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9
10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SAN BERNARDINO

12
13 ISABELLA CARO, on behalf of herself and all
14 others similarly situated and the general public,

15 Plaintiff,

16 v.

17 EM KMR LLC dba CHICK-FIL-A/ COLONIES
18 CROSSROADS FSU (01544); and DOES 1 to
19 100,

20 Defendants.

) Case No. CIVSB 2126991

) Hon. Donald Alvarez

) Dept. S-23

) CLASS ACTION

) **MEMORANDUM OF POINTS AND**

) **AUTHORITIES IN SUPPORT OF**

) **PLAINTIFF'S MOTION FOR**

) **PRELIMINARY APPROVAL OF CLASS**

) **AND PAGA REPRESENTATIVE**

) **ACTION SETTLEMENT**

) Date: September 1, 2022

) Time: 8:30 a.m.

) Dept.: S-23

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28)
Action filed: September 17, 2021

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1 This Memorandum is submitted in support of the Plaintiff Isabella Caro (“Plaintiff”)
2 Motion for Conditional Certification and Preliminary Approval of Class Action and PAGA
3 Settlement. The proposed non-reversionary settlement in the gross sum of \$105,000.00 is on
4 behalf of approximately 84 class members except as to any Class Members who elect to exclude
5 themselves (“opt-out”) from the settlement Class.

6 **INTRODUCTION**

7 Plaintiff filed her Complaint on September 17, 2021, her First Amended Complaint on
8 November 24, 2021, and her Second Amended Complaint on February 16, 2022, against
9 Defendant EM KMR, LLC dba Chick-Fil-A/Colonies Crossroads FSU (01544) (hereinafter
10 “Defendant”), as a class and representative Private Attorneys General Act (“PAGA”) action,
11 seeking recovery of unpaid wages and penalties under Business and Professions Code (“B&PC”)
12 §17200, et seq., and Labor Code §§ 200, et seq., 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1198,
13 and 2802. Plaintiff, on behalf of herself and all other hourly non-exempt employees working for
14 Defendant seeks damages for alleged violation of the Labor Code and restitution for Defendants’
15 alleged violations of B&PC §17200, et seq. Defendants filed its Answer and Affirmative
16 Defenses on April 18, 2022.

17 Plaintiff and Defendants (the “Parties”) attended mediation on March 24, 2022, with
18 mediator Steve Pearl. The Parties did not settle at mediation but were able to reach a tentative
19 settlement after mediation with the help of Steve Pearl. The Parties began negotiating the specific
20 terms of the long form settlement after the mediation and were able to agree on all terms in the
21 Stipulation of Class and PAGA Representative Action Settlement and Release (a true and correct
22 copy of which is attached to the Declaration of Janelle Carney as **Exhibit 1**).

23 Class Counsel have concluded, after taking into account sharply disputed factual and legal
24 issues involved in this litigation and the risks attending further prosecution, that the substantial
25 settlement to be received pursuant to the compromise and settlement of the litigation is in the best
26 interest of the Class Members. Plaintiff recognizes the expense and length of continued
27 proceedings necessary to continue the litigation against Defendants through trial and through any
28 possible appeals. Plaintiff has also taken into account the uncertainty and risk of denial of a motion
for class certification, the challenges of seeking PAGA relief for all PAGA Representative Action
Members, the uncertain outcomes resulting from further litigation, and the difficulties and delays

1 inherent in such litigation. Plaintiff is also aware of the burdens of proof necessary to establish
2 liability for the claims asserted in the Action, Defendants' defenses, and the difficulties in
3 establishing damages for the Plaintiff and Class Members.

4 **I. THE CLASSES REPRESENTED**

5 The Settlement Classes consist of the following:

6 **Settlement Class Members:** all current and former non-exempt hourly individuals who
7 were under the age of 18 at the time of hire by Defendant on or after September 17, 2017 through
8 August 31, 2022, who 1) did not later sign arbitration agreements after turning 18 or 2) did not
9 have a parent or other legal guardian co-sign arbitration agreements.

10 **PAGA Representative Action Members:** all current and former non-exempt hourly
11 employees of Defendant who were under the age of 18 at the time of hire, on or after April 29,
12 2021 through August 31, 2022, who 1) did not later sign arbitration agreements after turning 18 or
13 2) did not have a parent or other legal guardian co-sign arbitration agreements.

