see also Plaintiff Donis's Class Action Complaint
17 for Damages and Equitable Relief filed on June 14, 2021.

18 On May 31, 2021, pursuant to California Labor Code section 2698 *et seq.*, Plaintiff Donis
19 sent a letter to the California Labor and Workforce Development Agency ("LWDA") advising
20 of his intent to seek Private Attorneys General Act of 2004 ("PAGA") penalties for BTS's
21 violations of the California Labor Code. Berenji Decl., ¶ 14. To date, the LWDA has not
22 expressed an intent to investigate Plaintiff Donis' alleged violations. *Ibid.*

23 On October 21, 2021, Plaintiff Donis filed a First Amended Class Action Complaint for
24 Damages, Penalties, and Equitable Relief which added a cause of action against BTS seeking
25 PAGA penalties. *Id.* at ¶ 15; see also Plaintiff Donis's First Amended Class Action Complaint
26 for Damages, Penalties, and Equitable Relief filed on October 21, 2021.

27 On December 6, 2021, BTS moved to compel Plaintiff Donis's individual claims to
28 arbitration, dismiss his class claims, and stay his PAGA claims pending completion of arbitration.

1 Berenji Decl., ¶ 16. On January 11, 2022, and prior to BTS’s motion being heard, the Court
2 granted Plaintiff Donis’s and BTS’s stipulation to continue the pending motion to compel
3 arbitration and take the hearing off calendar until after they participated in mediation. *Ibid.*

4 **2. The *Muhammad* Labor Code Action**

5 On July 14, 2021, Plaintiff Muhammad filed a Class Action Complaint for Damages
6 alleging causes of action against Defendants for 1) Failure to Pay Overtime Wages; 2) Failure to
7 Timely Pay Wages; 3) Failure to Provide Accurate Itemized Wage Statements; 4) Failure to
8 Reimburse Business Expenses; 5) Failure to Make Proper Disclosure in Violation of Fair Credit
9 Reporting Act; 6) Failure to Obtain Proper Authorization in Violation of Fair Credit Reporting
10 Act; 7) Violation of California’s Investigative Consumer Reporting Agencies Act; and, 8)
11 Violation of California Unfair Competition Law. *Id.* at ¶ 17; see also Plaintiff Muhammad’s
12 Class Action Complaint for Damages filed on July 14, 2021.

13 On September 8, 2021, Defendant Amazon Services, Inc. removed the *Muhammad* Labor
14 Code Action to the United States District Court for the Central District of California. Berenji
15 Decl., ¶ 18. On October 14, 2021, Defendants moved to compel Plaintiff Muhammad’s
16 individual claims to arbitration, dismiss his class claims, and dismiss or alternatively stay the
17 action. *Ibid.* On December 2, 2021, the United States District Court for the Central District of
18 California (Hon. Virginia A. Phillips presiding) compelled Plaintiff Muhammad’s individual
19 claims to arbitration and dismissed his class claims. *Ibid.* The District Court’s reasoning for
20 granting Defendants’ motion included the possibility that the proposed classes in the *Muhammad*
21 Labor Code Action “could encompass many different types of employees who work for
22 Defendants, including employees whose jobs are unrelated to delivering packages,” thereby
23 excluding them from the transportation worker exemption to the Federal Arbitration Act
24 (“FAA”). *Ibid.*

25 Thereafter, on December 27, 2021, Plaintiff Muhammad moved for an order granting him
26 leave to file a First Amended Class Action Complaint for Damages which clarified that the scope
27 of the classes he sought to represent included only *transportation* delivery associates, thus
28 ensuring that the proposed classes fell within the FAA’s transportation worker exemption. *Ibid.*

1 Plaintiff Muhammad also filed a motion for reconsideration of the District Court's order
2 compelling his individual claims to arbitration and dismissing his class claims, based on the
3 clarified class definitions in the proposed First Amended Class Action Complaint for Damages.
4 *Ibid.* Before either motion was heard, however, Plaintiff Muhammad and the Defendants
5 stipulated to continue the hearing dates while they discussed potential mediation, and have
6 continued to stipulate to continuing them as mediation and settlement talks have progressed. *Ibid.*

7 **3. The *Muhammad* PAGA Action**

8 On July 14, 2021, pursuant to California Labor Code section 2698 *et seq.*, Plaintiff
9 Muhammad sent a letter to the LWDA advising of his intent to seek PAGA penalties for
10 Defendants' violations of the California Labor Code. *Id.* at ¶ 19. To date, the LWDA has not
11 expressed an intent to investigate Plaintiff Muhammad's alleged violations. *Ibid.*

12 Then, on September 21, 2021, Plaintiff Muhammad filed a Representative Complaint for
13 Damages alleging causes of action against Defendants for 1) Failure to Pay Overtime Wages
14 Brought Under PAGA; 2) Failure to Reimburse Business Expenses Brought Under PAGA; 3)
15 Failure to Provide Itemized Wage Statements Brought Under PAGA; 4) Failure to Provide Paid
16 Sick Leave Brought Under PAGA; and 5) Failure to Timely Pay Wages Brought Under PAGA.
17 *Id.* at ¶ 20; see also Plaintiff Muhammad's Representative Complaint for Damages filed on
18 September 21, 2021.

19 **4. Consolidation of the *Muhammad* Labor Code and PAGA Actions Into** 20 **the *Donis* Action**

21 In order to facilitate approval of the instant settlement and in the interest of judicial
22 economy, the Parties agreed to consolidate Plaintiff Muhammad's claims in the *Muhammad*
23 Labor Code and PAGA Actions into the *Donis* Action by seeking leave to file a Second Amended
24 Class Action Complaint for Damages in the *Donis* Action. Berenji Decl., ¶ 21. That complaint
25 will incorporate the factual allegations and causes of action in the *Muhammad* Labor Code and
26 PAGA Actions, add Plaintiff Muhammad as a plaintiff, and add Amazon as Defendants. *Ibid.*
27 Plaintiffs plan to file the Parties' stipulation to consolidate the three Actions and proposed order
28

1 granting Plaintiffs leave to file their “consolidated” Second Amended Class Action Complaint
2 for Damages in the near future. *Ibid.*

3 **C. Discovery and Investigation**

4 Before filing the lawsuit, Plaintiffs’ Counsel investigated and researched the facts and
5 circumstances underlying the pertinent issues and the law applicable thereto. *Id.* at ¶ 22. This
6 required thorough discussions and interviews between Plaintiffs’ Counsel and Plaintiffs, and a
7 critical review and analysis of their records and wage statements. *Ibid.* After conducting its
8 initial investigation, Plaintiffs’ Counsel determined that Plaintiffs’ claims were well-suited for
9 class action adjudication, owing that what appeared to be a common course of conduct affected
10 a similarly-situated group of employees. *Ibid.* After Plaintiffs filed their respective actions, the
11 Parties engaged in extensive negotiations to arrive at a method to examine the wage and hour
12 policies and practices applicable to the Class. *Id.* at ¶ 24. As a result of those negotiations,
13 Defendants informally produced over 1,800 pages of documents, which included the time punch
14 records and pay summaries of a randomly selected group making up 20% of Class Members and
15 Aggrieved Employees; Plaintiffs’ personnel files, time punch records, and pay summaries; and
16 BTS’s employee handbook and employment policies. *Ibid.* Defendants also provided the
17 number of current and total number of former Class Members, as well as the number of
18 background checks that they performed. *Ibid.* Plaintiffs’ Counsel spent a substantial amount of
19 time analyzing the above-mentioned information and data. *Ibid.*

20 In preparation for mediation, Plaintiffs’ Counsel prepared a comprehensive damage
21 analysis based on information gathered from the Plaintiffs, and the employment data and
22 documents provided by Defendants. *Id.* at ¶ 25. Plaintiffs’ Counsel drafted a mediation brief
23 containing a detailed review of the evidence and outlining the complex legal issues in this case.
24 *Ibid.*

25 **D. The Parties Reach a Settlement of all Claims**

26 At all times relevant herein, Defendants disputed and denied, and continue to dispute and
27 deny, that they were liable to Plaintiffs for any of the claims asserted in Plaintiffs’ LWDA letters
28

1 and/or operative complaints. *Id.* at ¶ 23. Additionally, there has been no determination on the
2 merits of Plaintiffs’ legal claims and request for damages or civil penalties. *Ibid.*

3 Recently, in order to avoid the additional cost of litigation, the inconvenience and burden
4 of legal proceedings, as well as the uncertainties of trial and appeals, the Parties agreed to resolve
5 this matter and entered into a settlement agreement. *Id.* at ¶ 26. The material terms of the
6 settlement agreement are discussed below.

