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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA**

RORY MASSEY, on behalf of himself and all
others similarly situated and the general public,

Plaintiffs,

v.

MANN+HUMMEL WATER AND FLUID
SOLUTIONS, INC., a Delaware corporation;
MICRODYN-NADIR US, INC., a business form
unknown; and DOES 1 to 100, inclusive,

Defendants

) Case No.: 21CV02965
) Hon. Colleen K. Sterne
) Dept. 5
) CLASS ACTION

) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
) **MOTION FOR CONDITIONAL**
) **CERTIFICATION AND**
) **PRELIMINARY APPROVAL OF**
) **CLASS ACTION AND PAGA**
) **SETTLEMENT**

) Date: November 28, 2022
) Time: 10:00 a.m.
) Dept.: 5

) Action filed: July 27, 2021
) Trial Date: Not Set

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR
CONDITIONAL CERTIFICATION AND PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

TABLE OF CONTENTS

INTRODUCTION	1
I. THE CLASS REPRESENTED	2
II. THE TWO-STEP APPROVAL PROCESS	2
1. <u>Procedure for Payment of Individual Settlement Payments:</u>	4
III. THE PRESUMPTION OF FAIRNESS	5
IV. PROPOSED SHARE PER CLASS MEMBER.....	6
A. <u>Class Member Compensation</u>	6
V. LIMITED STANDING TO OBJECT TO PROPOSED SETTLEMENT	11
VI. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS	11
VII. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON OBJECTIVE EVIDENCE.....	12
VIII. CONDITIONAL CERTIFICATION OF THE CLASS.....	12
A. <u>Class Certification is Appropriate in this Case</u>	12
B. <u>The Proposed Class is Ascertainable and Numerous</u>	13
C. <u>Common Issues of Law or Fact Predominate</u>	14
D. <u>Plaintiff's Claims Are Typical of the Class Claims</u>	14
E. <u>Adequacy of Representation</u>	14
IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS	15
X. ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL	16
CONCLUSION.....	16

TABLE OF AUTHORITIES

Treatises

<u>Manual for Complex Litigation Second</u> states at §30.44 (1985)	2
<u>Newberg on Class Actions</u> , 3 rd Ed., 11.26	2, 5, 11

Rules and Statutes

<u>California Code of Civil Procedure</u> §382	13
<u>California Rules of Court</u> , Rule 3.769(d).....	12

State Cases

<u>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</u> (1987) 191 Cal.App.3d 1341, 1347.....	14
<u>Classen v. Weller</u> (1983) 145 Cal.App.3d 27, 46	14
<u>Clothesrigger, Inc. v. GTE Corp.</u> , (1987) 191 Cal.App.3d 605, 617	13
<u>Dunk v. Ford Motor Co.</u> (1996) 48 Cal.App.4th 1794	3
<u>Kullar v. Foot Locker Retail, Inc.</u> 168 Cal. App 4th 116, 118	3
<u>L.A. Fire & Police Protective League</u> , supra, 23 Cal.App.3d at 74.....	14
<u>Linder v. Thrifty Oil Co.</u> (2000) 23 Cal. 4th 429, 435	13
<u>Richmond v. Dart Industries</u> (1981) 29 C3d 462, 469.....	13
<u>Sav-On Drug Stores, Inc. v. Superior Court</u> (2004) 34 Cal.4th 319.....	13, 14
<u>Stephens v. Montgomery Ward & Co., Inc.</u> (1987) 193 Cal.App.3d 411	14
<u>Tidewater Marine Western, Inc. v. Bradshaw</u> (1966) 14 Cal.4th 557, 561-562.....	14

Federal Cases

<u>Gould v. Alleco, Inc.</u> , 883 F.2d 281, 284 (4 th Cir. 1989).....	11
<u>Hammon v. Barry</u> , 752 F.Supp 1087 (D.D.C. 1990)	5
<u>In re Armored Car Antitrust Litigation</u> , 472 F.Supp 1357 (N.D. Ga. 1979), aff'd in part, rev'd in part in 645 F.2d 488 (5 th Cir. 1981)	5
<u>In re Chicken Antitrust Litigation</u> , 560 F.Supp 957, 962 (N.D. Ga. 1980)	5

1	<u>Mars Steel Corp. v. Continental Illinois National Bank and Trust Co.</u> , 834 F.2d 677, 682 (7 th Cir.	
2	1987)	5
3	<u>Priddy v. Edelman</u> , 883 F.2d 438, 447 (6 th Cir. 1989).....	5
4	<u>Sommers v. Abraham Lincoln Federal Savings & Loan Association</u> , 79 F.R.D. 571 (E.D. Pa.	
5	1978)	5
6	<u>Steinberg v. Carey</u> , 470 F.Supp. 471 (S.D.N.Y. 1979).....	5
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1 This Memorandum is submitted in support of Plaintiff Rory Massey’s (“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 \$800,000.00 is on
4 behalf of 323 class members except as to any Class Members who elect to exclude themselves
5 (“opt-out”) from the settlement Class.

6 **INTRODUCTION**

7 Plaintiff filed the Complaint on July 27, 2021, filed the First Amended Complaint on
8 September 20, 2021, and the Second Amended Complaint on October 19, 2021, against Mann +
9 Hummel Water and Fluid Solutions, Inc. and Microdyn-Nadir US, Inc. (collectively
10 “Defendants”), as a class and representative Private Attorneys General Act (“PAGA”) action,
11 seeking recovery of unpaid wages and penalties under Business and Professions Code
12 (“B&PC”) §17200, et seq., and Labor Code §§ 226, 226.7, 510, 512, 1194, 1194.2, 1197, and
13 1198. Plaintiff, on behalf of himself and all other hourly non-exempt employees of Defendants,
14 seeks damages for alleged violation of the Labor Code and restitution for Defendants’ alleged
15 violations of B&PC §17200, et seq.