14 At the time of filing of the action, Defendant asserted that there was a valid and enforceable
15 arbitration agreement, however, Plaintiff argued in the meet and confer process that Plaintiff was a
16 minor at the time she allegedly signed a purported agreement therefore, the agreement is not
17 enforceable. Plaintiff was hired and signed all her new hire paperwork when she was seventeen
18 (17) and had not reached the age of capacity nor can any of the purported agreements be used
19 against her or the other minor employees that signed purported agreements at the time of hire while
20 they were under the age of eighteen.

21 Sound policy considerations support this provision: **‘The law shields minors from
22 their lack of judgment and experience and under certain conditions vests in
23 them the right to disaffirm their contracts.** Although in many instances such
24 disaffirmance may be a hardship upon those who deal with an infant, the right to
25 avoid his contracts is conferred by law upon a minor “for his protection against his
26 own improvidence and the designs of others.” **It is the policy of the law to protect
27 a minor against himself and his indiscretions and immaturity as well as against
28 the machinations of other people and to discourage adults from contracting
with an infant.** Any loss occasioned by the disaffirmance of a minor's contract
might have been avoided by declining to enter into the contract.” (*Berg v. Traylor*
(2007) 148 Cal.App.4th 809, 818 [56 Cal. Rptr. 3d 140]; see also *Eriksson v.*
Nunnink (2015) 233 Cal.App.4th 708, 720–721 [183 Cal. Rptr. 3d 234].)

“No specific language is required to communicate an intent to disaffirm. ‘A contract
(or conveyance) of a minor may be avoided by any act or declaration disclosing an
unequivocal intent to repudiate its binding force and effect.’” (*Berg v. Traylor*,

1 supra, 148 Cal.App.4th at p. 820.) The filing of a lawsuit is sufficient disaffirmance.
2 (*Celli v. Sports Car Club of America, Inc.* (1972) 29 Cal.App.3d 511, 517 [105 Cal.
3 Rptr. 904] (Celli).) *Coughenour v. Del Taco, LLC*, 57 Cal. App. 5th 740, 748,
4 (2020)

5 As a result of this issue, the Defendant obtained parental consent on behalf of some of the
6 minors and had some of the minors who signed at hire, reaffirm their agreement to arbitrate after
7 turning 18. As such the class was limited to only those minors who never entered into a valid
8 arbitration agreement.

9 Further, the PAGA group of aggrieved employees is also limited based on a prior PAGA
10 settlement in the matter of *Ruvalcaba v. EM KMR LLC*, San Bernardino Superior Court Case No.
11 CIVDS 2008937. The PAGA only settlement in *Ruvalcaba* release runs from March 17, 2019 to
12 April 28, 2021. Plaintiff has amended her complaint to reflect the start date of the PAGA release in
13 her case to April 29, 2021 to the present. (See Exhibit 2 to the settlement agreement attached to
14 Decl. Carney as Exhibit 1)

14 **II. THE TWO-STEP APPROVAL PROCESS**

15 Any settlement of class litigation must be reviewed and approved by the Court. This is done
16 in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice
17 has been distributed to the Class Members for their comment or objections. The Manual for
18 Complex Litigation Second states at §30.44 (1985):

19 A two-step process is followed when considering class settlements ... if the
20 proposed settlement appears to be the product of serious, informed, non-
21 collusive negotiations, has no obvious deficiencies, does not improperly
22 grant preferential treatment to Class Representatives or segments of the
23 class, and falls within the range of possible approval, then the court should
24 direct that notice be given to the Class Members of a formal fairness hearing,
25 at which evidence may be presented in support of and in opposition to the
26 settlement.

27 Thus, the preliminary approval of the trial court is simply a conditional finding that the
28 settlement appears to be within the range of reasonableness for acceptable settlements. As
Professor Newberg commented, “The strength of the findings made by a judge at a preliminary
hearing or conference concerning a tentative settlement proposal may vary. The court may find that
the settlement proposal contains some merit, is within the range of reasonableness required for a

1 settlement offer or is presumptively valid subject only to any objections that may be raised at a
2 final hearing.” Newberg on Class Actions, 3rd Ed., 11.26.