7 **III. MATERIAL SETTLEMENT TERMS**

8 The proposed settlement provides monetary relief to Class Members and Aggrieved
9 Employees, and resolves all class and representative action claims of the Plaintiffs and Class
10 Members against Defendants. The settlement provides class-wide relief for the alleged wage-
11 and-hour and background check violations. In exchange, Defendants will receive a release from
12 all Class Members, that do not opt out of the settlement, of all wage and hour claims for monetary
13 relief that were alleged by Plaintiffs. The terms of the settlement are set forth in the Settlement
14 Agreement. See Berenji Decl., Ex. A. The principal material terms are as follows:

15 **A. Monetary Terms**

16 1. The “Class Members” includes all individuals who are or previously were
17 employed by BTS in California as drivers performing Amazon-related delivery services at any
18 time between October 3, 2019 and the date on which the Court grants preliminary approval of
19 this settlement (the “Class Period”) and who have not previously released their claims against
20 Defendants. Berenji Decl., Ex. A, ¶ 1. Defendants’ counsel has determined that there are
21 approximately five hundred (500) Class Members. *Ibid.*

22 2. The “Gross Settlement Amount” is One Million Dollars and Zero Cents
23 (\$1,000,000.00), inclusive of the class counsel’s fees and expenses, class representative
24 enhancements, settlement administration costs, and the LWDA PAGA penalties (“PAGA
25 Payment”). Berenji Decl., Ex. A, ¶ 9. Once the deductions are made for the class counsel’s fees
26 and expenses, the class representative enhancements, settlement administration costs, and the
27 PAGA Payment, the balance of the Gross Settlement Amount will be available for distribution
28 to the participating Class Members (the “Net Settlement Amount”). Berenji Decl., Ex. A, ¶ 10.

1 3. The Net Settlement Amount will be distributed among participating Class
2 Members on a proportional basis based on the number of weeks each participating Class Member
3 worked for BTS during the Class Period. Berenji Decl., Ex. A, ¶ 11.

4 4. Subject to the Court's approval, seventy-five percent (75%) of One Hundred
5 Thousand Dollars and Zero Cents (\$75,000.00) will be paid from the Gross Settlement Amount
6 to the LWDA for its share of the PAGA penalties negotiated and agreed-upon. Berenji Decl.,
7 Ex. A, ¶ 14. The remaining twenty-five percent (25%; \$25,000.00) will be available for
8 distribution to Aggrieved Employees in the form of individual PAGA payments. *Ibid.*

9 5. Subject to the Court's approval, Plaintiffs will each seek Class Representative
10 Enhancements in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00). Berenji
11 Decl., Ex. A, ¶ 13. Any enhancement awards granted will be paid from the Gross Settlement
12 Amount. Berenji Decl., Ex. A, ¶ 9.

13 6. Subject to the Court's approval, the settlement administrator will be paid costs
14 which are estimated not to exceed Fifteen Thousand Dollars and Zero Cents (\$15,000.00) for
15 administering the settlement. Berenji Decl., ¶ 32. The actual cost of paying the settlement
16 administrator will be paid from the Gross Settlement Amount. *Id.* at ¶¶ 9, 10, 15.

17 7. Subject to the Court's approval, class counsel will seek an award of attorney fees
18 equal to one-third (1/3) of the Gross Settlement Amount (\$333,333.33) and expenses not to
19 exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00). Berenji Decl., Ex. A, ¶¶ 16-17.
20 Any award granted will be paid from the Gross Settlement Amount. *Ibid.* If a lower amount is
21 awarded, the difference will be distributed to Class Members on a proportional basis relative to
22 the size of their individual settlement payments. *Ibid.*

23 **B. Administration of Notice, Opt-Outs, and Payments**

24 The reasonable costs of settlement administration will be deducted from the Gross
25 Settlement Amount. Berenji Decl., Ex. A, ¶¶ 9, 10, 15. Plaintiffs propose ILYM Group, Inc.
26 ("Settlement Administrator") to serve as the settlement administrator. Berenji Decl., ¶ 31. The
27 settlement administration costs are estimated not to exceed Fifteen Thousand Dollars and Zero
28 Cents (\$15,000.00). *Id.* at ¶ 32.

1 Class Members shall receive a notice packet which indicates how a Class Member may
2 exclude themselves if they do not want to participate in the settlement. Berenji Decl., ¶ 30, Ex.
3 B. Class Members who do not submit a valid and timely opt-out request, however, shall be
4 deemed be bound by all terms of the Settlement Agreement (the “Participating Class Members”).
5 Berenji Decl., Ex. A, ¶ 19. Any Class Member who does timely and validly opt out of the
6 Settlement shall nonetheless be bound by the release of their PAGA claims if they are an
7 Aggrieved Employee. Berenji Decl., Ex. A, ¶ 19. For any Participating Class Member or
8 Aggrieved Employee whose individual class payment check or individual PAGA payment
9 check is uncashed and cancelled after one hundred eighty (180) calendar days, the Settlement
10 Administrator shall transmit the funds represented by such checks either to the California
11 Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no
12 "unpaid residue" subject to the requirements of California Code of Civil Procedure Section
13 384(b), or to a Court-approved nonprofit organization or foundation consistent with Code of
14 Civil Procedure Section 384(b) (“Cy Pres Recipient”). Berenji Decl., Ex. A, ¶ 23. Plaintiffs
15 request that the Court issue an order directing the funds to the nonprofit organization, Legal Aid
16 at Work. Berenji Decl., ¶ 63. Plaintiffs and Plaintiffs’ Counsel do not have any interest or
17 relationship, financial or otherwise, with the intended Cy Pres Recipient. *Ibid.*

18 **C. Scope of Release**

19 Class members are releasing only those claims which were or could have been brought
20 in this action, the *Muhammad* Labor Code Action, and the *Muhammad* PAGA Action
21 (collectively, “the Actions”). Berenji Decl., Ex. A, ¶¶ 1, 2, 5, 19. Upon entry of judgment of
22 final approval by the Court, the Participating Class Members will release Defendants from all
23 state and federal claims alleged or that could have been alleged based on the factual allegations
24 included in the operative complains in the Actions, which occurred during the Class Period or
25 PAGA Period. *Ibid.* The release includes any claims within the above scope arising within the
26 period from October 3, 2019 to the date on which the Court grants preliminary approval of the
27 Settlement (the “Class Period”), and from May 31, 2020 to the date on which the Court grants
28 preliminary approval of the Settlement (the “PAGA Period”). *Ibid.* The Plaintiffs will also

1 execute general releases of all known and unknown claims they may have against Defendants.⁵
2 *Ibid.* Any Class Member who does timely and validly opt out of the settlement shall nonetheless
3 be bound by the release of their PAGA claims if they are an Aggrieved Employee. *Ibid.*

4 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE**

5 Express judicial policy favors maintaining wage and hour actions as class actions. *Prince*
6 *v. CLS Transp., Inc.* (2004) 118 Cal.App.4th 1320, 1328; *Sav-on Drug Stores, Inc. v. Superior*
7 *Court* (2004) 34 Cal.4th 319, 340 (finding that California public policy “encourages the use of
8 the class action device,” especially in the wage and hour context). Any doubt as to the
9 appropriateness of class treatment should be resolved in favor of class certification, subject to
10 later modification if necessary. *Richmond v. Dart Industries, Inc. (Richmond)* (1981) 29 Cal.3d
11 462, 473-75 (“Since the judicial system substantially benefits by the efficient use of its resources,
12 class certifications should not be denied so long as the absent class members’ rights are
13 adequately protected.”). The decision to certify a class is purely a procedural one, and should be
14 based on the allegations in the operative complaint, and not in the perceived factual or legal merit
15 of the class claims. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-441.

