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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

VICTORIA WILSON, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

I.K. HOFMANN USA, INC., et al.,

Defendants.

Case No.: 21STCV24628

[Assigned for all purposes to: Hon. Elihu M Berle,
Dept. 6]

CLASS ACTION

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

Date: April 24, 2023
Time: 11:00 a.m.
Courtroom: Dept. SSC-6
Judge: Hon. Elihu M Berle

Action Filed: July 2, 2021
Trial Date: Not Set

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

2 PLEASE TAKE NOTICE that on April 24, 2023, at 11:00 a.m., or as soon thereafter as the
3 matter may be heard, in Department 6 of the above-captioned Court, located at 312 N. Spring Street, Los
4 Angeles, CA, Plaintiff VICTORIA WILSON (“Plaintiff”) will and hereby does move this Court for an
5 order:

6 1. Granting class certification of the Class, solely for settlement purposes pursuant to
7 Code of Civil Procedure § 382;

8 2. Preliminarily approving the JOINT STIPULATION OF CLASS AND
9 REPRESENTATIVE ACTION SETTLEMENT (“Settlement” or “Agreement”);

10 3. Appointing counsel for Plaintiff, Moon & Yang, APC, as Class Counsel;

11 4. Appointing Plaintiff as the Class Representative;

12 5. Approving the use of the proposed notice procedure and related notice form;

13 6. Approving ILYM GROUP, INC. as the third-party administrator;

14 7. Directing that notice be mailed to the Class; and,

15 8. Scheduling a hearing date for motions for final approval of class action settlement
16 and awards of attorneys’ fees and costs.

17 Good cause exists to grant this Motion because:

18 1. The Class meets all of the requirements for class certification for settlement
19 purposes under Code of Civil Procedure § 382;

20 2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the
21 disputed wage and hour claims asserted by Plaintiff;

22 3. Plaintiff and Class Counsel are adequate to represent the Class;

23 4. The proposed notice procedures and related forms comply with California Rules of
24 Court 3.766(d) and (e), adequately apprise Class Members of their rights, and fully comport
25 with due process; and

26 5. Based on the foregoing, notice should be directed to the Class Members and a final
27 fairness hearing should be scheduled (Plaintiff suggests about 140 days after preliminary
28 approval is granted).

1 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court,
2 which require approval by the Court of a class action settlement and permit the Court to extend the page
3 limit for memoranda.

4 This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points
5 and Authorities, the Declarations of H. Scott Leviant, Plaintiff, and the Settlement Administrator in
6 support thereof, all papers and pleadings on file with the Court in this action, all matters judicially
7 noticeable, and on such oral and documentary evidence as may be presented in connection with the
8 hearing on the Motion.

9 Respectfully submitted,

10 Dated: March 24, 2023

MOON & YANG, APC

11 By: 
12 Kane Moon
13 H. Scott Leviant
14 Mariam Ghazaryan

15 Attorneys for Plaintiff
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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rules 3.769, Plaintiff requests that this Court preliminarily
3 approve the class action settlement set forth in the JOINT STIPULATION OF CLASS AND
4 REPRESENTATIVE ACTION SETTLEMENT (“Settlement” or “Agreement”) with Defendants I.K.
5 HOFMANN USA INC. (“I.K. Hofmann”) and LUFTHANSA CARGO AKTIENGESELLSCHAFT
6 (“Lufthansa”) (I.K. Hofmann and Lufthansa are referred to herein as “Defendants”).

7 After informal discovery, the exchange of documents and data, and an arm’s-length mediation
8 session with mediator Steven J. Serratore, Esq., Plaintiff and Defendants (collectively referred to herein
9 as the “Parties”) reached a proposed class action settlement with a gross settlement amount (“GSA”) of
10 **\$400,000.00** in compromise of disputed claims asserted on behalf of the below-defined Class consisting
11 of approximately **278** members. Plaintiff believes this settlement is a fair, adequate, and reasonable
12 compromise of disputed claims for alleged wage and hour violations and penalties asserted in this case.

13 Plaintiff now submits this Motion for Preliminary Approval of Class Action Settlement, along
14 with the Settlement (attached to the Declaration of H. Scott Leviant [“Leviant Decl.”], Exhibit 1 thereto).
15 For the Court’s convenience, below is a summary of the key provisions of the Settlement.

16 **II. THE MAJOR TERMS OF SETTLEMENT**

17 The provisions of the proposed Settlement include the following:

- 18 • Defendants agree not to oppose certification for purposes of Settlement (Settlement, ¶
19 VII.19);
 - 20 • Settlement Amount: Defendants will pay a maximum of **\$400,000.00**, referred to as the
21 Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross**
22 payment per Class Member of approximately **\$1,438.84** (Settlement, ¶ IV.A; Leviant Decl.,
23 ¶ 18.);
 - 24 • Class Size: approximately **278** individuals who worked an approximately **15,000**
25 workweeks. (Settlement, ¶ IV.A; Leviant Decl., ¶ 18.)
 - 26 • PAGA Group Size: an estimated **158** individuals, who worked roughly **2,400** pay periods
27 (Leviant Decl., ¶ 18);
- 28