3 The procedures for submission of a proposed settlement for preliminary approval are
4 discussed at Newberg on Class Actions, 3rd Ed., §11.24 – 11.26. Newberg observes at §11.24:

5 **When the Parties to an action reach a monetary settlement, they will usually**
6 **prepare and execute a joint stipulation of settlement, which is submitted to the**
7 **court for preliminary approval. The stipulation should set forth the central**
8 **terms of the agreement, including but not limited to, the amount of the**
9 **settlement, form of payment, manner of determining the effective date of**
10 **settlement, and any recapture clause.**

11 While the details of the recovery for each Class Member are set forth in the proposed
12 Stipulation filed concurrently herewith and attached to the Declaration of Janelle Carney in support
13 of Preliminary Approval, the settlement for each participating Class Member and PAGA
14 Representative Action Member is fair, reasonable, and adequate, given the inherent risk of
15 litigation, the risk relative to class certification, and the costs of litigation. (**Decl. Carney ¶ 7**)

16 To prevent fraud, collusion, or unfairness to the class, the settlement or dismissal of a class
17 action requires court approval. The court must determine whether the settlement is fair, adequate,
18 and reasonable. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794.)

19 The Court must look to the admissible evidence regarding the following factors specified in
20 *Dunk v. Ford Motor Co.*, supra at 1800-1801:

- 21 A. Strength of Plaintiff’s case;
- 22 B. The risk, expense, complexity and likely duration of further litigation;
- 23 C. The risk of maintaining class action status through trial;
- 24 D. With respect to the amount of the settlement, the number of "cents on the
25 dollar" or percentage of total damages the settlement represents; and
- 26 E. Presence (or lack thereof) of a governmental participant.

27 Further, the Court must take into consideration the additional *Kullar* factor which is "the
28 most important factor is the strength of the case for the plaintiffs on the merits, balanced against the
amount offered in settlement." (*Kullar v. Foot Locker Retail, Inc.* 168 Cal. App 4th 116, 118) (**See**
Decl. Carney, ¶ 8) Plaintiff contends the settlement represents approximately 40% of the
reasonable value of all claims. (**Decl. Carney, ¶ 8**). The settlement is for a maximum amount of
\$105,000.00 for approximately 84 class member employees as of the parties’ agreement (a subset

1 of which includes all the PAGA Representative Action members). (**Decl. Carney ¶ 8**). Plaintiff
2 asserts that this is an excellent settlement for each class member and PAGA Representative Action
3 member.

4 The distribution of payment to the Participating Class Members and PAGA Representative
5 Action members will occur as set forth in ¶ 54 of the Stipulation:

6 1. Procedure for Payment of Individual Settlement Payments:

7 The Settlement Administrator will distribute Individual Settlement Payments to
8 Participating Class Members, PAGA Settlement Shares to PAGA Representative Action Members,
9 the LWDA Payment to the Labor and Workforce Development Agency (“LWDA”), the Court-
10 approved Class Representative Enhancement to Plaintiff, and Court-approved Class Counsel Fees
11 and Expenses to Class Counsel, within thirty (30) calendar days after the effective date.

12 Non-Negotiated Settlement Checks. Any checks issued by the Settlement Administrator to
13 Participating Class Members and PAGA Representative Class Members shall be negotiable for one
14 hundred and eighty (180) calendar days from the date of their issuance. The total amount of funds
15 returned as undeliverable and the funds which correspond with the settlement checks that are not
16 negotiated within one hundred and eighty (180) calendar days after issuance shall be tendered, with
17 interest, to the State Controller’s Unclaimed Property Fund in the name of the Class Member.

18 (**Decl. Carney, Exh. 1: Stipulation ¶ 59**)

19 The settlement amount balanced against the merits of the Plaintiff’s case is strong as all
20 factors listed supra are discussed in detail in the **Declaration of Janelle Carney**, filed concurrently
21 herewith.

22 **III. THE PRESUMPTION OF FAIRNESS**

23 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
24 evidence to the contrary is offered. In short, there is a presumption that the negotiations were
25 conducted in good faith. Newberg, §11.51; *In re Chicken Antitrust Litigation*, 560 F.Supp 957, 962
26 (N.D. Ga. 1980); *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v.*
27 *Continental Illinois National Bank and Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987). Courts do not
28 substitute their judgment for that of the proponents, particularly where, as here, settlement has been
reached with the participation of experienced counsel familiar with the litigation. *Hammon v.*
Barry, 752 F.Supp 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F.Supp. 471 (S.D.N.Y. 1979); *In*

1 *re Armored Car Antitrust Litigation*, 472 F.Supp 1357 (N.D. Ga. 1979), *aff'd in part, rev'd in part*
2 *in 645 F.2d 488 (5th Cir. 1981)*; *Sommers v. Abraham Lincoln Federal Savings & Loan*
3 *Association*, 79 F.R.D. 571 (E.D. Pa. 1978). This is especially true where, as here, a very
4 experienced, highly regarded neutral mediator, Steve Pearl, one very familiar with this type of class
5 action in its substance and procedure, presided over the mediation session.