16 Plaintiffs may, at the preliminary approval stage, request that the Court provisionally
17 approve certification of a class for settlement purposes, conditioned upon final approval of the
18 settlement. Herbert B. Newberg, *Newberg on Class Actions* (“Newberg”) (4th ed. 2002) § 11.26
19 (the court’s findings “at a preliminary hearing or conference concerning a tentative settlement
20 proposal . . . may be set out in conditional orders granting tentative approval to the various items
21 . . . These conditional rulings may approve a temporary settlement class, the proposed settlement,
22 and the class counsel’s application for fees and expenses.”). Defendants deny that Plaintiffs
23 would be able to meet the threshold requirements for certification of the putative class in this
24 action if this matter were to be litigated; however, taking into account the risks inherent to
25 litigation, Defendants do not object to certification of the class for settlement purposes only.

26
27 ⁵ The Plaintiffs’ general release does not cover or include Plaintiff Muhammad’s individual claims that
28 relate to the termination of his employment and were alleged in *Jahad Muhammad v. Battle Tested*
Strategies, LLC (LASC Case No. 21STCV22603/AAA Case No. 01-22-0000-2531). Berenji Decl., Ex.
A, ¶¶ 9, 19.

1 Defendants reserve all right to object to class certification outside of the settlement context, and
2 reserve the right to oppose class certification should the court decline to approve this settlement.
3 Provisional class certification is appropriate at the preliminary approval stage where, as here, the
4 proposed Settlement Class has not previously been certified by the Court and the requirements
5 for certification are met. The additional rulings sought on this motion—approving the form,
6 content and distribution of the Class Notice and scheduling a formal fairness hearing—facilitate
7 the settlement approval process, and are also typically made at the preliminary approval stage.
8 The purpose of provisional class certification is to facilitate distribution to all class members of
9 notice of the terms of the proposed settlement and the date and time of the final approval hearing.
10 See *Manual for Complex Litigation* (Fourth) (2004) § 11.27. Neither formal notice nor a hearing
11 is required for the Court to grant provisional class certification; the Court may grant such relief
12 upon an informal application by the settling parties and may conduct any necessary hearing in
13 court or in chambers, at the Court’s discretion. *Ibid*.

14 To certify a settlement class, the Court must find the two primary requirements for
15 maintaining a class action: (1) an ascertainable class, and (2) a well-defined community of
16 interest in the questions of law and fact involving the parties to be represented. *Daar v. Yellow*
17 *Cab Co.* (1967) 67 Cal.2d 695, 704; *Daniels v. Centennial Capital Group* (1993) 16 Cal.App.4th
18 467, 471; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc. (B.W.I. Custom Kitchen)* (1987) 191
19 Cal.App.3d 1341; *Richmond, supra*, 29 Cal.3d at 470. These criteria are met here for the reasons
20 set forth below.

21 **A. There Is a Numerous and Ascertainable Class**

22 Whether a class is ascertainable is determined by examining the class definition, the size
23 of the class, and the means available for identifying class members. See *Vasquez v. Superior*
24 *Court (Vasquez)* (1971) 4 Cal.3d 800, 821-22; *Reyes v. Board of Supervisors of San Diego*
25 *County* (1987) 196 Cal.App.3d 1263, 1271; *Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.
26 Class members are “ascertainable” where they may be readily identified without unreasonable
27 expense or time.
28

1 Here, the requirement is met. Class Members includes all individuals who are or
2 previously were employed by BTS in California as drivers performing Amazon-related delivery
3 services at any time between October 3, 2019 and the date on which the Court grants preliminary
4 approval of this settlement (“the Class Period”) and who have not previously released their claims
5 against Defendants. Berenji Decl., Ex. A, ¶ 1. There are approximately 500 Class Members.
6 *Ibid.* Defendant BTS is required to and does maintain a record of each such person, including
7 job title and contact information. Berenji Decl., Ex. A, ¶ 8. Therefore, there is a numerous and
8 ascertainable class.

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

10 A community of interest is established by the predominance of common issues of law and
11 fact. See *Vasquez, supra*, 4 Cal.3d at 809. The requirement of a community of interest:

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

18 Here, common questions of law and fact predominate as to each of the claims alleged by
19 Plaintiffs, as the Class is united in its proof. The operative Class Action Complaint for Damages
20 delineates a common course of conduct applicable to all Class Members. Plaintiffs content that
21 all Class Members suffered the same alleged injuries in the same manner; for example, all Class
22 Members were employed by BTS as drivers delivering Amazon-related packages in California,
23 and were allegedly deprived of meal and rest breaks, regular wages, overtime wages, accurate
24 itemized wage statements, reimbursement of business expenses, and waiting time penalties as a
25 result of Defendants failure to properly compensate Class Members for all hours worked. Berenji
26 Decl., ¶¶ 34-41. Plaintiffs content that all Class Members were also subject to Defendants’
27 inadequate background check disclosures and authorizations. *Id.* at ¶¶ 42-43. Therefore, “the
28 relevant proof [does] not vary among class members” and “clearly presents a common question

1 fundamental to all class members.” *In re NASDAQ Market-Makers Antitrust Litigation*
2 (S.D.N.Y. 1997) 172 F.R.D. 119, 123. California courts show “no hesitancy” inferring class-
3 wide causation, class-wide injury, and class-wide damages when a common course of action has
4 been shown. *B.W.I. Custom Kitchen, supra*, 191 Cal.App.3d at 1350 (granting class certification
5 in a manufacturing defect case when a common course of action had been proven). This inference
6 “eliminates the need for each class member to prove individually the consequences of the
7 Defendant’s actions to him or her.” *Id.* at 1351 (quoting *Rosack v. Volvo of America Corp.* (1982)
8 131 Cal.App.3d 741, 753). Plaintiffs contend that these issues will not be decided on the basis
9 of facts peculiar to each Class Member, but rather on the basis of a single set of facts applicable
10 to them all. Plaintiffs also contend that all issues of liability can be determined on a class-wide
11 basis by reference to Defendants’ time records, payroll records, and records identifying the
12 number of workweeks during which Class Members worked. Berenji Decl., ¶¶ 34-43.

13 **C. Plaintiffs and Plaintiffs’ Counsel Have and Will Adequately Represent the**
14 **Class**

15 In addition to the above factors, preliminary approval of this settlement is appropriate
16 because Plaintiffs and the proposed settlement class have been represented by counsel who are
17 experienced in successfully prosecuting wage-and-hour class and representative actions. *Id.* at
18 ¶¶ 3-9; Declaration of Jennifer Kramer, filed concurrently herewith (“Kramer Decl.”), ¶¶ 2-4;
19 Declaration of Robert Ackermann, filed concurrently herewith (“Ackermann Decl.”), ¶¶ 2-4.

20 Plaintiffs themselves also desire to represent that settlement class and understand their
21 obligation to act as fiduciaries to the settlement class requires commitments beyond what any
22 litigant would do in prosecuting an action on their own behalf. Berenji Decl., ¶ 53.

23 **V. THE SETTLEMENT MERITS PRELIMINARY APPROVAL**

24 Any settlement of class action litigation must be reviewed and approved by the Court.
25 Cal. Rules of Court, rule 3.769(a). This is accomplished in two steps: (1) an early (preliminary)
26 review by the trial court, and (2) a detailed review after notice has been distributed to the class
27 members for their comments or objections. In this regard, the Manual for Complex Litigation
28 (Second) explains:

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

6 *Manual for Complex Litigation* (Second) (1985) at § 30.44. Thus, the preliminary approval of
7 the class action settlement by the trial court is simply a conditional finding that the settlement
8 appears to be within the range of acceptable settlements. See, e.g., Newberg, *supra*, § 11.25;
9 *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500; *North County*
10 *Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1091 (“We
11 must determine whether substantial evidence supports the trial court’s determination that the
12 settlement here was in the “ballpark” and made in good faith.”).