- 1 • PAGA Period: July 26, 2020, through January 15, 2023 (Settlement, ¶ II.29);
- 2 • Escalator Clause: Each Defendant agrees to increase their respective shares of the GSA in the
- 3 event that the workweeks attributable to that Defendant exceeds a 15% escalation threshold.
- 4 (the “Escalator Clause”). (Settlement, ¶ IV.A);
- 5 • Kullar/Munoz Analysis: Plaintiff addresses the claims analysis herein, at Part V.B.3, and in
- 6 more detail the Declaration of Leviant, at Paragraph 18;
- 7 • No Reversion: The Settlement is a *non-reversionary* settlement (Settlement, ¶ IV.A);
- 8 • Certification: Plaintiff addresses certification requisites herein, at Part V.A., and in the
- 9 Declaration of Leviant, at Paragraphs 34-40;
- 10 • No Claim Form: No claim form is required (Settlement, ¶ IV.A);
- 11 • Class Release: The Settlement will release specified wage-and-hour claims for Class
- 12 Members (those Class Members who do not opt out of the Settlement) as defined by the
- 13 First Amended Complaint (Settlement, ¶¶ II.9, IV.E.2);
- 14 • PAGA Release: Class Members will release the PAGA Claims set forth in this Action, that
- 15 were identified in the Operative Complaint and Plaintiff’s LWDA Notice Letter, regardless
- 16 of whether they opt out of the class portion of the Settlement (Settlement, ¶¶ II.30, IV.E.1);
- 17 • Release Effective Date: The Release is not active until Defendants tender all payments
- 18 required under the Settlement to the Settlement Administrator (Settlement, ¶ IV.E);
- 19 • Net Settlement Amount Available to the Class: After deducting Class Counsel’s attorneys’
- 20 fees and costs, service payment to Plaintiff, administration costs, and the PAGA penalty,
- 21 the remainder will be available for distribution to Class Members who do not opt out, with
- 22 each Class Member receiving a share based on the number of workweeks each Class
- 23 Member worked for Defendants within the Class Period. The Net Settlement Amount is
- 24 estimated to be at least **\$163,680.00**, resulting in an average **net** payment per Class Member
- 25 of at least **\$588.78**, before any tax withholdings. (Settlement, ¶ 3);
- 26 • Tax Allocation: The amounts distributed to Class Members will be characterized as 10%
- 27 alleged unpaid wages, 45% to penalties and 45% to interest and non-wage damages, and
- 28 PAGA Settlement Payments will be allocated as 100% penalties. (Settlement, ¶ IV.D.1.)

- 1 • Employer’s Portion of Payroll Taxes Paid Separately: Defendants’ portion of payroll taxes
2 (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that
3 constitute wages will be paid separate and apart from the GSM (Settlement, ¶ II.18);
- 4 • Settlement Administrator: The notice portion of the Settlement will be administered by a
5 third-party Administrator, ILYM Group, Inc., and the Parties estimated that the costs of
6 administration should not reasonably exceed \$10,000.00. ILYM’s estimate for settlement
7 administration services in the amount of **\$7,990.00** was selected as the lowest bid from a
8 competitive bidding process. (Settlement, ¶ II.44; ILYM Decl., Exh. C.)
- 9 • Class Data for Administration: The Settlement Administrator will receive the Class List
10 within 21 calendar days of Preliminary Approval, use the NCOA database to update the
11 Class List, and then use skip tracing on returned Notices (Settlement, ¶ V.C.1);
- 12 • Notice: The Notice will issue within 21 days of receipt of the Class List (Settlement, ¶
13 V.C.2). The Notice describes how to dispute workweeks, submit an objection in writing, in
14 person, or through an attorney, or request exclusion (Settlement, ¶¶ V.D, V.E);
- 15 • Notice Language: Notice will issue in English and Spanish (Settlement, ¶ V.B.1);
- 16 • Objections: Objections can be submitted in person, through an attorney, or in writing to the
17 Settlement Administrator, with no pre-requisite to being heard (Settlement, ¶ V.E);
- 18 • Exclusion Requests: The procedure for exclusion requests, mailing a request to the
19 Settlement Administrator, is the same as the procedure for submitting a written objection
20 (Settlement, ¶¶ V.D and V.E);
- 21 • PAGA Allocation: From the GSA, **\$70,000** will be allocated to settle claims brought
22 pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.*
23 (“PAGA”), and seventy-five percent (75%), or **\$52,500**, will be paid to the California Labor
24 & Workforce Development Agency. (Settlement, ¶¶ II.23.);
- 25 • Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is
26 attached to the Leviant Declaration;
- 27 • Enhancement/Service Awards to Plaintiff: Defendants will not oppose the application for
28 Class Representative Service Payment of up to **\$5,000.00** for Plaintiff, to be paid from the

GSA (Settlement, ¶ II.36);

- Fees and Costs: Defendants will not oppose Class Counsel’s application for fees not to exceed 33 1/3% of the GSA (\$133,320.00), and actual costs, in an amount not to exceed \$18,000, to be paid out of the GSA (Settlement, ¶ 3.2.2);
- Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ V.H.7);
- Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law (Settlement, ¶ V.H.7);
- Judgment Notice: Judgment will be posted on the Settlement Administrator’s website after entry;
- Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with Class Members (Settlement ¶ VII.8).

(Leviant Decl., ¶¶ 11-12 and Exhibit 1 thereto.)

III. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff’s Claims

On July 2, 2021, Plaintiff Victoria Wilson brought a putative class action against Defendants, asserting claims for (1) Failure to Pay Minimum Wages (Labor Code §§ 204, 1194, 1194.2 and 1197); (2) Failure to Pay Overtime Compensation (Labor Code §§ 1194 and 1198); (3) Failure to Provide Meal Periods (Labor Code §§ 226.7 and 512); (4) Failure to Authorize and Permit Rest Breaks (Labor Code §§ 226.7); (5) Failure to Indemnify Necessary Business Expenses (Labor Code § 2802); (6) Failure to Timely Pay Final Wages at Termination (Labor Code §§ 201-203); (7) Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226); and (8) California Business & Professions Code §§ 17200, *et seq.* (unfair business competition). (Leviant Decl., ¶ 4.)