6 While the recommendations of counsel proposing the settlement are not conclusive, the
7 Court can properly take them into account, particularly where, they have been involved in litigation
8 for some period of time, appear to be competent, have experience with this type of litigation, and
9 have obtained substantial evidence from the opposing party. See Newberg, §11.47. Here,
10 Plaintiff's counsel involved in this action has a great deal of experience in wage and hour class
11 action litigation. Janelle Carney of Janelle Carney – Attorney at Law, APC and formerly a partner
12 at the Law Office of Joseph Antonelli, has been approved as Class Counsel in over 300 wage and
13 hour class actions. A sampling of such cases is listed in the concurrently filed declaration of Janelle
14 Carney. Class Counsel and the Plaintiff have been actively engaged in resolving this matter, hiring
15 a damage expert at considerable cost to assist with the analysis of the financial records produced by
16 Defendants for mediation, and to prepare for filing class certification.

17 The settlement amount is fair and reasonable based on a review of all objective evidence.
18 The Parties' assessment of the matter is based on extensive research before and during the
19 litigation, and written exchange of information and documents.

20 **IV. PROPOSED SHARE PER CLASS MEMBER**

21 **A. Class Member Compensation**

22 Each Participating Class Member who does not request exclusion will receive payments
23 based on the following formula:

24 The Settlement Administrator shall determine the eligibility for, and the amounts of, any
25 Individual Settlement Shares or Individual Settlement Payments that Participating Class Members
26 may receive under the terms of this Settlement Agreement. Any unresolved disputes concerning the
27 administration of the Settlement Agreement will be resolved by the Court, under the laws of the
28 State of California.

a. Each Class Member who does not timely request to opt-out will receive a
share of the Net Settlement Amount ("Individual Settlement Share"), less employee's and

1 employer's withholdings and taxes associated with the wage portion of the Individual Settlement
2 Shares, based on the Class Member's number of Qualifying Workweeks. Specific calculations of
3 Individual Settlement Shares shall be made as follows:

4 i. The Settlement Administrator shall calculate the total aggregate
5 number of weeks that all Class Members were employed by, and worked for, Defendant as non-
6 exempt hourly individuals who were hired under the age of 18 on or after September 17, 2017
7 through August 30, 2022, who 1) did not later sign arbitration agreements after turning 18 or 2)
8 did not have a parent or other legal guardian co-sign arbitration agreements, excluding weeks
9 when the Class Members did not work or were on leave for the entire week ("Total
10 Workweeks").

11 ii. The value of each individual Qualifying Workweek shall then be
12 determined by dividing the Net Settlement Amount by the Total Workweeks, resulting in the
13 "Workweek Value." Each Individual Settlement Share shall then be determined by multiplying
14 the individual Participating Class Member's number of Qualifying Workweeks by the Workweek
15 Value.

16 iii. If any Class Members submit timely and valid Requests for
17 Exclusion, the Settlement Administrator shall reallocate their Individual Settlement Payment
18 amounts to the Net Settlement Amount for distribution to Participating Class Members pursuant
19 to the terms of this Settlement Agreement. The Settlement Administrator shall provide the final
20 Individual Settlement Payment calculations to Defendant. The Settlement Administrator shall
21 withhold any legally mandated withholdings or deductions (*e.g.*, payroll taxes, etc.) from the
22 Individual Settlement Payment for each Participating Class Member and remit tax withholdings
23 to the applicable tax authorities (not including Defendant's share of payroll taxes for the
24 Individual Settlement Payments). (**Stip.¶ 54**).

25 No reductions will be made to Individual Settlement Shares for any taxes or withholding in
26 connection with the penalties and interest, which shall be reported by IRS 1099 forms. All
27 Participating Class Members covered by this Settlement agree that they are not relying on any
28 representations regarding the tax allocation or treatment of any amounts paid to them under the

terms of this Settlement and agree to hold Defendants and the Released Parties harmless for any and all tax consequences relating to the allocation of the payments made under this Settlement. (Stip. ¶72). Each Class Member will receive a notice that details their estimated claim amount based on the number of Qualifying Workweeks worked during the applicable time period. In this case, Class Members who do not opt out will receive an Individual Settlement Share.

