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

MARIA AYALA, individually, and on behalf of  
other members of the public similarly situated,  
and on behalf of other aggrieved employees  
pursuant to the California Private Attorneys  
General Act; ROSA HANDS, individually, and  
on behalf of other members of the public  
similarly situated, and on behalf of other  
aggrieved employees pursuant to the California  
Private Attorneys General Act;

Plaintiffs,

vs.

SDH SERVICES WEST, LLC, a Delaware  
limited liability company; SODEXO, INC., a  
Delaware corporation; and DOES 1 through 25,  
inclusive,

Defendants.

Case No. BCV-21-101933

Honorable Thomas S. Clark  
Department 17

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

Date: December 4, 2023  
Time: 8:30 a.m.  
Dept.: 17

Complaint Filed: August 20, 2021  
Trial Date: None Set

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

2 **PLEASE TAKE NOTICE THAT on December 4, 2023 at 8:30 a.m.** in Department 17 of the  
3 above-captioned Court located at 1415 Truxtun Avenue, Bakersfield, California 93301 pursuant to  
4 California Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court, Plaintiffs  
5 Maria Ayala and Rosa Hands (together, “Plaintiffs”) will and hereby do move the Court for an Order  
6 granting preliminary approval of the proposed class action settlement between Plaintiffs and Defendants  
7 SDH Services West, LLC and Sodexo, Inc. (together, “Defendants”).

8 Plaintiffs request that the Court enter an Order:

9 1. Preliminarily approving the Stipulation of Class Action Settlement (“Settlement” or  
10 “Settlement Agreement”) attached as Exhibit B to the Declaration of Jonathan M. Genish in Support of  
11 Plaintiffs’ Renewed Motion for Preliminary Approval of Class Action Settlement;

12 2. Certifying the Class for Settlement purposes;

13 3. Appointing Plaintiffs Maria Ayala and Rosa Hands as the Class Representatives for  
14 Settlement purposes;

15 4. Appointing Jonathan M. Genish and Miriam L. Schimmel of Blackstone Law, APC as  
16 Class Counsel for Settlement purposes;

17 5. Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as  
18 Exhibit A to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement  
19 (“Preliminary Approval Order”), to be mailed to the Class;

20 6. Approving the opt-out and objection procedures provided in the Settlement Agreement  
21 and set forth in the Class Notice;

22 7. For each Class Member, directing Defendants to furnish their full name, last known  
23 address, Social Security number, and total number of Compensable Workweeks, to the Settlement  
24 Administrator within thirty (14) calendar days after entry of the Preliminary Approval Order;

25 8. Approving the proposed deadlines for the settlement administration process; and

26 9. Setting a Final Approval Hearing.

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1 This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the  
2 Declarations of Jonathan M. Genish and Miriam L. Schimmel, the Declarations of Plaintiffs, the  
3 Declaration of Kimberly Y. Shackleford, the pleadings and other records on file with the Court in this  
4 matter, and any other further evidence or argument that the Court may properly receive at or before the  
5 hearing.

6 Respectfully submitted,

7 Dated: October 12, 2023

**BLACKSTONE LAW, APC**

8  
9 By: 

Jonathan M. Genish  
Attorneys for Plaintiffs Maria Ayala  
and Rosa Hands

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## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

Plaintiffs Maria Ayala and Rosa Hands (together, “Plaintiffs”) seek preliminary approval of the Stipulation of Class Action settlement (“Settlement” or “Settlement Agreement”) entered into between Plaintiffs and Defendants SDH Services West, Inc. and Sodexo, Inc. (together, “Defendants”) (collectively, with Plaintiffs, the “Parties”). (Declaration of Jonathan M. Genish in Support of Plaintiffs’ Renewed Motion for Preliminary Approval of Class Action Settlement [“Genish Decl.”], Exh. B). The Settlement terms are outlined as follows:

- Class Size: Approximately 312 individuals.
- Escalated Maximum Settlement Amount: Six Hundred Sixteen Thousand Eight Hundred Sixty Dollars and Zero Cents (\$616,860.00).
- Settlement Administration Costs: Not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00), to be paid from the escalated Maximum Settlement Amount.
- Class Representative Service Awards: Five Thousand Dollars and Zero Cents (\$5,000.00) each to Plaintiffs Maria Ayala and Rosa Hands (total, \$10,000.00), to be paid from the escalated Maximum Settlement Amount.
- Attorneys’ Fees and Expenses: Attorneys’ fees of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) plus actual litigation costs and expenses not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00), to be paid from the escalated Maximum Settlement Amount.
- Estimated Net Settlement Amount: Three Hundred Seventy-Six Thousand Eight Hundred Sixty Dollars and Zero Cents (\$376,860.00) to be distributed to Settlement Class Members inclusive of employer and employee side payroll taxes.
- Average Estimated Individual Settlement Payment: \$1,207.88 (inclusive of employer and employee side payroll taxes).
- “Released Parties” means Defendants and their insurers, parents, subsidiaries, affiliated companies, charitable organizations, partners, trustees, directors, officers, clients, agents, servants and employees, past and present and each of them.

///

1 As set forth herein, the Settlement is the product of informed discovery and arms-length  
2 negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiffs therefore  
3 respectfully request that the Court grant preliminary approval of the proposed Settlement, conditionally  
4 certify the Class, approve the proposed Notice of Class Action Settlement (“Class Notice”), and set a  
5 hearing date for final settlement approval, among other requested relief.

## 6 **II. FACTUAL AND PROCEDURAL BACKGROUND**

7 Defendant Sodexo, Inc. (“Sodexo”) is a French-based company that provides a variety of services  
8 to businesses around the world. (Genish Decl., ¶ 9). Defendant SDH Services West, LLC (“SDH”) is a  
9 wholly owned subsidiary of Sodexo with its corporate headquarters located in Bakersfield, California.  
10 (Genish Decl., ¶ 9; Declaration of Kimberly Shackleford in Support of Plaintiffs’ Renewed Motion for  
11 Preliminary Approval of Class Action Settlement [“Shackleford Decl.”], ¶ 2).

12 SDH employed Plaintiff Maria Ayala as an hourly-paid, non-exempt Housekeeper at Long Beach  
13 Memorial Medical Center from approximately August 1990 to approximately June 30, 2021.  
14 (Declaration of Maria Ayala in Support of Plaintiffs’ Renewed Motion for Preliminary Approval of Class  
15 Action Settlement [“Ayala Decl.”], ¶ 3. SDH employed Plaintiff Rosa Hands as an hourly-paid,  
16 nonexempt Housekeeper at Long Beach Memorial Medical Center from October 2013 to June 30, 2021.  
17 (Declaration of Rosa Hands in Support of Plaintiffs’ Renewed Motion for Preliminary Approval of Class  
18 Action Settlement [“Hands Decl.”], ¶ 3).