On July 26, 2022, Plaintiff sent a letter to the Labor and Workforce Development Agency, pursuant to California Labor Code § 2699.3, providing notice of her intent to seek civil penalties under the Private Attorneys General Act, California Labor Code § 2698, *et seq.* (“PAGA Letter”). The LWDA did not indicate that it intended to investigate the alleged violations referenced in the letter, and the 65-

1 day time period permitted for the LWDA to provide such a notification expired. (Leviant Decl., ¶ 5.) On
2 September 30, 2021, Plaintiff filed a First Amended Complaint adding a cause of action for Private
3 Attorneys General Act penalties under Cal. Labor Code §§ 2698 *et seq.* for the Labor Code violations
4 alleged in the initial complaint. (*Id.*)

5 **B. Pre-Mediation Data Production and Analysis**

6 The Parties conducted informal discovery and investigation of the facts and law. Such
7 investigation included, inter alia, the exchange of extensive informal data and discoverable information
8 in preparation for the mediation sessions. (Leviant Decl., ¶ 6.) The Parties have analyzed payroll and
9 other data pertaining to Plaintiff and the Class during the relevant Settlement Period, including but not
10 limited to the numbers of former and current members of each purported subclass within the Class,
11 average workweeks, and average rate of hourly pay. (*Id.*) In addition, Defendants also provided
12 documents reflecting their wage and hour policies and practices during the Settlement Period and
13 information regarding the total number of current and former employees in the Class. (*Id.*)

14 After reviewing documents regarding Defendants' wage and hour policies and practices and
15 other information obtained during the informal exchange of discovery, Class Counsel were able to
16 evaluate the probability of class certification, success on the merits, and the reasonably obtainable
17 maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a
18 damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the
19 claims and defenses asserted in the litigation. (Leviant Decl., at ¶ 7.)

20 **C. Settlement**

21 On November 16, 2022, the Parties participated in an all-day mediation presided over by
22 mediator Steve Serratore, Esq., which led to this Agreement to settle. (Leviant Decl., ¶ 8.) The Parties
23 discussed at length the burdens and risks of continuing with the litigation as well as the merits of claims
24 and defenses. (*Id.*) After the mediation, the Parties then signed a long form settlement agreement (the
25 Agreement). (*Id.*)

26 Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for
27 the claims asserted in the Action, both generally and in response to Defendants' defenses thereto.
28 (Leviant Decl., ¶ 9.) Plaintiff and Class Counsel have also taken into account Defendants' agreement to

1 enter into a Settlement that confers substantial relief upon the Class.

2 Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth
3 in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class.
4 (Leviant Decl., ¶ 10.) Solely for the purpose of settling this case, the parties agree that the requirements
5 for establishing class action certification with respect to this class have been met and are met. (*Id.*) If
6 this Settlement is not approved by the Court for any reason, Defendants reserve their rights to contest
7 class certification. (*Id.*) This Settlement, if approved, will result in the termination of the litigation
8 through the entry of the Judgment and the release of all Released Claims for all Class Members,
9 including all within the class definition who have not elected to exclude themselves from the Class. (*Id.*)

10 **IV. CLASS DEFINITION**

11 The Class is defined as follows:

12 “Class” or “Class Member(s)” means all Lufthansa Class Members and I.K. Hofmann
13 Class Members. “Lufthansa Class Members” means all individuals who are currently
14 employed or were formerly employed by Defendant Lufthansa Cargo
15 Aktiengesellschaft in California as hourly non-exempt employees at any time during the
16 Class Period. “I.K. Hofmann Class Members” means all individuals who are currently
17 employed or were formerly employed by Defendant I.K. Hofmann USA, Inc. in
18 California as hourly non-exempt employees and assigned to perform services for
19 Lufthansa Cargo Aktiengesellschaft at any time during the Class Period. “Class Period”
20 means the period from July 2, 2017, through January 15, 2023. (Settlement, ¶ II.3, 4, 5,
21 8.) “Participating Class Members” are those Class Members who do not submit timely
22 exclusion requests to the Settlement Administrator. (Settlement, ¶ II.34.)

23 (Leviant Decl., ¶ 34 and Exhibit 1.)

24 **V. DISCUSSION**

25 **A. The Court Should Conditionally Certify the Class for Settlement Purposes**

26 The Class should be provisionally certified for settlement because: (1) the Class is ascertainable
27 and numerous; (2) there exists a well-defined community of interest; and (3) a class action is the superior
28 method of adjudication for this settlement. Code of Civ. Proc. § 382; *Brinker Rest. Corp. v. Super. Ct.*,
53 Cal. 4th 1004, 1021 (2012); *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435 (2000); *Sav-on Drug*
Stores, Inc. v. Superior Court, 34 Cal.4th 319, 326, 332 (2004). For purposes of this Settlement *only*,
Defendants stipulate to conditional certification. (Settlement ¶ VII.19.)

“The certification question is ‘essentially a procedural one that does not ask whether an action is
legally or factually meritorious.’” *Id.*, at 326, quoting *Linder*. Indeed, the certification question simply

1 asks whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class
2 treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286, 1298 (2010). “[I]t is also well
3 established that trial courts should use different standards to determine the propriety of a settlement class,
4 as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for
5 settlement cases.” *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal. App. 4th 836, 859
6 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996).

7 In view of these standards, the Class should be certified for purposes of settlement. Code Civ.
8 Proc. § 382; Rules of Court, Rule 3.769(c).

9 **1. The Members of the Class Are Both Ascertainable and Numerous.**

10 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
11 the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal. App. 3d
12 862, 873 (1983). A class is ascertainable when “it is defined ‘in terms of objective characteristics and
13 common transactional facts’ that make ‘the ultimate identification of class members possible when that
14 identification becomes necessary.’” *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980 (2019). The class
15 definition is sufficiently specific to enable the Parties, Class Members, and the Court to determine the
16 parameters of the class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605, 617 (1987). In this
17 case, there are about 278 Class Members, all of whom may be identified by reference to Defendants’
18 records. Accordingly, the Class is not only ascertainable, but also numerous. (Leviant Decl., ¶ 35.)