In addition to the settlement sums paid to Participating Class Members, the named Plaintiff, Isabella Caro, will request a Class Representative Enhancement of Ten Thousand Dollars (\$10,000.00) for her role as a class representative during the tenure of this litigation. The Class Representative Enhancement also includes Plaintiff's execution of a general release of all claims, known or unknown, pursuant to Civil Code ¶ 1542 (Stipulation ¶ 65). The enhancement takes into consideration the risks, time, effort, and expenses incurred by the named Plaintiff in coming forward to litigate this matter on behalf of all Class Members and for potentially being blacklisted in future employment, as an employee who sued her prior employer. It is also intended to compensate Plaintiff for her efforts in protecting the class members' rights. (See **Declaration of Isabella Caro** filed concurrently herewith.) The settlement achieved is broken down further:

- 1) Maximum Settlement Amount: \$105,000.00
- 2) Attorneys' Fees and Costs: Attorneys' Fees: \$35,000.00
(33.33% of the total settlement);
Costs not in excess of \$15,000.00, as
verified by Class Counsel and approved
by the Court;
- 3) Class Representative Enhancement: \$10,000.00;
- 4) Settlement Administration Costs: Not to exceed \$7,200.00 (maximum
amount);
- 5) PAGA Payment: \$5,000.00 (\$3,750.00 (75%) to the
LWDA and \$1,250 (25%) to the
aggrieved employees) of \$25,000
allocated as PAGA penalties per LC §
2649, et seq.); and

6) Net Settlement Amount: \$34,050.00 to be distributed to the settlement class.

Each PAGA Representative Action Member, regardless of whether he or she timely requests to opt-out of the class action portion of the Settlement (i.e., the Released Class Claims), will receive a portion of the PAGA Settlement Share allocated on a per capita basis. Individual PAGA Settlement Shares are calculated by dividing 25 percent of the PAGA Payment (\$1,250) by the total number of PAGA Representative Class Members.

At the very least, the Net Settlement Amount (NSA) will be \$34,050.00. The NSA is based on the court approving all the requested amounts listed above. To the extent any request is not approved, the Net Settlement Amount will increase accordingly. With an NSA of approximately \$34,050.00, each Class Member will receive an individual settlement share that is equal to a pro rata share of the Net Settlement Amount.

Plaintiff is awaiting confirmation of the total workweeks of the Net Settlement Amount but estimates at this time that the total workweeks are approximately 3,300 workweeks for 84 Class Members from September 17, 2017, through August 31, 2022. Based on the number of workweeks and Class Members, the average settlement share for each Class Member is \$405.00 (\$34,050.00/84 employees), or approximately \$10.31 per workweek. This is an excellent average settlement share. To the extent that any estimate is less than stated, the actual numbers will be used to determine the Net Settlement Amount. Fairness of the settlement is further demonstrated by risks of non-certification, trial or appeal. It is extremely unlikely that the majority of the current employees in the Class could or would maintain individual actions against Defendants.

V. LIMITED STANDING TO OBJECT TO PROPOSED SETTLEMENT

Non-settling parties or third parties sometimes attempt to object to settlements, but the right of non-settling parties to object even at the final settlement approval hearing, let alone the preliminary approval hearing, is quite limited. Generally, only Class Members have standing to object to a proposed settlement. “Beginning from the unassailable premise that settlements are to be encouraged, it follows that to routinely allow non-Class Members to inject their concerns via objection at the settlement stage would tend to frustrate this goal.” *Gould v. Alleco, Inc.*, 883 F.2d 281, 284 (4th Cir. 1989).

1 As Newberg observed, even non-settling defendants in a multiple-defendant litigation
2 context have no standing to object to the fairness or adequacy of the settlement by other
3 defendants; they are limited to objecting to any terms that would preclude them from seeking
4 indemnification from the settling defendants. Newberg at §11.55.