19 On July 22, 2021, Plaintiffs provided written notice by electronic submission to the Labor and  
20 Workforce Development Agency (“LWDA”) and by Certified U.S. Mail to Defendants pursuant to Labor  
21 Code § 2699.3, providing notice of the specific provisions of the California Labor Code which Plaintiffs  
22 alleged Defendants violated, including the facts and theories to support the allegations. (Genish Decl., ¶  
23 10, Exh. A thereto).

24 On August 20, 2021, Plaintiffs filed their Class Action Complaint for Damages and Enforcement  
25 Action Under the Private Attorneys General Act, California Labor Code §§ 2698 Et Seq. (“Complaint”)  
26 in the action entitled *Maria Ayala, et al. v. SDH Services West, LLC, et al.*, Kern County Superior Court,  
27 Case No. BCV-21-101933 (“Action”). (*Id.*, ¶ 11). The Complaint alleges nine (9) causes of action for:  
28 (1) failure to pay overtime wages (Labor Code §§ 510 and 1198), (2) failure to pay minimum wages

(Labor Code §§ 1194, 1197, and 1197.1), (3) failure to pay vested vacation wages (Labor Code § 227.3), (4) failure to provide meal periods (Labor Code §§ 226.7 and 512(a)), (5) failure to provide rest periods (Labor Code § 226.7), (6) failure to provide accurate itemized wage statements (Labor Code § 226(a)); (7) failure to timely pay wages upon termination (Labor Code §§ 201, 202, and 203), (8) unfair competition (Business & Prof. Code §§ 17200, et seq.); and (9) violation of the Private Attorneys General Act of 2004 (“PAGA”). (*Ibid*).

On October 21, 2021, Plaintiffs propounded multiple sets of formal written discovery requests onto Defendant (specifically, Form Interrogatories – General (Set One), Special Interrogatories (Set One), and Request for Production of Documents (Set One). (*Id.*, ¶ 12). Thereafter, on January 28, 2022, Defendants responded to Plaintiffs’ discovery requests. (*Ibid*).

The Parties met and conferred with respect to the potential resolution of the Action by means of a private mediation and agreed to exchange informal discovery as part of that process. (*Id.*, ¶ 13). Pursuant to their agreement to mediate, Defendants produced a random sampling of putative class members’ time and pay data, as well as information and documents concerning the claims set forth in Plaintiffs’ Complaint, including but not limited to, Defendants’ employee handbooks and relevant wage and hour policies. (*Ibid*).

On September 13, 2022, after a thorough investigation and analysis of these documents and data, the Parties attended a formal mediation with Jeffrey Krivis, Esq., a neutral and respected mediator with extensive experience in complex wage and hour matters. (*Id.*, ¶ 14). At the mediation, the Parties engaged in intensive settlement discussions during which they debated their respective positions and exchanged views regarding the strengths and weaknesses of the alleged claims. (*Ibid*). After a full day of mediation, and with the help of the mediator, the Parties were able to reach an agreement to resolve this dispute on a class basis, and shortly thereafter executed a memorandum of understanding memorializing the key settlement terms. (*Ibid*).

Following mediation, the Parties worked diligently to negotiate and memorialize the terms in a long form settlement agreement. (*Id.*, ¶ 15). On December 14, 2022, after additional discussions and revisions to the agreement, the Settlement Agreement was fully executed. (*Ibid*).

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1                   **III.     ORIGINAL MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**  
2                   **SETTLEMENT**

3                   On May 12, 2023, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement  
4 (“Original Motion for Preliminary Approval”) and supporting documents. (*Id.*, ¶ 16).

5                   On June 27, 2023, a hearing was held on the Original Motion for Preliminary Approval during  
6 which the Court raised multiple issues regarding the Original Motion for Preliminary Approval and  
7 denied the Original Motion for Preliminary Approval without prejudice. (*Ibid.*). Subsequently, the Court  
8 issued a Minute Order, which included the issues raised by the Court at the June 27, 2023 hearing (“June  
9 27, 2023 Minute Order”). (*Ibid.*, Exh. C thereto).

10                   **IV.     THE SETTLEMENT TERMS**

11                   **A.   Class Definition**

12                   For purposes of settlement only, the Parties have agreed that the Class shall be defined as “all  
13 individuals who worked for Defendant SDH Services West, LLC at Long Beach Memorial Medical  
14 Center as a non-exempt, hourly-paid employee at any time during the period from August 20, 2017  
15 through June 30, 2021, and who were terminated on June 30, 2021” (“Class Members” or “Class”).  
16 (Settlement Agreement, ¶ 5). The “Class Period” is defined as the period from August 20, 2017 through  
17 June 30, 2021. (*Id.*, ¶ 7). Based on information provided by Defendants, the Class is estimated to consist  
18 of approximately three hundred and twelve (312) individuals. (Genish Decl., ¶ 18).

19                   **B.   Amount of Settlement**

20                   The Parties have agreed to settle the Class claims at issue in the Complaint for a non-reversionary  
21 escalated Maximum Settlement Amount of Six Hundred Sixteen Thousand Eight Hundred Sixty Dollars  
22 and Zero Cents (\$616,860.00). (Genish Decl., ¶ 19). The Parties reached the Settlement based on an  
23 assumption of approximately 30,421 workweeks (“Certified Workweek Amount”). (Genish Decl., ¶ 19;  
24 Settlement Agreement, ¶ 46). However, Defendants represented that the actual number of workweeks for  
25 all Class Members during the Class Period was approximately 34,404. (Genish Decl., ¶ 19; Settlement  
26 Agreement, ¶ 46). Pursuant to Paragraph 46 of the Settlement Agreement, to the extent the percentage of  
27 actual workweeks exceed the Certified Workweek Amount, Defendants agreed to increase the Maximum  
28 Settlement Amount by the additional percentage over ten percent (10%) above the Certified Workweek

Amount. (Genish Decl., ¶ 19; Settlement Agreement, ¶ 46). Accordingly, the workweeks increased by two point eighty-one percent (2.81%) above the ten percent (10%) threshold over the Certified Workweek Amount. (Genish Decl., ¶ 19). This resulted in an escalated Maximum Settlement Amount of Six Hundred Sixteen Thousand Eight Hundred Sixty Dollars and Zero Cents (\$616,860.00) (from the original Maximum Settlement Amount of \$600,000.00). (Ibid).