19 **2. There Are Common Questions That Predominate Over Any Questions That**
20 **May Be Unique to Individual Class Members.**

21 The community of interest requirement embodies three factors: (1) predominant questions of law
22 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class
23 representatives who can adequately represent the class. *Dunk*, 48 Cal. App. 4th at 1806; *Richmond*, 29
24 Cal. 3d at 473-75. A question of law or fact is common to the members of a class if it may be resolved
25 through common proof. *See, Jaimez*, 181 Cal.App.4th at 1305. As for predominance, it “is a comparative
26 concept, and ‘the necessity for class members to individually establish eligibility and damages does not
27 mean individual fact questions predominate.’” *Sav-on*, 34 Cal. 4th at 334.

28 In this case, common questions include, but are not limited to: i. Whether or not Defendants paid

proper wages to the Class; ii. Whether or not Defendants provided meal periods to the Class; iii. Whether or not Defendants provided rest periods to the Class; iv. Whether or not Defendants paid compensation timely upon separation of employment to former Class Members; v. Whether or not Defendants provided accurate itemized wage statements to the Class; vi. Whether or not waiting-time penalties are available to the Class for violation of California Labor Code § 203; and, vii. Whether or not Defendants engaged in unlawful or unfair business practices. (Leviant Decl., ¶¶ 37-38.)

In the Action, Plaintiff's claims present sufficient common issues of law and fact that predominate over individual issues and warrant class certification. From their review of the documentation provided, Class Counsel determined that for purposes of these claims, Defendants' policies and practices are either identical, or sufficiently similar, to raise the same questions of liability, and applied to all Class Members. Because Class Members would have to prove the same issues of law and fact to prevail, and because their potential legal remedies are identical, it would be preferable to resolve all Class Members' claims by means of the Settlement than to require each Class Member to litigate his or her individual claims. Therefore, common questions predominate over questions that may be unique to individual Class Members, and class-wide settlement is superior to any other resolution.

3. Plaintiff's Claims Are Typical of Those of the Class.

Typicality "requires a showing that the class representative has claims or defenses typical of the class." *See, e.g., Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1534 (2008), approved by *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004 (2012). California law does not require that plaintiffs have claims identical to the other class members. Rather, the test of typicality for a class representative is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct. *Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (2007).

In light of these standards, Plaintiff is typical of class members. Like other Class Members, Defendants employed Plaintiff in a non-exempt position during the Class Period, and Plaintiff claims that she was subject to the same policies alleged to have impacted the entire class. (Leviant Decl., ¶ 36.) Plaintiff alleges that she and other Class Members share the same claims stemming from Defendants' alleged violations of the Labor Code and relevant wage order. In addition, Defendants' main defenses,

1 including that the wage and hour policies and practices fully comply with California law, apply equally
2 to the claims of all Class Members. Thus, Plaintiff is typical of the Class.

3 **4. Plaintiff and Plaintiff's Counsel Will Adequately Represent the Class.**

4 The adequacy requirement is met where the plaintiff is represented by counsel qualified to
5 conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to class members'
6 interests. *McGhee v. Bank of America*, 60 Cal.App.3d 442, 451(1976). In other words, where the plaintiff
7 has adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts of interest
8 that might hinder the plaintiff's ability to represent the class. *Id.*

9 In the Action, Plaintiff has no conflicts of interest with other Class Members and has agreed to
10 place Class interests above Plaintiff's own. (Wilson Decl., ¶¶ 5-20; Leviant Decl., ¶ 39.) Moreover,
11 Plaintiff's counsel are experienced in wage and hour class action litigation and have no conflicts of
12 interest with absent Class Members. (Leviant Decl., ¶¶ 21-26, 39.) As such, this Court should appoint
13 Plaintiff as Class Representative for the Class and appoint Plaintiff's Counsel as Class Counsel.

14 **5. Proceeding as a Class Action is Superior to Individual Actions**

15 Plaintiff contends that proceeding as a class action is a superior means of resolving this dispute,
16 as the Class Members and the Court will derive substantial benefits. Class certification would serve as
17 the only means to deter and redress the alleged Labor Code violations. *See Linder v. Thrifty Oil Co.* 23
18 Cal. 4th at 434. Furthermore, individual actions arising out of the same operative facts would unduly
19 burden the courts and could result in inconsistent results, which may be avoided by class certification.

20 **6. The Proposed Class Notice Complies with Rule 3.766(d) and (e)**

21 Notice requirements are set forth in Rules of Court, Rule 3.766. In determining the manner of
22 notice, the court must consider interests of the class, relief requested, stakes of individual class members,
23 costs of notifying class members, resources of the parties, possible prejudice to class members who do
24 not receive notice, and the *res judicata* effect on class members. Rules of Court, Rule 3.766(e).

25 *a) The Notice Procedure Satisfies Due Process*

26 The proposed procedure for distributing the Proposed Notice is robust and meets the requirement
27 that it have "a reasonable chance of reaching a substantial percentage of the class members." *Cartt v.*
28 *Sup. Ct.*, 50 Cal.App.3d 960, 974 (1975). There is no statutory or due process requirement that all class

1 members receive actual notice, but in this matter, the Class Members will receive direct notice. Here, the
2 proposed procedure includes safeguards, including, but not limited to, mailing notice to Class Members'
3 last known addresses; skip tracing; searches for address changes; and the re-mailing of returned notices
4 to any forwarding addresses. This manner of giving notice complies with Rule of Court 3.766(c)
5 because it provides a reasonable chance that Class Notice will reach most if not all Class Members.