13 A review of the preliminary approval criteria demonstrates a substantial basis for granting
14 the preliminary approval requested by this motion and proceeding to a full settlement hearing.

15 **VI. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

16 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
17 evidence to the contrary is offered. In short, there is a presumption that the negotiations were
18 conducted in good faith. See Newberg, *supra*, § 11.51; *North County Contractor’s Ass’n., supra*,
19 27 Cal.App.4th at 1091 (“The burden is upon the party objecting to the proposed settlement to
20 prove an absence of good faith.”); See also *United States v. Oregon* (9th Cir. 1990) 913 F.2d 576,
21 581. There is also a presumption of fairness when: “(1) the settlement is reached through arm’s
22 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court
23 to act intelligently; (3) counsel is experienced in similar litigation; (4) the percentage of objectors
24 is small.” *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1802.

25 **A. The Settlement Is the Product of Serious, Informed, and Non-Collusive**
26 **Negotiations**

27 The settlement is the result of arm’s length and non-collusive negotiations. Berenji Decl.,
28 ¶ 27. The Parties mediated because they concluded it was desirable that this action be settled in

1 order to avoid the expense, inconvenience, and burden of further legal proceedings, as well as
2 the uncertainties of trial and appeals. *Ibid.* Plaintiffs concluded that alternative dispute resolution
3 was beneficial to the Class due to the significant challenges the Class faced regarding class
4 certification, eventual trial, trial manageability, and anticipated appeals. *Ibid.* Settlement
5 negotiations took place on November 8, 2022 before Francis J. (“Tripper”) Ortman III, Esq., a
6 well-established and highly regarded neutral mediator of wage and hour class actions in
7 California. *Id.* at ¶ 28.

8 The mediation occurred only after Plaintiffs’ Counsel had the opportunity to conduct a
9 thorough independent investigation of the facts of the class action and after Defendants provided
10 Plaintiffs’ Counsel with all of the necessary documents and data. *Id.* at ¶ 24. Defendants
11 produced the following documents for the Class, as more specifically described above: the time
12 punch records and pay summaries of a randomly selected group making up 20% of Class
13 Members and Aggrieved Employees; Plaintiffs’ personnel files, time punch records, and pay
14 summaries; and BTS’s employee handbook and employment policies. Plaintiffs’ Counsel
15 analyzed the data and created spreadsheets and complex formulas to prepare damage estimates.
16 *Ibid.* The mediation lasted a full-day, was contentious, and involved arm’s length negotiations
17 through the aid of Mr. Ortman. *Id.* at ¶ 28. After a long day of mediation, Mr. Ortman made a
18 mediator’s proposal that the Parties considered and ultimately accepted. *Ibid.* Thereafter, the
19 Parties continued the arms-length negotiations until all terms of the Settlement Agreement were
20 finalized on January 13, 2023. *Ibid.*

21 The Parties and their respective counsel believe that the settlement reached is fair,
22 reasonable, and adequate and falls well within the range of reasonable outcomes, meriting
23 preliminary approval. *Id.* at ¶ 49. As consideration to settle the claims between the Parties,
24 Defendants agreed to pay a settlement of One Million Dollars and Zero Cents (\$1,000,000.00) to
25 Class Members. *Id.* at ¶ 48. These monetary terms will settle all issues pending in this litigation
26 between the Plaintiffs and Class Members, on the one hand, and Defendants, on the other hand.
27 *Ibid.*

1 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
2 capable advocacy on both sides. Accordingly, “[t]here is likewise every reason to conclude that
3 settlement negotiations were vigorously conducted at arm’s length and without any suggestion
4 of undue influence.” *In re Walsh Public Power Supply System Sec. Litig.* (1989) 720 F. Supp.
5 1379, 1392; *aff’d sub nom Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268.

6 **B. The Settlement Falls Well Within the Range for Approval According to**
7 ***Kullar/Munoz Standards***

8 The proposed settlement herein has no “obvious deficiencies” and is within the range of
9 possible approval. In determining whether a settlement amount is reasonable, a class action
10 settlement “need not obtain 100 percent of the damages sought in order to be fair and reasonable.”
11 *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 250 (*Wershba*) citing *Rebney v. Wells*
12 *Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139 [settlements found to be fair and reasonable even
13 though monetary relief provided was ‘relatively paltry’] and *City of Detroit v. Grinnell Corp.* (2d
14 Cir. 1974) 495 F.2d 448, 455 [settlement amounted to only ‘a fraction of the potential recovery’].
15 “Compromise is inherent and necessary in the settlement process. Thus, even if ‘the relief
16 afforded by the proposed settlement is substantially narrower than it would be if the suits were
17 to be successfully litigated,’ this is no bar to a class settlement because ‘the public interest may
18 indeed be served by a voluntary settlement in which each side gives ground in the interest of
19 avoiding litigation.’” *Wershba* at p. 250 citing *Air Line Stewards, etc., Local 550 v. American*
20 *Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109.”).

21 In *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 127-128, the appellate
22 court explained that, although “not exhaustive,” a determination of whether a settlement is “fair,
23 adequate and reasonable” should take into account the strength of a plaintiff’s case, as well as
24 the risk, expense, complexity, and likely duration of further litigation. Following *Kullar* is the
25 more recent case, *Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, in which
26 there was a sole objector to the \$1.1 million settlement of a wage and hour class action who
27 appealed the trial court’s approval of the settlement. The objector/appellant contended that the
28 trial court lacked evidence concerning “the potential value of the claims,” and that such a defect

1 violated the *Kullar* standards because an “informed evaluation cannot be made without an
2 understanding of the amount that is in controversy and the realistic range of outcomes of the
3 litigation.” *Id.* at 409. The *Munoz* court disagreed:

4 [Appellant] misunderstands *Kullar*, apparently interpreting it to
5 require the record in all cases to contain evidence in the form of an
6 explicit statement of the maximum amount the plaintiff class could
7 recover if it prevailed on all its claims—a number which appears
8 nowhere in the record of this case. But *Kullar* does not, as
[Appellant] claims, require any such explicit statement of value; it
requires a record, which allows “an understanding of the amount
that is in controversy and the realistic range of outcomes of the
litigation.” *Ibid.*

9 Accordingly, under the *Munoz* standard, a plaintiff need only provide sufficient
10 information to allow for an understanding of the amount in controversy and the realistic range of
11 outcomes, not an explicit quantification of the maximum amount of damages recoverable for
12 each claim on a class-wide basis.

13 In *Glass v. UBS Fin. Servs.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 8476 at *12, the
14 federal court held the following should be considered in evaluating the reasonableness of a
15 settlement:

16 “In light of the above-referenced uncertainty in the law, the risk,
17 expense, complexity, and likely duration of further litigation
18 likewise favors the settlement. Regardless of how this Court might
19 have ruled on the merits of the legal issues, the losing party likely
20 would have appealed, and the parties would have faced the expense
and uncertainty of litigating an appeal. “The expense and possible
duration of the litigation should be considered in evaluating the
reasonableness of [a] settlement.”

21 See also *In re Mego Financial Corp. Securities Litigation* (9th Cir. 2000) 213 F.3d 454, 458.

22 Although Plaintiffs believe that their claims, and those of the Class Members, are
23 meritorious, Plaintiffs faced substantial risks in trying to obtain certification and judgment against
24 Defendants in this matter. The realistic range of outcomes for this litigation was discounted due
25 to an analysis of Defendants’ defenses for each claim, Plaintiff Muhammad’s class claims being
26 dismissed and the need to arbitrate his individual claims before being able to appeal that dismissal,
27 the likelihood of Plaintiff Donis being able to defeat BTS’s motion to compel his individual
28 claims to arbitration and dismiss his class claims, the likelihood of prevailing on a class

1 certification motion, as well as trial and any appeals. Berenji Decl., ¶¶ 45-46. Where both sides
2 face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.* (9th
3 Cir. 1998) 150 F.3d 1011, 1026. As illustrated below, Defendants categorically disputed
4 Plaintiffs' claims and raised a number of defenses that presented threats to the claims of the Class.
5 Berenji Decl., ¶ 29.