### **C. Allocation and Funding of the Escalated Maximum Settlement Amount**

The escalated Maximum Settlement Amount is a common fund and therefore includes all requested costs, fees, and other allocations. (Settlement Agreement, ¶ 17). As stated above, the escalated Maximum Settlement Amount includes: (1) Class Counsel's fees in the amount of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00); (2) Class Counsel's actual litigation costs and expenses, not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00); (3) Settlement Administration Costs, not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00); and (4) Class Representative Service Awards in the amount of Five Thousand Dollars and Zero Cents (\$5,000.00) each to Plaintiffs (total, \$10,000.00). (Genish Decl., ¶ 20; Settlement Agreement, ¶¶ 17 & 44.b-44.d). After the above-estimated amounts are deducted from the escalated Maximum Settlement Amount, approximately 312 Class Members will share in a Net Settlement Amount of approximately Three Hundred Seventy-Six Thousand Eight Hundred Sixty Dollars and Zero Cents (\$376,860.00) (including both employee-side and employer-side payroll taxes). (Genish Decl., ¶ 20).

The Net Settlement Amount will be distributed and paid to Class Members who do not submit a valid and timely Request for Exclusion ("Settlement Class Members") on a pro-rata basis based on their total number of weeks worked during which the Class Member performed a full week of work during the Class Period ("Compensable Workweeks"). (Genish Decl., ¶ 21; Settlement Agreement, ¶¶ 9 & 30). The amount payable from the Net Settlement Amount to each Settlement Class Member ("Individual Settlement Payment") will be calculated by the Settlement Administrator by dividing the Net Settlement Amount by the total number of Compensable Workweeks for all Settlement Class Members resulting in a value for each week worked by the Settlement Class Members during the Class Period ("Workweek Value"); and then multiplying the number of Compensable Workweeks for each Settlement Class Member by the Workweek Value. (Genish Decl., ¶ 21; Settlement Agreement, ¶¶ 15 & 44.a.i.). Any Class Member who previously settled and released their claims in the matter of *Geoffrey Gross and*

1 *Leonard Pinckney v. Sodexo, Inc., et al.*, Kern County Superior Court Case No. BCV-18-101746, will  
2 have their workweeks released in that settlement excluded from their payout calculation in this matter.  
3 (Genish Decl., ¶ 21; Settlement Agreement, ¶ 44.a.i.; *see* Shackleford Decl., ¶¶ 8-10). If a Settlement  
4 Class Member's Individual Settlement Payment is less than \$50.00, that Settlement Class Member will  
5 be issued \$50.00. (Genish Decl., ¶ 21; Settlement Agreement, ¶ 44.a.i.). The average estimated  
6 Individual Settlement Payment is approximately \$1,207.88 (including both employee-side and employer-  
7 side payroll taxes). (Genish Decl., ¶ 21). The actual payments to Settlement Class Members will vary  
8 based on the actual Compensable Workweeks worked by Settlement Class Members and shall be  
9 confirmed by the Settlement Administrator in advance of the final approval hearing. (Ibid).

10 Each Individual Settlement Payment will be allocated as 20% wages, 40% non-wage interest, and  
11 40% non-wage penalties. (Genish Decl., ¶ 22; Settlement Agreement, ¶ 44.a.iv.). All applicable payroll  
12 taxes on wages (including both employee-side and employer-side payroll taxes) will be deducted from  
13 the wage portion of each Settlement Class Member's Individual Settlement Payment. (Genish Decl., ¶  
14 22; Settlement Agreement, ¶ 44.a.iv.).

15 The Settlement Agreement is a non-reversionary and a non-claims-made settlement. (Genish  
16 Decl., ¶ 23; Settlement Agreement, ¶ 44.a.). All money from the Net Settlement Amount will be  
17 distributed to Settlement Class Members. (Genish Decl., ¶ 23; Settlement Agreement, ¶ 44.a.). No  
18 money will revert to Defendants. (Genish Decl., ¶ 23; Settlement Agreement, ¶ 44.a.). As the employer  
19 of record responsible for related taxes, SDH will ultimately pay the escalated Maximum Settlement  
20 Amount. (Shackleford Decl., ¶ 11). However, Defendants understand that the Settlement makes both  
21 Defendants jointly obligated to pay the escalated Maximum Settlement Amount. (Ibid).

22 Any Individual Settlement Payment checks remaining uncashed after one hundred and eight (180)  
23 calendar days will be transferred to the California State Controller's Office Unclaimed Property Fund in  
24 the name of the Settlement Class Member. (Genish Decl., ¶ 24; Settlement Agreement, ¶ 44.a.v.). As  
25 such, no "unpaid residue" under California Code of Civil Procedure section 384 will result from the  
26 Settlement. (Genish Decl., ¶ 24; Settlement Agreement, ¶ 44.a.v.).

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1                   **D. Released Claims**

2                   a. Settlement Class Members' Released Claims

3                   Upon the Effective Date, and upon the Settlement Administrator's receipt of the Maximum  
4 Settlement Amount from Defendant, Plaintiffs and all Class Members who have not timely opted out of  
5 the settlement shall release the Released Parties of all claims, demands, rights, liabilities, and/or causes  
6 of action of any nature and discretion whatsoever, known or unknown, in law or in equity, whether or  
7 not concealed or hidden, that have been asserted or that might have been asserted based on the facts and  
8 claims alleged in the operative Complaint and arising during the period from and including August 20,  
9 2017 through June 30, 2021 for unpaid wages (including premiums) or other compensation allegedly  
10 owed, or for damages, penalties (including without limitation waiting time penalties under Labor Code  
11 section 203), restitution, interest, liquidated damages, attorneys' fees, or costs, or any other recovery  
12 based on or arising out of the claims and allegations alleged in the Lawsuit, including under the California  
13 Labor Code and corresponding provisions of Wage Orders, for: (1) Failure to Pay Wages Including  
14 Overtime; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Vested Vacation Wages; (4) Failure to  
15 Provide Meal Periods; (5) Failure to Provide Rest Periods; (6) Failure to Provide Accurate Itemized Wage  
16 Statements; (7) Failure to Timely Pay Wages Upon Termination; (8) Unfair Competition; and (9) any  
17 and all corresponding claims that could have been brought under California law based on the facts and  
18 claims alleged in the operative Complaint during the Class Period, including claims for failure to pay  
19 wages (including overtime or premium wages). (Settlement Agreement, ¶ 42.a.). It is the intent of the  
20 Parties that the judgment entered by the Court upon final approval of the Settlement shall have *res*  
21 *judicata* effect and be final and binding upon Plaintiffs and all Class Members who have not expressly  
22 opted out of the settlement. (Ibid)