6 *b) The Notice is Accurate and Informative*

7 The proposed Notice of Class Action Settlement should be approved for dissemination to the
8 Class Members because its content complies with Rule of Court 3.766(d) in that it contains a brief
9 explanation of the case, including the basic contentions or denials of the Parties, detailed information
10 about Class Members' rights to be excluded from the Settlement and object to the Settlement; a
11 statement that the Settlement will bind all members who do not timely opt-out. Thus, the Notice also
12 satisfies Rule of Court 3.769(f) regarding the contents of settlement notices.

13 The Notice also fulfills the requirement of neutrality in class notices. 3 NEWBERG § 8.39. It
14 summarizes the proceedings and the terms and conditions of the proposed Settlement, in an informative
15 and coherent manner, in compliance with the Manual for Complex Litigation ("MANUAL"), (2d Ed.
16 1993), which states that "the notice should be accurate, objective, and understandable to Class Members .
17 . ." MANUAL, § 30.211. It makes clear that the Settlement does not constitute an admission of liability
18 by Defendants and recognizes that this Court has not ruled on the merits. It also states that the final
19 settlement approval decision has yet to be made. Accordingly, the Notice complies with the standards of
20 fairness, completeness, and neutrality required of a combined settlement-certification class notice.

21 **B. The Court Should Preliminarily Approve the Settlement Because It Is a Fair,**
22 **Adequate, and Reasonable Compromise of Disputed Wage Claims**

23 California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231,
24 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists
25 to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v.*
26 *Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). For the reasons discussed below, this Court
27 should preliminarily approve the Settlement, allow the Parties to give notice to the Class as proposed,
28 and schedule a final fairness and final approval hearing.

1 **1. Class Action Settlements Are Subject to Review and Approval.**

2 Any settlement of class litigation must be reviewed and approved by the presiding court. Rules
3 of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review and (2) a
4 subsequent (final) review after notice has been distributed to the class members. The Preliminary
5 Approval Hearing and Final Approval Hearing coincide with these two steps. The present motion seeks
6 *preliminary approval* and the setting of a Final Approval Hearing.

7 To evaluate a settlement, the trial court must receive “*basic*” information about the nature and
8 magnitude of the claims in question and the basis for concluding that the consideration being paid for the
9 release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.
10 App. 4th 116, 133 (2008). However, the record need *not* contain an explicit statement of the maximum
11 theoretical amount that the class could recover. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*,
12 186 Cal. App. 4th 399, 409 (2010).

13 **2. The Parties Reached the Settlement Through Arms’ Length Negotiations**
14 **Between Experienced Counsel with the Assistance of a Highly Qualified**
15 **Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.**

16 A settlement is presumptively fair where it is reached through arms’ length bargaining, based on
17 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
18 experienced in similar litigation, and the percentage of objectors is small.¹ *Dunk*, 48 Cal.App.4th at 1802;
19 *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v.*
20 *Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In exercising the power to approve a settlement,
21 the overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable,” *Dunk*,
22 at 1801, considering “the complexity and likely duration of further litigation, the risk of maintaining class
23 action status through trial, the amount offered in settlement, the extent of discovery completed and the
24 state of the proceedings, the experience and views of counsel, the presence of a governmental participant,
25 and the reaction of the class members to the proposed settlement. *Id.* These factors require balancing, are
26

27 ¹ Because the fourth prerequisite for the presumption to arise cannot be addressed until the final
28 approval hearing, only the first three prerequisites are relevant at this preliminary stage of the settlement
approval process.

1 non-exhaustive, and, as such, trial courts should tailor the factors considered to each case and give due
2 regard to “what is otherwise a private consensual agreement between the parties.” *Id.*

3 Here, the Settlement resulted from thorough, arms’ length negotiations between experienced
4 counsel with the assistance of highly regarded mediator Steve Serratore, Esq. (Leviant Decl., ¶¶ 8-10.)
5 With respect to the claims at issue in this case, Plaintiff obtained data from Defendants and then carefully
6 reviewed that information. Counsel for Plaintiff also examined relevant policies and interviewed
7 witnesses in detail about their work experiences and Defendants’ practices.

8 Based on that review, Plaintiff estimated potential exposure and then estimated risk factors to
9 adjust the reasonable expected outcome. The investigation that Plaintiff’s counsel conducted was
10 sufficient to provide them with enough information to intelligently evaluate the estimated exposure for
11 purposes of negotiating the Settlement in view of the risks discussed below and was sufficient to allow
12 this Court to do the same. *See, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001).

13 **3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise**
14 **of Class Members’ Claims Based on Defendants’ Estimated Liability**
15 **Exposure Given the Risks Continued Litigation Would Entail.**

16 A settlement is not judged against what might have been recovered had a plaintiff prevailed at
17 trial and does not have to provide 100% of damages sought to be fair and reasonable. “In the context of a
18 settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the
19 complaint, but rather whether the settlement is reasonable under all of the circumstances.” *Wershba*, 91
20 Cal. App. 4th at 250. Accordingly, because settlements involve compromise, even one that provides for
21 substantially narrower relief than would likely be obtained if the suit were successfully litigated can be
22 reasonable given that “the public interest may indeed be served by a voluntary settlement in which each
23 side gives ground in the interest of avoiding litigation.” *Id.*

24 With respect to the claims asserted on behalf of the Class in this case, there are serious risks that
25 support this compromise amount. These risks include, but are not limited to: (i) the risk that Plaintiff
26 would be unable to establish liability for unpaid wages, *see Duran v. US Bank Nat’l Ass’n*, 59 Cal. 4th 1,
27 39 & n. 33 (2014) (“*Duran*”); (ii) the risk that Defendants’ meal and rest period policies might not
28 ultimately support class certification or a class-wide liability finding; (iii) the risk that uncertainties about