6 In preparation for mediation, Plaintiffs' Counsel performed extensive damages analysis
7 on the data and documents obtained from Defendants to calculate an estimated amount of
8 damages for Plaintiffs' claims. *Id.* at ¶ 25. Based on the foregoing information, Plaintiffs derived
9 the following estimated values for their alleged claims:

10 **1. Unpaid Regular Wages (Labor Code § 1194 and IWC Wage Order**
11 **No. 9):**

12 Plaintiffs' claim for failure to pay regular wages is based on allegations that Defendants
13 required their drivers to work off the clock (a) during alleged meal breaks that the drivers could
14 not actually take, and (b) by spending time reviewing WhatsApp messages outside of their shift
15 time. *Id.* at ¶ 34. Plaintiffs allege that until September 2020, Defendants required drivers to be
16 clocked-out for thirty (30) minutes per 8.5-hour shift for a meal break (for which they were not
17 paid), during which time Defendants' insufficient staffing levels and onerous delivery schedule
18 required that the drivers either work through this "meal break" and/or be available to work. *Ibid.*
19 If the drivers could not clock out on their own, Plaintiffs allege that it was Defendants' policy to
20 deduct 30 minutes as a meal break from their hours worked for that day, and for which the driver
21 was also not paid. *Ibid.*

22 Plaintiffs also allege that Defendants utilized WhatsApp as their primary internal
23 communication tool. Defendants established a WhatsApp Company chatroom ("the Company
24 Chatroom"). *Id.* at ¶ 35. Defendants allegedly required Plaintiffs as well as other employees to
25 download WhatsApp onto their personal cell phones and then to also join and participate in the
26 Company Chatroom. *Ibid.* There were likely more than 50-75 persons participating at any one
27 time; and because each participant was receiving all the communications from all the other
28 participants, participants were not only being deluged with messages on their personal cell

1 phones while at work – but they were also regularly and frequently receiving communications
2 when they were not at work. *Id.* at ¶ 36. Chatroom participants were receiving hundreds and
3 hundreds of messages per day on their own personal cell phone and were forced to spend
4 substantial amounts of time to sift through a flood of irrelevant and distracting information in
5 order locate and review messages that were pertinent to themselves. *Ibid.* Plaintiffs allege that
6 drivers regularly and frequently worked off-the-clock to check work-related messages and
7 respond to work communications in the Company Chatroom, and Defendants failed and refused
8 to pay employees for any of this time. *Ibid.* Based on information provided by Defendants, the
9 maximum realistic value of Plaintiffs’ claims for unpaid regular wages was approximately Five
10 Hundred Thirty-Three Thousand Six Hundred Thirty-One Dollars and Zero Cents (\$533,631.46).
11 *Ibid.*

12 **2. Unpaid Overtime Wages (Labor Code §§ 510, 1194, 1198 and IWC**
13 **Wage Order No. 9)**

14 Plaintiffs’ claim for overtime wages is based on the allegation that Defendants failed
15 properly calculate the regular rate of pay for overtime purposes by (a) failing to include the value
16 of bonuses that they paid to drivers at all when calculating the drivers’ regular rate of pay, and
17 (b) failing to use non-overtime hours as the divisor for flat sum bonuses when determining the
18 regular rate of pay. *Id.* at ¶ 37. Based on information provided by Defendants, the maximum
19 value of Plaintiffs’ claims for unpaid overtime wages was only approximately Three Hundred
20 Seventy-One Dollars and Zero Cents (\$371.00). *Ibid.*

21 **3. Meal and Rest Break Violations (Labor Code § 226.7 and IWC Wage**
22 **Order No. 9)**

23 Plaintiffs also allege that as a result of grossly insufficient staffing levels, Defendants’
24 policies and other factors, Plaintiffs did not have, and were not provided, the opportunity to take
25 either a meal break or a rest break. *Id.* at ¶ 38. Nor, as a practical matter were Plaintiffs permitted
26 to stop their delivery vans for a long enough time to take either a meal break or rest break. *Ibid.*
27 Furthermore, during shifts, Plaintiffs as well as other delivery drivers were required to keep their
28 communication devices “ON” at all times and were furthermore responsible to be available for

1 and to be able to respond to work-related communications at all times over the course of their
2 shifts. *Ibid.* Additionally, Plaintiffs allege that they were required to be punched-out for thirty
3 (30) minutes per 8.5-hour shift for a meal break (for which they were not paid), all the time during
4 which they were either required to work and/or to be available to work. *Ibid.* Plaintiffs further
5 alleged that if they were unable to clock-out on their own, it was the policy of Defendants to
6 deduct 30 minutes as a meal break from Plaintiffs' hours worked for that day and for which
7 Plaintiffs were also not paid. *Ibid.* Defendants allegedly failed to pay the required meal or rest
8 break premiums that result from their failure to permit drivers to take meal and rest breaks. *Ibid.*
9 Based on the information collected from Plaintiffs and the documents produced by Defendants,
10 the maximum value of Plaintiffs' claims for unpaid meal and rest break premiums was
11 approximately Seven Hundred Sixteen Thousand One Hundred Forty-Seven Dollars and Zero
12 Cents (\$716,147.00). *Ibid.*

13 **4. Wage Statement Violations (Labor Code § 226)**

14 Plaintiffs' claim for failure to provide accurate wage statements to Class Members was
15 derivative of the claims set forth above. *Id.* at ¶ 39. Plaintiffs argued that, due to Defendants'
16 failure to: (1) pay one additional hour of pay at the employee's regular rate for each workday that
17 a meal period was not provided; (2) pay one additional hour of pay at the employee's regular rate
18 for each workday that a rest period was not provided; and (3) pay regular and overtime wages,
19 Defendants failed to accurately list the gross wages earned and net wages earned by Class
20 Members. *Ibid.* Plaintiffs additionally acknowledge there is a risk Defendants could have denied
21 these violations and prevailed in arguing that all hours worked were paid and no injury resulted
22 from the wage statements. *Ibid.* Based on information collected from Plaintiffs and the
23 documents produced by Defendants, the maximum value of Plaintiffs' claim for failure to provide
24 accurate itemized wage statement was approximately Nine Hundred Sixteen Thousand Dollars
25 and Zero Cents (\$916,800.00). *Ibid.*

26 **5. Business Expense Reimbursement (Labor Code § 2802)**

27 Plaintiffs' claim for failure to reimburse business expenses was premised on the
28 allegation that Class Members were required to carry their cell phones on them at all times during

1 work hours in order to send and receive messages in the Company Chat, download and use the
2 AmFlex mobile application on their cell phones, and use their cell phones to communicate with
3 Amazon regarding deliveries. *Id.* at ¶ 40. Plaintiffs and the Class argued that they were not
4 reimbursed by Defendants for the cost of their necessary cell phone or monthly cell phone costs
5 resulting from their required use of their personal cell phones. *Ibid.* The maximum value of
6 Plaintiffs' claims for unreimbursed business expenses was approximately Two Hundred Fifty-
7 Six Thousand Two Hundred Forty-Five Dollars and Zero Cents (\$256,245.00). *Ibid.*

8 **6. Waiting Time Penalties (Labor Code §§ 201-204)**

9 Plaintiffs' claim for failure to timely pay wages at termination is based on Defendants'
10 failure to pay meal and rest break premiums, and regular and overtime wages owed to Class
11 Members. *Id.* at ¶ 41. Plaintiffs additionally acknowledge there is a risk Defendants could have
12 prevailed in arguing that Class Members were paid all wages owed and any failure to pay during
13 separation was not willful. *Ibid.* The maximum reasonable value of Plaintiffs' claims for waiting
14 time penalties is One Million Six Hundred and Thousand Three Hundred Fifty-Eight Dollars and
15 Zero Cents (\$1,603,358.00). *Ibid.*