23                   b. Plaintiffs' Released Claims

24                   Upon the Effective Date, and upon the Settlement Administrator's receipt of the Maximum  
25 Settlement Amount, Plaintiffs individually and on their own behalf release the Released Parties from any  
26 and all charges, complaints, claims, causes of action, demands, disputes, damages, business expenses,  
27 attorneys' fees, costs, losses and liabilities of any kind or nature whatsoever, known or unknown,  
28 suspected or unsuspected, asserted or unasserted, which Plaintiffs, at any time heretofore, had or claimed

1 to have or Plaintiffs may have, including but not limited to any and all claims arising out of, relating to  
2 or resulting from their employment with and/or separation of employment with Released Parties,  
3 including any claims arising under any federal, state or local law, statute, ordinance, rule or regulation or  
4 Executive Order relating to employment, including, but in no way limited to, any claim under Title VII  
5 of the Civil Rights Act of 1964, as amended (“Title VII”), 42 U.S.C. § 1981; the Americans with  
6 Disabilities Act (“ADA”); the Family and Medical Leave Act (“FMLA”); the Employee Retirement  
7 Income Security Act (“ERISA”); the California Family Rights Act (“CFRA”); the California Fair  
8 Employment and Housing Act (“FEHA”); all claims for wages or penalties under the Fair Labor  
9 Standards Act (“FLSA”); all claims for wages or penalties under the California Labor Code; Business  
10 and Professions Code sections 17200 *et seq.*; all laws relating to violation of public policy, retaliation, or  
11 interference with legal rights; any and all other employment or discrimination laws; whistleblower  
12 claims; any tort, fraud or constitutional claims; and any breach of contract claims or claims of promissory  
13 estoppel. (*Id.*, ¶ 42.b.). It is agreed that this is a general release and is to be broadly construed as a release  
14 of all claims; provided that, notwithstanding the foregoing, this paragraph expressly does not include a  
15 release of any claims that cannot be released hereunder by law, including any claim for indemnification  
16 pursuant to California Labor Code section 2802. (*Ibid.*). Plaintiffs hereby warrant that they are not aware  
17 of any business expenses incurred by them during their employment with Defendants and for which they  
18 have not been fully reimbursed other than those which serve as the basis for their class claim and for  
19 which they will be compensated through the settlement. (*Ibid.*). If a claim is not subject to release, to the  
20 extent permitted by law, Plaintiffs waive any right or ability to be a class or collective action  
21 representative or to otherwise participate in any putative or certified class, collective or multi-party action  
22 or proceeding based on such a claim in which any Releasee is a party. (*Ibid.*). However, the Equal  
23 Employment Opportunity Commission (“EEOC”) or other governmental agency cannot be barred from  
24 pursuing a claim on Plaintiffs’ behalf, although Plaintiffs agree that they are releasing their right to any  
25 personal recovery from a claim brought by the EEOC or any other governmental agency. (*Ibid.*).  
26 Plaintiffs understand and expressly agree that the Settlement Agreement extends to claims that they have  
27 against Defendants, of whatever nature and kind, known or unknown, suspected or unsuspected, vested  
28 or contingent, past, present, or future, arising from or attributable to an incident or event, occurring in

1 whole or in part, on or before the Effective Date of the Settlement Agreement. (Ibid). Any and all rights  
2 granted under any state or federal law or regulation limiting the effect of the Settlement Agreement,  
3 including the provisions of section 1542 of the California Civil Code, are hereby expressly waived.  
4 (Ibid). Section 1542 of the California Civil Code reads as follows:

5 A general release does not extend to claims that the creditor or releasing party does not know or  
6 suspect to exist in his or her favor at the time of executing the release, and that if known by him or her  
7 would have materially affected his or her statement with the debtor or released party. (Ibid).

8 **V. DEFENDANT(S) IN CLASS DEFINITION AND RELEASE**

9 In the June 27, 2023 Minute Order regarding the Original Motion for Preliminary Approval, the  
10 Court requested clarification to explain why Sodexo is not part of the Class definition in the Settlement  
11 Agreement, but is a defendant and part of the class definition in the Complaint, and is also part of the  
12 Released Parties as defined in the Settlement Agreement. (Genish Decl., ¶ 26, Exh. C thereto). The  
13 Court also specified that the Class Notice submitted with the Original Motion for Preliminary Approval  
14 mentioned Sodexo as the employer rather than SDH. (Ibid).

15 Sodexo is a named defendant in the Action because Sodexo is a parent company of SDH. (*Id.*,  
16 27). At the time the Action was filed, Plaintiffs believed that Sodexo was an employing entity of the  
17 employees who fell within the class definition. (Ibid). Through litigation and discovery, Plaintiffs  
18 learned that SDH was in fact the only entity that employed any of the class members. (Ibid). Sodexo  
19 never employed any of the Class Members. (Gensh Decl., ¶ 27; Shackleford Decl., ¶ 4). However,  
20 Sodexo is still a named defendant and therefore, is part of the Settlement and a proper party to be released.  
21 (Gensh Decl., ¶ 27).

22 It is standard in class action settlements to define released parties to include the named defendants  
23 and their “insurers, *parents*, subsidiaries, affiliated companies, charitable organizations, partners,  
24 trustees, directors, officers, clients, agents, servants, and employees, past and present and each of them.”  
25 (*Id.*, ¶ 28). Sodexo is a parent company, which was also a named defendant in the Action. (Ibid). Based  
26 thereon, the Parties assert that Sodexo is correctly included within the Released Parties. (Ibid).

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1 Related thereto, the fact that Sodexo is not part of the Class definition also comports and aligns  
2 with the above explanation. (*Id.*, ¶ 29). Sodexo never employed any Class Members; its subsidiary SDH  
3 was the only entity that employed Class Members. (Genish Decl., ¶ 29; Shackleford Decl., ¶ 4). This is  
4 why the Class definition in the Settlement Agreement only refers to SDH. (Genish Decl., ¶ 29).