5 **VI. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

6 The Parties have finalized a formal Settlement Agreement. The Parties are filing all
7 settlement and notice documents with this Motion for Conditional Certification and Preliminary
8 Approval of Class Action and PAGA Settlement: **(1) Stipulation of Class and PAGA**
9 Representative Action Settlement and Release (“Stipulation”) (see **Exhibit 1** to the **Decl. Carney**);
10 because this is a non-reversionary settlement, upon the expiration of the Objection period,
11 Participating Class Members will receive one (1) check for their settlement amount based on the
12 formulas listed supra. Each PAGA Representative Action Member, regardless of whether he or she
13 timely requests to opt-out of the class action portion of the Settlement (i.e., the Released Class
14 Claims), will receive a portion of the PAGA Settlement Share allocated on a per capita basis. The
15 Participating Class Members do not have to submit a claim form in order to receive their share of
16 the Settlement. The Parties respectfully request that this Court approve the Notice (attached to the
17 **Stipulation** as **Exhibit 1**) to be disseminated to the Class Members consistent with the manner and
18 timing as set forth in this Memorandum and in the Stipulation.

19 The Parties have agreed to retain ILYM Group, Inc. (“ILYM”), as the Settlement
20 Administrator to perform the notice and other claims administration functions set forth within the
21 Stipulation. (ILYM’s qualifications and estimate are attached as **Exhibits 3** and **4** to the **Decl.**
22 **Carney ¶¶ 14-15**). The current estimate of ILYM is in the amount of \$7,200. Any amount less
23 than the estimated amount to administer will be returned to the Net Settlement Amount for
24 distribution to Participating Class Members.

25 **VII. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON**
26 **OBJECTIVE EVIDENCE**

27 The settlement that has been reached, subject to this Court's approval, is the product of
28 tremendous effort, time, and expense by the Parties and their counsel. The settlement was reached
after factual and legal research, discovery, including informal data exchange, including an analysis

1 of Plaintiff's and a 25 percent (25%) sampling of Class Members' payroll records, wage
2 statements, and time records, review of thousands of pages of documents, and one (1) full-day
3 mediation. (**Decl. Carney ¶ 11**) The settlement amount is, of course, a compromise figure. It also
4 considered the possibility that if a settlement were reached after many months or even years of
5 litigation, the great expenses and attorneys' fees of litigation would cause Defendant to decrease
6 what it was willing to offer. Further, with a prior PAGA settlement, Defendant was not willing to
7 entertain protracted litigation, as Defendant believed all issues were resolved. If the Court were to
8 grant a motion to compel arbitration, then Plaintiff's class claims would have been dismissed.
9 Furthermore, Plaintiff also took into consideration the time delay and financial repercussions in the
10 event of liability trials, numerous damages trials, and appeal by Defendant.

11 **VIII. CONDITIONAL CERTIFICATION OF THE CLASS**

12 **A. Class Certification is Appropriate in this Case**

13 The proposed settlement seeks conditional certification of a settlement class pursuant to
14 Rule of Court 3.769(d). The certification of the class is essential to the settlement. California
15 public policy favors the use of the class action device. *Richmond v. Dart Industries* (1981) 29 Cal.3d
16 462, 469. CCP §382 authorizes class suits in California when "the questions is one of the common
17 or general interest, of many persons, or when the parties are numerous, and it is impracticable to
18 bring them all before the courts, one or more may sue or defend for the benefit of all." To obtain
19 certification, a party must establish the existence of both an ascertainable class and a well-defined
20 community of interest among class members. *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429,
21 435. The "community of interest" requirement depends on three factors: (1) whether common
22 issues of law or fact predominate; (2) whether the class representatives have claims that are typical
23 of the class; and (3) whether the class representatives will adequately represent the
24 class. *Richmond*, 29 Cal.3d at 470. Because the policy of favoring use of class actions is so strong,
25 any doubts as to the appropriateness of class treatment must be resolved in favor of certification,
26 subject to later modification. *Richmond*, 29 Cal.3d at 473-75. Except in extraordinary
27 circumstances, the trial court does not weigh the merits of the claims in ruling on a motion for class
28 certification. *Linder*, supra, 23 Cal.4th at 443. The seminal California Supreme Court decision of
Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th 319, 326 has reemphasized the
procedural nature of the certification motion.

1 Here, class treatment is warranted for the class for purposes of this Settlement only. (**Decl.**
2 **Carney ¶ 2**). Plaintiff contends that evidence of Defendant's policies and procedures with the
3 class member information establish that these claims should be conditionally certified at this time
4 for Settlement only. Plaintiff contends that the evidence consists of witness testimony, payroll
5 records, time records, and pay stubs given to all hourly non-exempt employees.