16 **7. PAGA Penalties**

17 Plaintiffs also sought penalties under PAGA for violations of all of the Labor Code
18 sections at issue in this case. *Id.* at ¶ 44. If the Court awarded Plaintiffs the maximum civil
19 penalty for each pay period that fell within the PAGA period, the total amount of the PAGA
20 penalties would be \$1,264,400. *Ibid.* Alternatively, if the Court permitted Plaintiffs to stack the
21 PAGA penalties by awarding the maximum civil penalty for all of the pay periods within each
22 legal claim, Plaintiffs' Counsel valued the amount in controversy at \$3,360,800. *Ibid.*

23 **8. FCRA Violations (15 U.S.C. § 1681b(b)(2)(A)(i), et seq.)**

24 Plaintiffs also allege that Defendants violated the Fair Credit Reporting Act's ("FCRA")
25 requirement that an FCRA disclosure for a background check consist of a standalone disclosure
26 that is clear and conspicuous. *Id.* at ¶ 42. Defendants' used a standard background check
27 disclosure form, titled "BACKGROUND CHECK DISCLOSURE," that they provided to all of
28 their drivers. *Ibid.* The disclosure form allegedly violated the FCRA's requirements by

1 unlawfully combining federal and state disclosures and referring to documents that are not part
2 of the FCRA-mandated disclosure (e.g., “A Summary of Your Rights Under the Fair Credit
3 Reporting Act and A Summary of Your Rights Under the Provisions of California Civil Code
4 Section 1786.22 for California residents”), and other extraneous information. *Ibid.* Plaintiffs
5 additionally allege that Defendants’ FCRA disclosure form improperly required them and the
6 other drivers to “certify that all of the personal information I provided is true and correct” in the
7 “Authorization For Background Checks” portion of the FCRA disclosure form. *Ibid.*
8 Accordingly, Plaintiffs were confused regarding the nature of their rights under the FCRA and
9 did not give valid authorization for Defendants to procure a consumer report in violation of 15
10 U.S.C. § 1681b(b)(2)(A)(ii). *Ibid.* Nevertheless, Defendants allegedly willfully procured, or
11 caused to be procured, background checks on Plaintiffs and other drivers in violation of 15 U.S.C.
12 § 1681b(b)(2)(A) because they knew that their standard FCRA form must be standalone and clear
13 and conspicuous, and that proper authorization is not possible without a legally compliant
14 disclosure. *Ibid.* Plaintiffs valued Defendants’ alleged FCRA violations between \$78,400 and
15 \$784,000. *Ibid.*

16 **9. ICRAA Violations (Civil Code § 1786, et seq.)**

17 California’s Investigative Consumer Reporting Agencies Act (“ICRAA”) similarly
18 requires that employment background check disclosures be clear and conspicuous and be made
19 in a document that consists solely of that disclosure. Cal. Civil Code § 1786.16, subd. (a)(2). It
20 also requires that the subject of the report be offered the option to check a box on a written form
21 to indicate that they would like to receive a copy of the report, and if they do, that the recipient
22 of the report send a copy of it to the subject within three days of receiving it. Cal. Civil Code §
23 1786.16, subd. (b)(1). As described above, Plaintiffs allege that Defendants’ standard
24 background check disclosure form was not clear and conspicuous and included extraneous
25 information. *Id.* at ¶ 43. Additionally, Plaintiffs allege that Defendants failed to provide a copy
26 of the background check report to Plaintiffs and other drivers who checked the box indicating
27 that they wanted to receive a copy within three days of Defendants’ receipt of the report. *Ibid.*
28 Accordingly, Plaintiffs allege that Defendants violated the ICRAA’s requirements. The ICRAA,

1 however, bars claims based on the same acts or omissions under both the ICRAA and the FCRA.
2 Cal. Civil Code § 1786.50, subd. (a). Because Plaintiffs' claim for ICRAA violations is based
3 on the same acts and omissions as their FCRA claims, Plaintiff did not value their ICRAA claim
4 independently of the value of their FCRA claim. *Ibid.*

5 Additionally, the risk of further litigation was substantial. *Id.* at ¶ 46. There was a
6 significant risk that, if this action was not settled, Plaintiffs would have been unable to obtain
7 class certification and thereby not recover on behalf of any employees other than themselves.
8 *Ibid.* Class-wide liability was far from certain due to the risk that individual issues may
9 predominate. *Ibid.* Thereby, class certification in this action would have been hotly disputed
10 and was by no means a foregone conclusion. *Ibid.* Even if the Court were to grant certification,
11 the Parties would have faced a potentially lengthy, costly, and complicated trial which, as with
12 all trials, entailed the risk of a loss. *Ibid.* If that were the case, the Class would have received no
13 compensation at all. *Ibid.* Additionally, the Court would have remained free to decertify the
14 Class at any time during trial. *Ibid.* Obviously, if the Court were to decertify the Class during
15 trial, the impact on the Class would have been catastrophic. *Ibid.* Plaintiffs' Counsel also
16 understands that even if Plaintiffs were ultimately successful in litigating this matter to a
17 favorable judgment after trial, recovery would likely not materialize until after a lengthy appellate
18 process. *Id.* at ¶ 47. By contrast, the settlement provides immediate benefits to the Class
19 Members in the form of financial compensation. *Ibid.* Under these circumstances, and in light
20 of the risks to all parties inherent in further litigation, it was reasonable for the Parties to elect to
21 settle their differences in this manner. *Ibid.* Therefore, after contentious negotiations, the Parties
22 entered into a Settlement Agreement, recognizing the potential risks both sides would face if
23 litigation of this action continued. *Ibid.*

24 In particular, Plaintiffs compared the results of this settlement with another wage-and-
25 hour class and representative action settlement involving similar claims by delivery drivers
26 against Amazon: *Miller v. Amazon.com LLC*, Alameda County Superior Court Case No.
27 RG17856888 ("*Miller*"). *Id.* at ¶ 48. Importantly, the settlement here produced results that were
28 almost **two times better** than the *Miller* settlement. *Ibid.* The *Miller* settlement involved a total

1 payment of Two Million Dollars and Zero Cents (\$2,000,000.00) to 2,330 participating class
2 members who had a total of 48,554 work weeks. *Ibid.* These figures resulted in the class
3 receiving a gross amount of \$41.20 per work week, and an average net settlement amount per
4 class member of \$539.19. *Ibid.* In this case, based on the data that Defendants had supplied prior
5 to mediation (i.e., 500 Class Members and 14,193 work weeks), the proposed settlement results
6 in a gross amount of \$70.46 per work week and an average net settlement amount per Class
7 Member of \$1,003.33. *Ibid.*

8 Here, the proposed settlement falls within the range of reasonableness, especially when
9 compared to the *Miller* settlement. The settlement commits Defendants to pay a total of
10 \$1,000,000.00 to compensate Class Members for their alleged damages. Berenji Decl., ¶ 49.
11 The terms of the Settlement Agreement are fair and adequate. *Id.* at ¶ 51. Although the precise
12 amounts of the individual settlement payments for each Participating Class Member cannot be
13 calculated by the Settlement Administrator until after the total number of workweeks worked by
14 the number of Participating Class Members has been determined, Plaintiffs' Counsel estimates
15 the average Individual Settlement Payment per Class Member will be approximately One
16 Thousand Dollars. *Ibid.* Accordingly, the overall monetary recovery adequately compensates
17 Class Members in light of the estimated damages and value of their claims, as well as the risks
18 of continued litigation. *Ibid.*

19 **C. The Proposed Individual Settlement Payments to Settlement Class Members**
20 **Are Fair, Adequate, and Reasonable**

21 The Class Members shall be entitled to a distribution of the settlement amount, as set
22 forth in the Settlement Agreement. Berenji Decl., Ex. A. After deducting the amount of attorney
23 fees, litigation costs, and expenses, class representative enhancements, the PAGA Payment, and
24 the estimated costs of administering the settlement, the remainder of the settlement fund ("Net
25 Settlement Amount") will be available for distribution to the Participating Class Members.
26 Berenji Decl., Ex. A, ¶¶ 9-10.