5 Regarding the identification of Sodexo in the Class Notice, counsel for the Parties met and  
6 conferred and revised the Class Notice to make clear that references to the employer identify SDH (along  
7 with additional revisions). (*Id.*, ¶ 30). The revised Class Notice is attached as “Exhibit A” to the  
8 [Proposed] Order Granting Preliminary Approval of Class Action Settlement filed concurrently herewith  
9 (“Preliminary Approval Order”). (*Ibid.*) A redlined copy of the revised Class Notice showing the  
10 changes from the prior version is attached as “Exhibit D” to the Genish Decl. (*Ibid.*).

## 11 VI. NO PAGA ALLOCATION

12 In the June 27, 2023 Minute Order regarding the Original Motion for Preliminary Approval, the  
13 Court specified that while the Action includes a PAGA claim, there is no mention of deducting a PAGA  
14 allocation from the Maximum Settlement Amount. (Genish Decl., ¶ 31, Exh. C thereto).

15 The Settlement is only a class action settlement and no settlement of or provision for any PAGA  
16 allocation was made. (*Id.*, ¶ 32). This is because the PAGA claim asserted in the Action was previously  
17 settled and released in a settlement of a prior-filed PAGA action against Defendants in the action entitled  
18 *Francisco Nodal v. Sodex, Inc., et al.*, Los Angeles Superior Court, Case No. 20STCV40601. (Genish  
19 Decl., ¶ 32; Shackleford Decl., ¶ 5). The *Nodal* settlement covers the time period of July 28, 2019 through  
20 September 30, 2021. (Genish Decl., ¶ 32; Shackleford Decl., ¶ 7).

21 In the *Nodal* settlement, the settlement group members were defined as “Plaintiff and all other  
22 non-exempt hourly-paid employees subject to California wage-and-hour laws who are or were employed  
23 by Sodexo<sup>1</sup> or any Sodexo subsidiary or affiliate in California from July 28, 2019 through September 30,  
24 2021, other than those whose pay period during the PAGA Covered Period are entirely covered by the  
25 *Gross v. Sodexo* Settlement” and the PAGA claim was based on the following alleged Labor Code  
26 violations: Labor Code sections 201, 202, 203, 204, 226(a), 226.3, 226.7, 432, 510, 512, 558.1, 1174(d),  
27 1182.12, 1194, 1197, 1197.1, 1198.5, 2802, and 2810.5, as well as California Business and Professions  
28

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<sup>1</sup> “Sodexo” as defined in the *Nodal* Settlement includes both Sodexo and SDH. (Shackleford Decl., ¶ 6)

1 Code section 17200, et seq., and all applicable IWC Wage Orders. (Shackleford Decl., ¶ 6).

2 In the preliminary approval process, there is no request to dismiss any claims, so the issue of the  
3 dismissal of the PAGA claim has not yet been raised or addressed. (Genish Decl., ¶ 33). Upon moving  
4 for final approval, Plaintiffs will address the fact that the PAGA claim was not settled or included in the  
5 Settlement and request that the Court only dismiss the PAGA claim *without* prejudice. (Ibid).

## 6 **VII. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL**

7 The settlement of a class action requires court approval. *See Dunk v. Ford Motor Co.*, 48 Cal.  
8 App. 4th 1794 (1996). “In general, questions whether a settlement was fair and reasonable, whether  
9 notice to the class was adequate, whether certification of the class was proper, and whether the attorney  
10 fee award was proper are matters addressed to the trial court’s broad discretion.” *Wershba v. Apple*  
11 *Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds).

12 The review and approval of a proposed class action settlement involves a two-step process. *See*  
13 Cal. Rules of Court, Rule 3.769(c). First, counsel submit the proposed terms of the settlement and the  
14 Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the  
15 range of a fair settlement to justify providing notice of the proposed settlement to class members. After  
16 notice is provided to the class, the Court must conduct a second inquiry into whether the proposed  
17 settlement is fair, reasonable, and adequate. *Id.*

18 The initial evaluation of the settlement at the preliminary approval step “is not a fairness hearing.”  
19 *Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980). Rather,  
20 the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the proposed  
21 settlement is within the range of possible approval and, as a result, “whether there is any reason to notify  
22 the class members of the proposed settlement and to proceed with a fairness hearing.” A presumption of  
23 fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and  
24 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in  
25 similar litigation; and (4) the percentage of objectors is small. *See In re Microsoft I-V Cases*, 135 Cal.  
26 App. 4th 706, 723 (2006).

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1 Preliminary approval does not require a court to make a final determination that the settlement is  
2 fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice  
3 of the settlement has been given to the class members and they have had an opportunity to object or  
4 exclude themselves from the settlement. *See* Cal. Rules of Court, Rule 3.769(g). In considering a  
5 potential class settlement, the court need not reach any ultimate conclusions on the issues of fact and law  
6 which underlie the merits of the dispute and need not engage in a trial on the merits. *See Officers for*  
7 *Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982).

## 8 **VIII. THE SETTLEMENT IS PRESUMED FAIR**

### 9 **A. The Settlement Was Reached as a Result of Arm's-Length Bargaining**

10 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is  
11 reached through arm's-length bargaining.” *Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*  
12 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009). Here, the parties' settlement negotiations  
13 were at all times made at arm's-length and were adversarial. (Genish Decl., ¶ 36). The Settlement was  
14 reached following a full day of mediation with a highly respected mediator with substantial experience  
15 mediating wage and hour cases. (*Id.*, ¶ 14). Moreover, Plaintiffs engaged in additional negotiations in  
16 order to finalize the Settlement Agreement presently before the Court. (*Id.*, ¶ 15). At all times, Plaintiffs  
17 were willing and prepared to litigate this matter through class certification and trial if the Parties had been  
18 unable to reach a favorable resolution. (*Ibid*).