6 **B. The Proposed Class is Ascertainable and Numerous**

7 For a class to exist, the class description must be sufficiently definite so that it is
8 administratively feasible for the court to determine whether a particular individual is a member of
9 the proposed class by reference to objective criteria. Plaintiff contends that for this settlement, the
10 class definition is sufficiently specific to enable potential class members, and the court, to readily
11 determine the parameters of the class. (See, *Clothesrigger, Inc. v. GTE Corp.*, (1987) 191
12 Cal.App.3d 605, 617.) At approximately 84 class members as of June 2022, this is sufficient to
13 satisfy numerosity requirements.

14 **C. Common Issues of Law or Fact Predominate**

15 Plaintiff contends that for purposes of settlement only, that common questions of law and
16 fact predominate. As an employer, EM KMR, LLC is required to pay wages to all its employees in
17 accordance with the Labor Code and IWC Wage Order 5-2001. (See, LC §§1173, 1178.5, 1182;
18 *Tidewater Marine Western, Inc. v. Bradshaw* (1966) 14 Cal.4th 557, 561-562). As indicated supra,
19 Plaintiff contends that the predominant legal and factual issues in this case are whether the meal
20 break claims through Plaintiff's prism of the case warrants certification for the purposes of
21 settlement. Plaintiff contends that, in assessing whether common issues predominate over
22 individual issues for the purposes of settlement, it is not necessary that the class members' claims or
23 their circumstances be identical. *L.A. Fire & Police Protective League*, supra, 23 Cal.App.3d at 74
24 (in an overtime action, the fact that there were 19 different subgroups of employees did not
25 preclude finding that common issues predominated.) Plaintiff contends that for the purposes of
26 settlement, California law authorizes class actions when a defendant's corporate policies result in
27 injury to a group of plaintiffs. In *Stephens v. Montgomery Ward & Co., Inc.* (1987) 193
28 Cal.App.3d 411, 421 See *Sav-On*, supra. Further, the *Ruvalcaba* settlement was a PAGA only
settlement and did not include the payment of underlying wages which Plaintiff has settled for in
this action

- 1 5. Filing date for Final Approval Papers & file any (16 court days prior to the heading
2 response to any objectors and Settlement Administrator for Final Approval/ Fairness
3 Report/declaration to be filed no later than: Hearing)
4 6. Date for Final Fairness Hearing: Plaintiff requests a hearing date on
5 or after November 30, 2022.

6 **X. ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY**
7 **APPROVAL**

8 The Parties request this Court, as part of the preliminary approval process, to do the
9 following:

- 10 1. Review and approve the proposed Stipulation of Class and PAGA Representative
11 Action Settlement and Release.
12 2. Conditionally certify for settlement purposes only, a Class consisting of: “All
13 current and former non-exempt hourly individuals who were under the age of 18 at
14 the time of hire by Defendant on or after September 17, 2017 through August 31,
15 2022, who 1) did not later sign arbitration agreements after turning 18 or 2) did not
16 have a parent or other legal guardian co-sign arbitration agreements.”
17 3. Confirm Janelle of Janelle Carney – Attorney at Law, APC, as Class Counsel; and
18 Isabella Caro as Class Representative.
19 4. Conditionally approve the PAGA settlement amount of \$5,000.00, subject to
20 obtaining Final Approval of the class action settlement.
21 5. Approve an order preliminarily approving the proposed settlement on a class basis,
22 direct notice to be given to the Class, and setting a hearing for final review of the
23 proposed settlement on or about November 30, 2022; and
24 6. Approve ILYM Group, Inc. as Settlement Administrator to handle the notice
25 procedures as set forth in its proposal. (A true and correct copy of which is attached
26 as **Exhibit 3** to **Decl. Carney**).

26 /////

27 /////

28 /////

1 CONCLUSION

2 Accordingly, Plaintiff respectfully requests that the settlement be given preliminary
3 approval and notice be approved for mailing to the class. The proposed Notice is included with the
4 settlement documents attached to the Declaration of Janelle Carney filed concurrently herewith.

5
6 Dated: August 4, 2022

JANELLE CARNEY – ATTORNEY AT LAW, APC

7 

8 By:

9 Janelle Carney, Attorney for Plaintiff