27 The individual settlement payments to Participating Class Members shall be apportioned
28 based on the number of weeks worked by each Participating Class Member during the Class

Period. Berenji Decl., Ex. A, ¶ 11. One-third (1/3) of each individual settlement payment shall be allocated as wages subject to all applicable tax withholding and two-thirds (2/3) shall be allocated as non-wage penalties and interest not subject to payroll tax withholdings. Berenji Decl., Ex. A, ¶ 12. The portion of the PAGA Payment distributed to Aggrieved Employees shall be treated as penalties. *Ibid.*

The proposed distribution to each of the Class Members is fair and reasonable because each Participating Class Member will receive a percentage of the net amount of the common fund logically based upon the weeks worked during the Class Period. Berenji Decl., Ex. A, ¶ 11. The settlement reasonably tailors each Participating Class Member's claim to the amount he or she will receive based on the number of weeks worked which augurs a low objection rate. *Ibid.*

D. The Settlement Provides for Reasonable Compensation for Settlement Class Members in Light of Significant Litigation Risks

Defendants also deny failing to provide regular and overtime wages, meal and rest breaks, business expense reimbursements, accurate itemized wage statements, all wages due at termination, and legally compliant background check disclosures. Berenji Decl., ¶ 23. Thus, Plaintiffs face numerous risks in continued litigation, including: (1) the fact that Plaintiff Muhammad's class claims have been dismissed and the need to arbitrate his individual claims before being able to appeal that dismissal, (2) the risk that Plaintiff Donis's class claims would similarly be dismissed, (3) the risk that the proposed Settlement Class would not be certified; (4) the risk that Defendants would be found not to have failed to pay regular and overtime wages; (5) the risk that Defendants would be found not to have failed to provide meal and rest breaks; (6) the risk that Defendants would be found not to have failed to provide accurate itemized wage statements; (7) the risk that Defendants would be found not to have failed to reimburse business expenses; (8) the risk that Defendants would be found not to have failed to timely pay wages due at separation; and (9) the risk that Defendants' background check disclosures would be found to have been lawful, the alleged violation would be found to not have been willful, and the tenfold range of potential damages per violation. *Id.* at ¶ 45.

Continued litigation would be costly and time consuming, and an appeal from any judgment would be likely. Berenji Decl., at ¶ 47. Such efforts would result in a delay of years before the case would be finally resolved. *Ibid.* This settlement provides a significant and timely recovery to the Class Members and easily falls within the range of reasonableness. *Ibid.*

E. The Settlement of Penalties Under PAGA Is Reasonable

The settlement of the PAGA penalties claim for One Hundred Thousand Dollars and Zero Cents (\$100,000.00) is reasonable under the circumstances. Berenji Decl., ¶ 53. Under PAGA, the LWDA is entitled to 75% of any settlement of civil penalties awardable under PAGA. Lab. Code, § 2699, subd. (i). The parties negotiated a good faith amount of \$100,000 for PAGA penalties, and this amount was not the result of self-interest at the expense of other Class Members. *Ibid.* Of this amount, Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00) will be paid to the LWDA and Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) will be distributed to Aggrieved Employees pursuant to the settlement. *Ibid.* Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no indication that this amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable. *Hopson v. 7 Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133, at *9. Moreover, the amount, \$100,000, is well within the range of reasonable PAGA settlement amounts approved by the courts. See, e.g., *id.* at *1 (approving a PAGA settlement of 0.3% or \$1,500). The \$100,000 allocated by the parties to PAGA penalties is therefore reasonable in light of the range of similar settlements and the potential exposure to Defendants for such penalties and wages. See e.g. *Hopson, supra*, 2009 WL 928133, at *1 (approving a PAGA settlement of \$1,500 or 0.3% of total settlement amount); *Viceral v. Mistras Group* (N.D. Cal. October 11, 2016) 2016 WL 5907869 (approving PAGA payment of 0.15% of its total value); *McKenzie v. Fed. Express Corp.* (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5 (approving PAGA payment that represents one percent (1%) of the maximum settlement amount); *Makabi v. Gedalia* (2016) 2016 WL 815937, at *2 (after trial, the court found in favor of plaintiffs on Labor Code claims, but declined to award PAGA penalties).

F. The Class Representative Enhancements Are Fair and Reasonable

1 After preliminary approval of the settlement, class counsel will move the Court for service
2 awards of Ten Thousand Dollars and Zero Cents (\$10,000.00) each to Plaintiff Muhammad and
3 Plaintiff Donis to recognize their time and efforts on behalf of the Class Members and their
4 release of potential individual claims against Defendants in addition to those claims they share
5 in common with the Class Members. Berenji Decl., ¶ 54. These payments will be in addition to
6 the payments they may otherwise receive as Class Members. *Id.*

7 It is appropriate to provide an additional incentive payment to the class representative.
8 See Newberg, *supra*, § 12.1; *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th
9 1380, 1393-94; *In re Online DVD-Rental Antitrust Litigation* (9th Cir. Feb. 27, 2015, 12-15705)
10 2015 WL 846008, at *3-4; *Van Vranken v. Atlantic Richfield Co.* (“*Van Vranken*”) (N.D. Cal.
11 1995) 901 F.Supp. 294; *Bogosian v. Gulf Oil Corp.* (E.D. Pa. 1985) 621 F.Supp. 27 (award of
12 \$20,000.00 each to two class representatives in antitrust case); *Bryan v. Pittsburgh Plate Glass*
13 *Co. (PPG Industries, Inc.)* (W.D. Pa. 1973) 59 F.R.D. 616, 617, *aff’d* 494 F.2d 799 (3d Cir.
14 1974). The factors courts use in determining the amount of service awards include: (1) a
15 comparison between the service awards and the range of monetary recovery available to the class
16 (see, e.g., *Clark v. American Residential Services, LLC* (“*Clark*”) (2009) 175 Cal.App.4th 785,
17 805; *Roberts v. Texaco, Inc.* (“*Roberts*”) (S.D.N.Y 1997) 979 F. Supp. 185, 204); (2) time and
18 effort put into the litigation (see, e.g., *Clark, supra*, 175 Cal.App.4th at 804-05; *Van Vranken,*
19 *supra*, 901 F. Supp. at 299; *Cook v. Neidert* (7th Cir. 1998) 142 F.3d 1004, 1016); (3) whether
20 the litigation will further the public policy underlying the statutory scheme (see, e.g., *Roberts,*
21 *supra*, 979 F. Supp. at 201 fn. 25); and, (4) risks of retaliation (see, e.g., *id.* at 202; *Cook, supra,*
22 142 F.3d at 1016).

23 Here, all of the above factors support the service awards that Plaintiffs intends to request.
24 In this case, Class Representatives Plaintiffs Muhammad and Donis assisted counsel during
25 various stages of litigation, including helping with the investigation of the claims and preparation
26 of the complaints; providing relevant documents; and working with Plaintiffs’ Counsel
27 throughout the case. Berenji Decl., ¶ 54. Plaintiffs’ Counsel believes that no action would have
28 been taken by Class Members individually, and no compensation would have been recovered for

1 them at all, but for the Plaintiffs' actions on their behalf. *Ibid.* The Class Representatives were
2 crucial participants in the prosecution of this litigation, as they actively participated in case
3 development and settlement negotiations. *Ibid.* The Class Representatives, in agreeing to bring
4 this action, formally agreed to accept the responsibilities of representing the interests of all Class
5 Members and to assume risks and potential costs that were not specifically agreed to by other
6 Class Members in this case. *Ibid.*

7 Accordingly, it is appropriate and just for Plaintiffs Muhammad and Donis to each receive
8 a reasonable payment of \$10,000 for their services on behalf of the Class Members. These sort
9 of payments to class representatives have been a common feature of settlements negotiated by
10 Plaintiffs' Counsel and have been routinely approved by trial courts.