### 19 **B. Sufficient Investigation and Discovery by Experienced Class Counsel**

20 Courts typically assess the status of discovery in determining whether a class action settlement  
21 agreement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801. In preparation for mediation,  
22 Defendants produced a random sampling of putative class members' time and pay data; Defendants'  
23 employee handbooks and relevant wage and hour policies and procedures; information regarding the  
24 number of putative class members; the total workweeks and pay periods worked by the putative class  
25 members; and the rates of pay for each putative class member. (Genish Decl., ¶ 34). This allowed  
26 Plaintiffs' counsel to conduct an informed assessment and analysis of the potential class-wide damages.  
27 (*Ibid*). The Parties extensively briefed issues regarding class certification and liability and provided their  
28 analyses to the mediator who helped the Parties debate the strengths and weakness of their respective

positions. (*Id.*, ¶ 35). Additionally, settlement negotiations were conducted by highly capable and experienced counsel. Class Counsel are respected members of the California State Bar with strong records of vigorous and effective advocacy and are experienced in handling complex wage and hour class action litigation. (Genish Decl., ¶¶ 1-8; Declaration of Miriam L. Schimmel in Support of Plaintiffs’ Renewed Motion for Preliminary Approval of Class Action Settlement [“Schimmel Decl.”], ¶¶ 1-10). Accordingly, Class Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

**C. The Settlement is Fair and Reasonable in Light of the Parties’ Respective Legal Positions and Recovery Risks**

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable. *Wershba*, 91 Cal.App.4th at 246, 250. In evaluating the reasonableness of a settlement, a trial court must consider “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008).

Here, the reasonableness of the Settlement is underscored by the fact that Defendants have legal and factual grounds for defending the Action. Based upon Class Counsel’s experience litigating similar complex matters, Plaintiffs reasonably expected a vigorous and lengthy defense to both class certification and the merits of the Action absent a settlement.

**1. Class Counsel’s Analysis of the Maximum Available Liability and Damages**

Prior to mediation, Class Counsel analyzed a sampling of time and payroll data provided by Defendants and other relevant documents and discovery. (Genish Decl., ¶ 34). Based on the discovery provided, Class Counsel estimated with respect to the Class claims, with all claims adjudicated in favor of the Class, that Defendants faced a maximum potential liability of \$4,910,603.00. (*Id.*, ¶ 38). This estimate is based off an estimated maximum liability for the primary claims at issue as follows: \$1,092,492.00 for unpaid off-the-clock work, \$15,037.00 for unpaid meal break premiums and sick pay, \$3,759,643.00 for rest period violations, \$43,431.00 for unique meal break violations, and \$996,088.00

1 in total interest. (Ibid).

## 2 **2. Class Counsel's Risk-Based Analysis and Risk-Based Adjustments**

3 While Plaintiffs believe that Defendants faced significant exposure, substantial barriers to a  
4 recovery existed. Defendants contended that Plaintiffs' claims are not suitable for class certification  
5 because individual issues and affirmative defenses would predominate should this case go to trial.  
6 (Genish Decl., ¶ 41; *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran v.*  
7 *U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541,  
8 2551(2011). While Plaintiffs and Class Counsel disagree with Defendants' predictions, they also  
9 recognize that there is a significant risk that the Court may deny class certification. (Genish Decl., ¶ 41;  
10 *see also, Findings of the Study of California Class Action Litigation*, 2000-2006, available at  
11 <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of all class  
12 actions were certified either as part of a settlement or as part of a contested certification motion)).

13 For example, a large portion of Defendants' overall liability lies in Plaintiffs' meal period and  
14 sick pay claims. (Genish Decl., ¶ 42). These claims have been increasingly difficult to certify in recent  
15 years and Defendants contended their practices were lawful. (Genish Decl., ¶ 42; *See Brinker*, 53 Cal.  
16 4th at 1034-35). Plaintiffs' theory of liability for meal period violations was based on allegations that  
17 Defendants had failed to implement lawful policies and practices that allowed Class Members to take  
18 meal breaks in the manner required under California law. (Genish Decl., ¶ 42; *See Bradley v. Networkers*  
19 *Int'l, LLC*, 211 Cal.App.4th 1129 (2012) (holding that "the lack of a meal/rest break policy and uniform  
20 failure to authorize such breaks are matters of common proof.")). In contrast, Defendants argued that  
21 their practices at all times during the Class Period were lawful. (Genish Decl., ¶ 42). Defendants argued  
22 that the rate of purported meal period violations reflected in the data would require individualized inquiry  
23 and that such inquiry would prohibit a class from being certified. (Ibid). Class Counsel disagreed with  
24 this assessment but had to consider the risk that the Court would find validity in an individualized proof  
25 defense to certification of Plaintiffs' meal period claim. (Ibid).

26 Plaintiffs' rest period allegations were based on a similar lack of written policy and failure to  
27 provide employees with timely, full, and uninterrupted rest periods. (Genish Decl., ¶ 43). As with the  
28 meal period allegations, Defendants contended that they provided rest breaks and relieved Class Members  
of all duties as required under California law. (Ibid). Additionally, this claim was even more uncertain

1 given the difficulties associated with proving the alleged rest period violations, as Defendants were not  
2 required to record these breaks. (Ibid). Given the lack of records demonstrating rest period violations,  
3 there were legitimate concerns Plaintiffs would not be able to certify these claims or prove substantial  
4 damages with requisite certainty. (Ibid).

5 Plaintiffs also faced challenges certifying and proving liability for their minimum wage and  
6 overtime claims. (*Id.*, ¶ 44). These claims were largely based on unrecorded, off-the-clock work  
7 performed by the Class Members both before and after their shifts and during purported meal periods.  
8 (Ibid). As such, the individualized nature of why this work was performed and the individualized nature  
9 of damages presented substantial concerns regarding the manageability of the case and the risk the Court  
10 could find these issues prevented certification. (Ibid).

11 Class Counsel also recognized that, even if Plaintiffs prevailed at class certification, proving the  
12 amount of wages due to Class Members would be an expensive, time-consuming, and uncertain  
13 proposition. (*Id.*, ¶ 45). In order to prove liability and damages, Class Counsel will need to request and  
14 analyze thousands of pages of documents, obtain the Class Members' contact information, contact them,  
15 and obtain their declarations at great expense. (Ibid). Obtaining the cooperation of current employees  
16 would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current  
17 employer. (Ibid). On the other hand, Defendants would likely be able to obtain the cooperation of their  
18 employees. (Ibid). Moreover, even if Plaintiffs prevailed at class certification and trial, possible appeals  
19 would substantially delay any recovery by the Class. (Ibid).

## 20 **IX. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

21 Code of Civil Procedure Section 382 provides that three basic requirements must be met in order  
22 to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined  
23 community of interest in the question of law or fact affecting the parties to be represented; and (3)  
24 certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class action  
25 is superior to other methods. *See Dunk*, 48 Cal.App.4th at 1806. Plaintiffs contend that this Action, which  
26 is based upon Defendants' wage and hour policies and practices, satisfies the class certification  
27 requirements under California Code of Civil Procedure section 382. Defendants deny Plaintiffs'  
28 allegations, but for purposes of the Settlement only, Defendants have stipulated to certification of the

1 Class.

2 **A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is**  
3 **Impracticable**

4 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of  
5 the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal.App.3d 862,  
6 873 (1983). In this case, all three considerations strongly favor class certification. Here, the Class is  
7 defined as “all individuals who worked for Defendant SDH Services West, LLC at Long Beach Memorial  
8 Medical Center as a non-exempt, hourly-paid employee at any time during the period from August 20,  
9 2017 through June 30, 2021, and who were terminated on June 30, 2021. (Genish Decl., ¶ 18; Settlement  
10 Agreement, ¶ 5). This provides a clear and definite scope for the proposed class.