1 the ultimate legality of Defendants' policies and practices could preclude class-wide awards of statutory
2 penalties; (iv) the risk that individual differences between Class Members could be construed as
3 pertaining to liability and not solely to damages; (v) the risk that any civil penalties award under PAGA
4 could be reduced by the Court in its discretion; (vi) the risk that class treatment could be deemed
5 improper as to one or more claims, except for settlement; (vii) the risk that the presence of a client
6 employer and a staffing agency could have injected issues that required a reduction in the scope of the
7 class or the elimination of a defendant from the action, either voluntarily or involuntarily; and, (viii) the
8 risk that appellate litigation could ensue. (Leviant Decl., ¶ 16.) These risks are non-exhaustive.

9 In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and
10 reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of
11 course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to
12 liability, damages, and the defenses asserted by Defendants. (*Id.*) Moreover, each Class Member will be
13 given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are
14 greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the
15 approximately **278** members of the Class, the average **gross** recovery is at least **\$1,438.85** per class
16 member, and the estimated average **net** recovery for each Class Member is approximately **\$588.78**. (*Id.*)
17 Given that Defendants could challenge certification and liability, this is a significant sum to have
18 achieved in settlement. Moreover, a Class Member who worked a greater number of weeks for
19 Defendants will receive a larger share of the Settlement than a Class Member who worked for a shorter
20 amount of time during the class period. (*Id.*)

21 The maximum calculated plausible exposure is **\$3,765,583.25**, *including* PAGA penalties.
22 (Leviant Decl., ¶ 18.) However, after analyzing the claims in this matter, Plaintiff has concluded that the
23 Gross Settlement Amount of **\$400,000.00** is about 51% of the **\$776,759.93** estimate of *risk-adjusted*
24 recovery (excluding interest) at this stage in the litigation. (*Id.*) This assessment is based on a carefully
25 constructed model of the current fair value of the case, using estimated risks, average wage rates,
26 numbers of employees, and the amount of time covered by the class period. (*Id.*)

- 27 • A reasonably estimated exposure for unpaid wages due to rounding was calculated, with the
28 assistance of an expert, to be approximately **\$28,839.50**. However, with the risk factor
discounts for certification and liability proof, the value of that claim is estimated by

Plaintiff's counsel to be approximately **\$16,222.22**, assuming certification probability of 75% and merits success at 75%. The settlement of this action was motivated predominantly by data showing rounding of time punches. While rounding law remains unsettled, Plaintiff's counsel has successfully obtained a decision refuting *See's Candy* and is now before the California Supreme Court. The ultimate outcome is uncertain.

- A reasonably estimated exposure for unpaid off-the-clock work (which includes overtime where applicable) was calculated, with the assistance of an expert, to be approximately **\$293,914.25**. However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **\$26,452.28**, assuming certification probability of 30% and merits success at 30%. Plaintiff's counsel views the off-the-clock estimate as overly aggressive.
- A reasonably estimated exposure for rest break violations over the class period was calculated at **\$647,788.00**, but with chances of certification and proof of liability (25% and 20% respectively) for a risk-adjusted exposure of **\$32,389.40**. Plaintiff assumes that 100% of the Class missed one rest break per week, an aggressive assumption.
- A reasonably estimated exposure for meal break violations over the class period was calculated at **\$1,079,807.50**, with chances of certification and liability risks (40% and 30% respectively) resulting in a risk-adjusted exposure of **\$129,576.90**. Both Defendants paid meal period premiums, which complicates the liability showing significantly.
- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were estimated to be approximately **\$158,456.25** and **\$270,862.88**, respectively, on maximum exposures of **\$281,700.00** and **\$481,534.00**, respectively (75% and 75% respectively, based upon the rounding claim).
- Performing risk-adjusted valuations for all claims yields a total value in the range of **\$633,959.93**, excluding PAGA.² (*Id.*)
- PAGA penalties were calculated as having a maximum realistic exposure of **\$952,000.00**, but a risk adjusted value of **\$142,800.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees.

The concurrently-filed Declaration of H. Scott Leviant sets forth claim valuation in additional detail. (*See*, Leviant Decl., ¶ 18.)

This result here is fully supportable as reasonable. First, it is important to recognize the wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Leviant Decl., ¶ 19.) Second, rest break and meal period claims have been challenging to certify for many years, even after *Brinker*. (Leviant Decl., ¶ 19.) Third, the certification rates in California are lower than

² In a sense, it is nonsensical to assign specific percentages to future events, but it does provide a specific method for attempting to reduce the concept of "very high risk" or "high risk" to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel.

1 conventional wisdom holds. *See, Findings of the Study of California Class Action Litigation, 2000-2006*,
2 available at <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page
3 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a
4 settlement *or* as part of a contested certification motion). Here, the estimated certification probabilities
5 are *above* the average rate at which cases were certified in California over the study years, based upon
6 data available through the California Courts websites. (Leviant Decl., ¶ 19.) In sum, well *under* 20% of
7 all cases filed as proposed class actions are ultimately certified by way of a *contested* motion. (*Id.*) The
8 recovery is roughly **11%** of the maximum plausible recovery (estimated to be approximately
9 **\$3,765,583.25**, including PAGA), which falls within the expected outcome under the likelihood of
10 success metric. (*Id.*) It would also be appropriate to evaluate the result by examining only the premium
11 wages at issue (approximately \$2,050,349.25, with no risk reduction), excluding penalties and interest;
12 the settlement is about 20% of the premium wages (unpaid wages, meal period premiums, and rest break
13 premiums) at maximum realistic exposure value.³ This Settlement achieves the goals of the litigation.