11 **G. The Award of Attorneys' Fees and Expenses Is Fair and Reasonable**

12 As demonstrated through the concurrently filed Declaration of Shadie L. Berenji,
13 appointment of class counsel is appropriate here. There has been an extraordinary amount of
14 work performed by Plaintiffs' Counsel. Plaintiffs' Counsel conducted extensive research,
15 investigation, and analysis of each potential cause of action and claim for damages in Plaintiffs'
16 case. Plaintiffs' Counsel is highly experienced in wage and hour matters such as this action and
17 is experienced in class action cases. Berenji Decl., ¶¶ 2-9; Kramer Decl., ¶¶ 2-4; Ackerman Decl.,
18 ¶¶ 2-4. Additionally, Plaintiffs' Counsel has committed and continues to commit significant
19 financial and staffing resources to the representation of the Class. Berenji Decl., ¶ 56. Under
20 the terms of the proposed settlement, Plaintiffs' Counsel may seek attorney fees of up to Three
21 Hundred Thirty-Three Thousand Three Hundred and Thirty-Three Dollars and Thirty-Three
22 Cents (\$333,333.33) and expenses of up to Thirty Thousand Dollars and Zero Cents
23 (\$30,000.00).⁶ *Ibid.* This fee request represents one-third (1/3) of the Gross Settlement Amount.
24 *Ibid.* Accordingly, Plaintiffs' Counsel's fees and expenses request is very fair and reasonable in
25 light of the time, money, and effort invested in this case to date.

26
27
28 ⁶ As explained more fully in the concurrently filed Berenji Declaration, Plaintiffs' Counsel have entered
into a fee-splitting agreement amongst themselves, and have obtained Plaintiffs' written approval to the
agreement. Berenji Decl., ¶ 54.

1 As will be explained further in the attorney fee motion that will be filed along with the
2 final approval motion, the requested fees and expenses are extremely reasonable, and Defendants
3 do not oppose Plaintiffs' Counsel's fees and expenses request. *Ibid.* Plaintiffs' Counsel has had
4 to divert many of its resources to this case in order to effectively prosecute and settle this action.
5 *Ibid.* Plaintiffs' Counsel's investigation and preparation for settlement negotiations included,
6 among other things, the thorough review and analysis of hundreds of pages of employee time and
7 payroll records, employee manuals, and written policies and procedures produced by Defendants,
8 as well as constant communication with Plaintiffs. *Ibid.* Plaintiffs' Counsel's fees and expenses
9 request is warranted by the significant monetary results achieved on behalf of the settlement
10 Class. Accordingly, for purposes of this motion, and as will be explained in detail in the fee
11 application, the requested fee amount falls well within the range of reasonableness considering
12 that case law supports a fee award as high as fifty percent (50%) on common law settlement
13 funds less than \$10 million. See, e.g., *Van Vranken, supra*, 901 F. Supp. at 297 (noting class
14 counsel fee awards of 30-50% are more typical where the common fund is less than \$10 million).

15 The California Supreme Court in *Laffitte v. Robert Half International, Inc.* (2016) 1
16 Cal.5th 480, 573 (*Laffitte*) recently held that courts may use a percentage of the recovery
17 calculation to calculate reasonable attorney fees when class action litigation establishes a
18 common fund for the benefit of the class members. The common fund doctrine rests on the
19 commonsense notion that attorneys should normally be paid by their clients, and that unless
20 attorney fees are paid out of the common fund, those who benefited from the fund without
21 contributing would be unjustly enriched while the client who created the fund faces the possibility
22 of receiving no benefit because his recovery might be consumed by expenses. *Boeing Co. v. Van*
23 *Gernert* (1980) 444 U.S. 472, 478. Awards of common fund fees are also essential to furthering
24 the important societal goal of attracting competent counsel to handle class actions, which
25 California courts recognize as an important, necessary, and desirable tool for assuring the
26 effective enforcement of the Labor Code and minimum labor standards. See, e.g., *Vasquez,*
27 *supra*, 4 Cal.3d at 807 (class action justified to prevent "random and fragmentary enforcement"
28 of employer's legal obligations); *Richmond, supra*, 29 Cal.3d at 473 ("this state has a public

policy which encourages the use of the class action device”); *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th at 741 (“By preventing a failure of justice . . . the class action not only benefits the individual litigant but serves the public interest in the enforcement of legal rights and statutory sanctions.”) [citation omitted]. The *Laffitte* court also found that the percentage method assists the courts: in calculating fees; aligns the incentives between counsel and the class; provides a better approximation of market conditions in a contingency fee case; and, encourages counsel to seek an early settlement and avoid unnecessarily prolonging litigation to obtain a higher attorney fee award. *Laffitte* at 573 (citing *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 48–49 (*Lealao*) and *Rawlings v. Prudential–Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516).

Because our legal system relies upon private litigants “to enforce substantive provisions of law through class and derivative actions, attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for defendants to increase injurious behavior.” *Lealao, supra*, 82 Cal.App.4th at 47. Substantial fee awards in successful cases encourage meritorious class actions, thereby promoting private enforcement of, and compliance with, the law.

This common fund approach is especially suitable where, as here, a readily ascertainable (indeed, fixed) settlement fund is available. See *Dunk, supra*, 48 Cal.App.4th at 1808-09. Under the settlement, Class Counsel will seek a total award of attorney’s fees of one-third of the settlement sum of \$1,000,000.00. Berenji Decl., ¶ 56. This amount is well within the range customarily approved by California courts in comparable wage and hour class actions. Newberg, *supra*, at § 14.6 (studies show that “fee awards in class actions average around one-third of the recovery”).

The attorney fees agreed to by the Parties in the Settlement Agreement are in line with the prevailing guidelines established in California case law and academic literature, and are consistent with awards in California, including other class actions litigated by Plaintiffs’ Counsel.

Accordingly, the Parties request that the Court preliminarily approve the attorney fees and expenses as negotiated by the Parties and requested herein.

VII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO CLASS MEMBERS

The Court has broad discretion in approving a practical administration of notice to class members. The “Notice of Proposed Class Action Settlement and Hearing for Court Approval” (the “Notice”), which Plaintiffs propose for approval by the Court, and is based on the Court’s model notice, includes the required information pursuant to California Rules of Court, rules 3.766(d) and 3.769(f).⁷ See *State of California v. Levi Strauss & Co.* (1986) 41 Cal. 3d 460, 485. The Notice provides, among other information: (1) a summary of the substance of the settlement, including the Class Representative Enhancements and Class Counsel’s fees and expenses; (2) the class definition; (3) the date for the final approval hearing; (4) the formula used for calculating the Individual Settlement Payments; and, (5) and the procedure and deadlines for submitting an objection or request for exclusion. Berenji Decl., ¶ 30, Ex. B - “Court Approved Notice of Proposed Class Action Settlement and Hearing Date for Final Court Approval.”

A. The Notice, Opt-Out, and Objection Procedure

The Notice explains that Class Members who do not wish to participate in the settlement must timely request to be excluded from the settlement pursuant to the instructions contained therein. Berenji Decl., Ex. B at pp. 2-3, 5-6. The Notice also states that all objections to the settlement must be mailed to the Settlement Administrator by no later than not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) days from the mailing of the Notice. *Ibid.*

Plaintiffs propose ILYM Group, Inc. as the professional class action settlement administration firm to perform all duties related to the mailing of the Notice, processing claims,

⁷ Plaintiffs’ proposed version of the class notice is based on the “Los Angeles Superior Court’s [Model] Class Action and PAGA Settlement Agreement and Class Notice,” and which is attached as “**Exhibit B**” to the Berenji Declaration. Berenji Decl., ¶ 30. A redlined version of the notice that shows the changes made from the Court’s model class notice is attached to the Berenji Declaration as “**Exhibit C**.” Defendants have not agreed to the form of Plaintiffs’ Notice. *Ibid.* *Ibid.*

1 and issuing checks and tax reporting. Berenji Decl., ¶ 31. Plaintiffs and Plaintiffs' Counsel do
2 not have a conflict of interest or any ownership interest in ILYM Group, Inc. *Ibid.*

3 **VIII. CONCLUSION**

4 For the foregoing reasons, Plaintiffs' Counsel respectfully requests that this Court issue
5 an order: certifying the Settlement Class for settlement purposes only; preliminarily approving
6 the class action settlement; approving the Notice of the class action settlement; appointing class
7 counsel and the class representatives; and setting a date for the final approval hearing.

8 DATE: February 28, 2023

BERENJI LAW FIRM, APC

9
10 

11 By:

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