11 Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity  
12 requirement. Courts have certified classes with as few as ten or twenty-eight class members. *Rose v.*  
13 *City of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995);  
14 *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972). Here, the estimated Class size of three hundred  
15 and twelve (312) individuals meets the numerosity requirement.

16 Finally, the question of whether class members are easily identifiable turns on whether a plaintiff  
17 can establish “the existence of an ascertainable class.” *Daar v. Yellow Cab Co.*, 67 Cal.2d 695 at 706  
18 (1967). The existence of an ascertainable class in this case can be established through SDH’s payroll  
19 records, and the Class definition is sufficiently specific to enable the Parties, Class Members, and the  
20 Court to determine the parameters of the Class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal.App.3d  
21 605, 617 (1987).

22 **B. The Class Shares a Well-Defined Community of Interest**

23 The community of interest requirement embodies three factors: (1) predominant questions of law  
24 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives  
25 who can adequately represent the class. *Dunk*, 48 Cal.App.4th at 1806. Here, all three requirements are  
26 easily satisfied.

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1 The commonality criterion requires the existence of common question of law or fact and is  
2 generally established with the issues of predominance and typicality. *See Daar*, 67 Cal.2d 695, 706.  
3 What is required is that a common question of fact or law exists which predominates over issues unique  
4 to individual plaintiffs. The existence of individual issues or facts—generally present in any case arising  
5 from employment—is not a bar to class certification as long as they do not render class litigation  
6 unmanageable or predominate over the common issues. *See B.W.I. Custom Kitchen v. Owens-Illinois,*  
7 *Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

8 Here, Plaintiffs’ claims present common issues of law and fact that predominate and warrant class  
9 certification. Plaintiffs allege that Defendants denied compliant meal and rest periods to employees,  
10 required employees to perform work off-the-clock, and failed to fully compensate employees for all time  
11 actually worked. These policies and practices meant that Defendants allegedly failed to pay minimum  
12 and overtime wages, and other related claims. Plaintiffs allege that Defendants’ policies and practices  
13 were uniform as to all Class Members. Thus, class treatment is appropriate.

14 To satisfy the typicality requirement, California law does not require that plaintiffs’ claims be  
15 identical to the other class members. Rather, the test of typicality for a class representative is whether  
16 other members have the same or similar injury, whether the action is based on conduct which is not  
17 unique to the named plaintiff, and whether other class members have been injured by the same course of  
18 conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007). The typicality requirement  
19 for a class representative refers to the nature of the claim or defense of the representative, and not to the  
20 specific facts from which it arose or the relief sought. *See id.*

21 Here, Plaintiffs allege that their claims are similar to that of the other Class Members and that  
22 Plaintiffs’ claims arise out of the same alleged course of conduct giving rise to the claims of the other  
23 Class Members. Because Plaintiffs’ claims are based upon the same alleged conduct and business  
24 practices as those of Class Members, the typicality requirement has been satisfied.

25 Finally, the question of adequacy of representation “depends on whether the plaintiff’s attorney  
26 qualifies to conduct the proposed litigation in the plaintiff’s interest or not antagonistic to the interests of  
27 the class.” *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations are  
28 satisfied. Class Counsel are well-regarded and accomplished lawyers who are qualified and experienced

1 in employment-related, class-action litigation. (Genish Decl., ¶¶ 1-8; Schimmel Decl., ¶¶ 1-10).  
2 Plaintiffs will vigorously, adequately, and fairly represent the interests of the Class. Plaintiffs have, at  
3 all times, throughout the course of the litigation considered the interests of the Class and understood that  
4 they must take steps to adequately represent the Class and their interests. (Ayala Decl., ¶ 8; Hands Decl.,  
5 ¶ 8). Because Plaintiffs' claims are typical of other Class Members and are not based on unique  
6 circumstances, there is no antagonism between the interests of Plaintiffs and the Class.

### 7 **C. A Class Action is Superior to a Multiplicity of Litigation**

8 Under the circumstances, proceeding as a class action is a superior means of resolving this dispute,  
9 as the Class Members and the Court will derive substantial benefits. Class certification would serve as  
10 the only means to deter and redress the alleged violations. *See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429,  
11 434 (2000) (relevant considerations include the probability that each class member will come forward to  
12 prove his or her separate claim and whether the class approach would actually serve to deter and redress  
13 the alleged wrongdoing). Further, individual actions arising out of the same operative facts would unduly  
14 burden the courts and could result in inconsistent results. Therefore, class action proceedings are superior  
15 to individual litigation.

### 16 **X. THE REQUESTED CLASS REPRESENTATIVE AWARDS ARE REASONABLE**

17 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation  
18 “for the expense or risk they have incurred in conferring a benefit on other members of the class.” *Munoz*  
19 *v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). Courts routinely grant approval of  
20 class action settlement agreements containing enhancements for the class representative, which are  
21 necessary to provide incentive to represent the class and are appropriate given the benefit the class  
22 representatives help to bring about for the class. *See In re Online DVD Rental*, 779 F.3d 934, 947-948  
23 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive  
24 award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL  
25 7454183, at \*10 (N.D. Cal. Nov. 23, 2015) (finding service award of \$15,000 to be “fair and reasonable”).

26 Plaintiffs initiated this litigation on behalf of their former co-workers who will now be entitled to  
27 receive payment from the Settlement. Plaintiffs invested substantial time and effort into litigation,  
28 including their own research, reviewing documents, contacting other putative class members to obtain

1 their participation in the action, and extensive discussions with Class Counsel. (Ayala Decl., ¶¶ 4-5;  
2 Hands Decl., ¶¶ 4-5). Further, the requested amounts for Plaintiffs are also reasonable given the average  
3 award and the benefit gained by other Class Members. For these reasons, Plaintiffs request that Class  
4 Representative Service Awards of \$5,000.00 each to Plaintiffs (total, \$10,000.00) be preliminarily  
5 approved by the Court. (Genish Decl., ¶ 47; Ayala Decl., ¶ 9; Hands Decl., ¶ 9).