14 **4. The Proposed Method for Allocating Settlement Funds Is Fair.**

15 The proposed method of allocating the Settlement Fund to Class Members also is fair and
16 reasonable. As noted, the parties agreed to allocate the Settlement Fund between all Class Members
17 based on time worked by the Class Member during the Class Period, in relation to the total amount of
18 time worked by all participating Class Members collectively during the class period. This proposed
19 method is fair and reasonable because each Class Member's actual potential damages vary based on the
20 number of workweeks he or she worked (e.g., Lab. Code § 226.7 provides for an extra hour of pay at the
21 employee's regular rate of pay for each violation, resulting in a higher potential damage when a higher
22 number of incidents occur). A Class Member who worked a greater number of weeks for Defendants
23

24 ³ The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA
25 penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion "may award a lesser
26 amount than the maximum civil penalty amount specified by this part...")), and, second, courts evaluate
27 the strength of a proposed settlement without taking potential penalties or interest into consideration. *See*
28 *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA*
Logistics U.S.A., Inc., 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015) (court utilized calculation of a
defendant's exposure exclusive of interest and penalties to determine whether the settlement fell within
the range of possible approval).

will receive a larger payment under the Settlement than a Class Member who worked for a shorter amount of time during the relevant period. (Leviant Decl., ¶¶ 11, 17.)

5. The Proposed Enhancement Award to Plaintiff Warrants Approval.

The proposed enhancement payment to Plaintiff is intended to recognize the substantial initiative and significant efforts on behalf of the Class. Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange*, 115 Cal. App. 4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D.Cal. 1995) (approving a \$50,000 enhancement award). Plaintiff contributed time to the prosecution of this matter, including assistance prior to the mediation with information and substantial time conferring with counsel over the course of this litigation and before it was filed. (Wilson Decl., ¶¶ 5-20; Leviant Decl., ¶ 33.) The \$5,000.00 enhancement also recognizes the considerable risks Plaintiff undertook on behalf of the Class to be personally liable for all costs incurred regardless of the success of the litigation or class certification, as well as the personal risk of facing intrusive discovery and potential disclosure to future employers that Plaintiff sued a former employer, making future employment prospects uncertain.

6. The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate, and Reasonable and Merits Preliminary Approval.

The California Supreme Court removed any lingering doubt about the use of the percentage of the fund method to award attorney’s fees in California Courts. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).⁴ Thus, this Court may and, pursuant to *Laffitte*, should award fees to Plaintiff’s counsel based upon the percentage of the fund methodology.

Setting *Laffitte* aside, whether the once-again-confirmed percentage of the fund method or the lodestar method is used, the outcome is roughly the same: “[F]ee awards in class actions average around

⁴ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing doubt about the use of the percentage method: “The *Dunk* court, while finding the percentage method inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport to bar its usage generally in common fund cases.” *Laffitte*, 1 Cal. 5th at 501.

one-third of the recovery’ regardless of ‘whether the percentage method or the lodestar method is used.’” *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521 (2021). This is also consistent with counsels’ experience in class cases. Here, Plaintiff’s attorneys intend to request attorneys’ fees of up to \$133,320.00 (33.33% of the GSA), and costs capped at \$18,000 (which includes payment for mediation, filing fees, service of process fees, and other standard expenses). (Leviant Decl., ¶ 32.) Given the efforts and risks involved in this case, as well as the results achieved, these amounts are within the range of reasonableness and warrant *preliminary approval*.

7. The Proposed Payment to the Administrator Is Fair and Reasonable

ILYM, which has been selected due to its competitive bid, estimates that administration can be performed for **\$7,990.00**. In counsel’s experience, based on similar wage-and-hour actions, an estimated cost of **\$7,990.00** is a fair and reasonable amount for administration fees, is below the \$10,000 estimate, and should be preliminarily approved. (Leviant Decl., ¶ 34.)

8. The PAGA Allocation is Reasonable

The ultimate decision as to the amount of PAGA penalties is always up to the discretion of the Court. Labor Code § 2699(e)(2) states: “In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”

Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in federal court decisions addressing that question. In their view, a PAGA allocation, even if a small portion of the total settlement, could be reasonable if the settlement of the underlying wage and hour claims is robust and serves the deterrent purpose of the PAGA statute. *O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) (“By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA.”); *see also Visceral v. Mistras Group*, 2016 WL 5907869 *9 (N.D. Cal. 2016) (applying O’Connor’s sliding scale approach) *Moniz* then provided explicit confirmation that

1 this was an appropriate measure of reasonableness of a PAGA settlement. *Moniz*, 72 Cal. App. 5th at 77.
2 *Moniz* also held it appropriate to consider of the settlement furthers “PAGA’s purposes to remediate
3 present labor law violations, deter future ones, and to maximize enforcement of state labor laws.”