#### 6 **XI. THE REQUESTED ATTORNEYS' FEES AND EXPENSES ARE REASONABLE**

7 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions will  
8 “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v. Beneficial Cal, Inc.*, 82  
9 Cal.App.4th 19, 41 (2000). California law provides that attorney fee awards should be equivalent to fees  
10 paid in the legal marketplace to compensate for the result achieved and risk incurred. *Id.* at 47. In cases  
11 where class members present claims against a common fund and the defendant agrees to a percentage of  
12 the fund as part of the settlement, use of the percentage method is appropriate. *Id.* at 32.

13 Here, the requested attorneys’ fees of \$200,000.00, which is 32.42% of the escalated Maximum  
14 Settlement Amount, is disclosed to Class Members in the proposed Class Notice. (Preliminary Approval  
15 Order, Exh. A). The requested fee was freely negotiated, is common in the legal marketplace, and is not  
16 opposed by Defendants. The Motion for Final Approval will elaborate on the nature of the legal services  
17 provided and will also support Class Counsel’s request for the reimbursement of litigation costs and  
18 expenses not to exceed \$20,000.00. (Genish Decl., ¶¶ 48 & 49). All Attorneys’ Fees and Expenses that  
19 are not ultimately approved by the Court shall instead be included in the Net Settlement Amount to be  
20 distributed to Settlement Class Members. (Settlement Agreement, ¶ 44.c).

#### 21 **XII. THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS** 22 **MEETS DUE PROCESS REQUIREMENTS**

23 The Parties have jointly drafted the Class Notice, which will be mailed to the Class Members.  
24 (Preliminary Approval Order, Exh. A). The Class Notice will include information regarding the nature  
25 of the Action, a summary of the terms of the Settlement, the Class definition, information on how to  
26 object to and/or opt-out of the Settlement and to dispute Compensable Workweeks, and the date of the  
27 Final Approval Hearing. (Ibid). The Class Notice will list each Class Members’ total Compensable  
28 Workweeks and their estimated Individual Settlement Payment. (Ibid).

1           Within fourteen (14) calendar days after entry of the Preliminary Approval Order, Defendants  
2 will provide a list in electronic form to the Settlement Administrator containing the following information  
3 for each Class Member: full name; last known address; Social Security number; and total number of  
4 Compensable Workweeks (collectively referred to as the “Class Information”). (Settlement Agreement,  
5 ¶¶ 4 & 43.a.). Upon receipt of the Class Information, the Settlement Administrator will perform a search  
6 based on the National Change of Address Database maintained by the United States Postal Service to  
7 update and correct any known or identifiable address changes. (*Id.*, ¶ 43.a.i). Within ten (10) calendar  
8 days after receiving the Class Information from Defendants, the Settlement Administrator will mail the  
9 Class Notice to all Class Members via First Class U.S. Mail. (*Ibid*). The Parties have agreed to use  
10 ILYM Group, Inc. as the Settlement Administrator. (Genish Decl., ¶ 51; Settlement Agreement, ¶ 29).

11           In determining whether to approve a settlement of a class action, a trial court has virtually  
12 complete discretion as to the manner of giving notice to class members, and review on appeal is governed  
13 by the abuse of discretion standard. *See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380  
14 (2010). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which  
15 would result in a higher likelihood of actual notice. (Genish Decl., ¶ 52). The original source of the  
16 mailing addresses is from Class Members, who provided the information to Defendants. (*Ibid*).

17           Class Members have forty-five (45) calendar days after the Settlement Administrator mails the  
18 Class Notice to Class Members to submit a Request for Exclusion, Notice of Objection, or dispute  
19 regarding the number of Compensable Workweeks stated on their respective Class Notice (“Response  
20 Deadline”). (Settlement Agreement, ¶ 26).

21           Within three (3) business days, any Class Notice returned to the Settlement Administrator as non-  
22 deliverable on or before the Response Deadline shall be re-mailed to the forwarding address affixed  
23 thereto. (*Id.*, ¶ 43.a.ii.). If no forwarding address is provided, within not later than three (3) business  
24 days, the Settlement Administrator shall attempt to determine a correct address by the use of skip-tracing,  
25 or other type of automated search, using the name, address and/or Social Security number of the Class  
26 Member involved and re-mail the Class Notice to the Class Member whose Class Notice was returned as  
27 non-deliverable, provided that another mailing address is identified by the Settlement Administrator.  
28 (*Ibid*). If a Class Notice is re-mailed to a Class Member less than ten (10) calendar days prior to the

Response Deadline, the Class Member shall have their Response Deadline extended by ten (10) calendar days from the date the Settlement Administrator re-mails the Class Notice. (Ibid). If these procedures are followed, notice to Class Members shall be deemed to have been fully satisfied, and if the intended recipient of the Class Notice does not receive the Class Notice, the intended recipient shall nevertheless remain a Class Member and shall be bound by all terms of the Settlement and the Judgment. (Ibid).

Any Class Members who wish to object to the Settlement must submit to the Settlement Administrator a written objection ("Notice of Objection") by the Response Deadline or appear at the Final Approval Hearing to explain their objection(s). (*Id.*, ¶¶ 19 & 43.c.). A Notice of Objection must: (1) state the full name of the Class Member; (2) be signed by the Class Member; (3) state the grounds for the objection; and (4) be postmarked by the Response Deadline and returned to the Settlement Administrator at the specified address. (*Id.*, ¶ 43.c.).

Any Class Members who wish to be excluded from the Settlement must submit a written request ("Request for Exclusion") to the Settlement Administrator by the Response Deadline. (*Id.*, ¶¶ 25 & 43.b.). The Request for Exclusion must: (1) contain the name, address, telephone number, and last four Social Security Number digits of the Class Member requesting exclusion; (2) be signed by the Class Member; and (3) be postmarked by the Response Deadline and returned to the Settlement Administrator at the specified address. (*Id.*, ¶ 43.b.).

### **XIII. CONCLUSION**

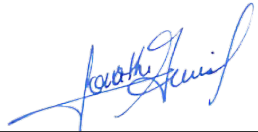
For all of the foregoing reasons, Plaintiffs respectfully request that this Court grant Plaintiffs' Renewed Motion for Preliminary Approval and the relief requested herein.

Respectfully submitted,

Dated: October 12, 2023

**BLACKSTONE LAW, APC**

By:

  
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