4 As to the first set of elements (the class-type analysis), it is embodied in Plaintiff’s discussion of
5 the adequacy of the settlement. Using class settlements as a source of analogous settlement review
6 standards, to assess the fairness, adequacy, and reasonableness of a settlement, the court should also
7 consider the expense, complexity and likely duration of further litigation. *Dunk*, 48 Cal. App. 4th at
8 1801. Here, the expense, complexity and likely duration of future litigation as it pertained to Plaintiff’s
9 PAGA claims was to some extent an unknown. However, to adequately establish the foundational
10 violations that would support a substantial penalty award, tremendous time and expense would be
11 invested. To adequately establish that aggrieved employees experience the alleged violations, and at
12 what frequency, most aggrieved employees would need to be interviewed in a systematic fashion and
13 their testimony cataloged in way sufficiently meaningful to permit the submission of evidence at trial,
14 such as via survey. *First*, the burdensome nature of such a process would be expensive and time-
15 consuming. *Second*, individuals already interviewed confirmed substantial risk that the Court would
16 either substantially reduce any penalty awarded *or* conclude that the conduct was insufficient to support a
17 penalty. *Third*, it would be difficult to formulate an objectively reliable means of summarizing
18 testimonial experiences, other than by an extraordinarily detailed survey. And formulating such a survey
19 would have been important, since frequency of violations would need to be established before any
20 penalties could be recovered. In sum, the evidence leads Plaintiff to conclude that, to the extent
21 violations occurred, a fact which Defendants dispute, the violations were **not** systematic and **not** uniform
22 across all of Defendants’ employees who worked during the PAGA period. Alternatively, direct
23 testimony would have been required from as many of the aggrieved employees as could be obtained,
24 which would be, at best, very difficult. Proof of this sort gives rise to a manageability argument.

25 The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*,
26 PAGA’s purposes include (1) remediation of present labor law violations, (2) deterrence of future
27 violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major
28 portion of settlement funds to class members still advances the goal of remediation. Class members

1 benefit from payments intended to offset the harm of alleged violations. The allocation of a major
2 portion of settlement funds to class members also deters future violations, since, from the perspective of
3 an employer, where settlement funds go is less significant than the fact that settlement funds are issuing.

4 Finally, *Moniz* was concerned with the standard applied to a standalone PAGA action, not a
5 settlement in which money was allocated between class and PAGA claims. Here, the adequacy of the
6 whole settlement impacts the factors approved of by *Moniz*. It would be misleading to examine only the
7 PAGA portion without asking how this Settlement as a whole is consistent with the purposes of PAGA.
8 And the discussion of “fairness” to those impacted by the settlement in *Moniz* does not play a role in this
9 matter. In *Moniz*, the Court found the record lacked any support for the disparate allocation of PAGA
10 penalties between different types of employees: “[T]he settlement’s allocation of shares of civil penalties
11 to Colleagues that are fifteen times greater than the shares allocated to Associates does not seem to have
12 been justified below and may be contrary to PAGA’s purposes.” *Moniz*, 72 Cal. App. 5th at 87. Here,
13 PAGA penalties are allocated by pay period, an equitable method of allocation.

14 In addition, there is no evidence that a court or a commissioner had informed Defendants that any
15 conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis*
16 *v. Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013) (“Under California law, courts have
17 held that employers are not subject to heightened penalties for subsequent violations until and unless a
18 court or commissioner notified the employer that it is in violation of the Labor Code.”) And in *Cotter*,
19 the court found a significant reduction of the PAGA claim would be appropriate because “[t]his does not
20 appear to be a case where a company has deliberately sought to evade the law.” *Cotter v. Lyft, Inc.*, 176
21 5 F. Supp. 3d 930, 941 (N.D. Cal. 2016). Here, Defendants can state a strong case that, as the Court
22 concluded in *Cotter*, the efforts to devise compliant operational policies do not indicate an organization
23 that has deliberately sought to evade the law. This is a very significant risk factor.

24 Finally, the PAGA allocation is fair. The LWDA is receiving **\$52,250.00**. The Class is
25 receiving, net, an estimated **\$163,680.00** for the releases for eight theories of recovery (excluding the
26 \$12,750.00 as the aggrieved employees’ share of the PAGA Allocation). The allocation to the LWDA is
27 not unfair and satisfies the policies underlying California’s wage and hour laws.
28

1 **VI. THE COURT SHOULD SCHEDULE A FINAL FAIRNESS HEARING**

2 The last step in the settlement approval process is the fairness hearing, where the Court makes a
3 final determination about the propriety of settlement. Plaintiff requests that the fairness hearing in this
4 case be scheduled for about 140 days after issuance of the Court's Order granting preliminary approval
5 of the Settlement. Under the Settlement, the Defendants will have 21 days to provide the data to the
6 Settlement Administrator, which will then have 21 calendar days to mail out class notice. Class
7 Members have 45 days after mailing of the notice to submit exclusions or objections (with a 15-day
8 extension available for re-mailed notices). Therefore, Plaintiff proposes a final approval hearing
9 scheduled for the first available hearing date that is about 140 days after preliminary approval is granted.

10 **VII. CONCLUSION**

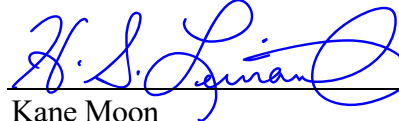
11 For all the foregoing reasons, because the Class meets the requirements for certification, because
12 the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the
13 proposed notice procedure and forms comport with Rule 3.766 and due process, this Court should grant
14 this Motion for Preliminary Approval, adopt the [Proposed] Order Granting Preliminary Approval of
15 Class Action Settlement submitted herewith, and schedule a Final Fairness Hearing.

16 Respectfully submitted,

17 Dated: March 24, 2023

MOON & YANG, APC

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19 By:



Kane Moon
H. Scott Leviant
Mariam Ghazaryan

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21 Attorneys for Plaintiff
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Chad D. Bernard
Buck N. Haddix
JACKSON LEWIS P.C.
725 South Figueroa Street Suite 2500
Los Angeles, CA 90017

Jason E. Barsanti
Brett C. Greving
COZEN O'CONNOR
501 West Broadway, Suite 1610
San Diego, CA 92101

Attorneys for Defendant I.K. HOFMANN
USA, INC.

Attorneys for Defendant LUFTHANSA
CARGO AKTIENGESELLSCHAFT

☒ **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service CASEANYWHERE. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this **March 24, 2023** at Los Angeles, California.

H. Scott Leviant
Type or Print Name



Signature