16 On August 25, 2022, Plaintiff and Defendants (the “Parties”) participated in an all-day
17 mediation presided over by Steven G. Mehta, which led to the Class Action and PAGA
18 Settlement Agreement; a true and correct copy of which is attached to the Declaration of Janelle
19 Carney as **Exhibit 1**.

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

1 necessary to establish liability for the claims asserted in the Action, Defendants' defenses, and
2 the difficulties in establishing damages for the Plaintiff and Class Members.

3 **I. THE CLASS REPRESENTED**

4 The Settlement Class consists of the following:

5 All current and former non-exempt hourly individuals employed by Defendants at any
6 time from July 27, 2017, until the date of preliminary approval or November 1, 2022, whichever
7 occurs first.

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

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

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

18 Thus, the preliminary approval of the trial court is simply a conditional finding that the
19 settlement appears to be within the range of reasonableness for acceptable settlements. As
20 Professor Newberg commented, “The strength of the findings made by a judge at a preliminary
21 hearing or conference concerning a tentative settlement proposal may vary. The court may find
22 that the settlement proposal contains some merit, is within the range of reasonableness required
23 for a settlement offer or is presumptively valid subject only to any objections that may be raised
24 at a final hearing.” Newberg on Class Actions, 3rd Ed., 11.26.

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

27 **When the Parties to an action reach a monetary settlement, they will usually**
28 **prepare and execute a joint stipulation of settlement, which is submitted to**

1 **the court for preliminary approval. The stipulation should set forth the**
2 **central terms of the agreement, including but not limited to, the amount of**
3 **the settlement, form of payment, manner of determining the effective date of**
4 **settlement, and any recapture clause.**

5 While the details of the recovery for each Class Member are set forth in the proposed
6 Settlement Agreement filed concurrently herewith and attached to the Declaration of Janelle
7 Carney in support of Preliminary Approval, the settlement for each participating Class Member
8 and PAGA Representative Action Member is fair, reasonable, and adequate, given the inherent
9 risk of litigation, the risk relative to class certification, and the costs of litigation. (**Declaration of**
10 **Janelle Carney ¶7**) As explained below, the average settlement share for each Class Member is
11 \$1,490.97 (\$481,583.34 / 323 employees).

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

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

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

23 Further, the Court must take into consideration the additional Kullar factor which is "the
24 most important factor is the strength of the case for the plaintiffs on the merits, balanced against
25 the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. 168 Cal. App 4th 116, 118)
26 (See **Carney Decl., ¶8**) Plaintiff contends the settlement represents approximately 57% of the
27 reasonable value of all claims. (**Carney Decl. ¶8**). The settlement is for a maximum amount of
28 \$800,000.00 for approximately 323 class member employees. (**Carney Decl. ¶8**). Plaintiff

1 asserts that this is an excellent settlement for each class member and PAGA Representative
2 Action member.

3 The distribution of payment to the Participating Class Members and PAGA
4 Representative Action members will occur as set forth in ¶ 4.3 of the Settlement Agreement:

5 1. Procedure for Payment of Individual Settlement Payments:

6 Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts
7 necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the
8 Administrator no later than fourteen (14) days after the Effective Date.

9 Within fourteen (14) days after Defendants fund the Gross Settlement Amount, the
10 Administrator will mail checks for all Individual Class Payments, all Individual PAGA
11 Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class
12 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class
13 Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class
14 Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not
15 precede disbursement of Individual Class Payments and Individual PAGA Payments.

16 The Administrator will issue checks for the Individual Class Payments and/or Individual
17 PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage
18 prepaid. The face of each check shall prominently state the date (not less than 180 days after the
19 date of mailing) when the check will be voided. The Administrator will cancel all checks not
20 cashed by the void date. The Administrator will send checks for Individual Settlement Payments
21 to all Participating Class Members (including those for whom Class Notice was returned
22 undelivered). The Administrator will send checks for Individual PAGA Payments to all
23 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
24 Employees (including those for whom Class Notice was returned undelivered). The
25 Administrator may send Participating Class Members a single check combining the Individual
26 Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement
27 Administrator must update the recipients' mailing addresses using the National Change of
28 Address Database.

1 For any Class Member whose Individual Class Payment check or Individual PAGA
2 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
3 funds represented by such checks to the California Controller's Unclaimed Property Fund in the
4 name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of
5 California Code of Civil Procedure Section 384, subd. (b). The Parties, Class Counsel and
6 Defense Counsel represent that they have no interest or relationship, financial or otherwise, with
7 the California Controller's Unclaimed Property Fund. (**Carney Decl, Exh. 1: Settlement**
8 **Agreement, ¶ 4)**

9 The settlement amount balanced against the merits of the Plaintiff's case is strong as all
10 factors listed supra are discussed in detail consistent **Declaration of Janelle Carney (Carney**
11 **Decl.)**, filed concurrently herewith.

12 **III. THE PRESUMPTION OF FAIRNESS**

13 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
14 evidence to the contrary is offered. In short, there is a presumption that the negotiations were
15 conducted in good faith. Newberg, §11.51; In re Chicken Antitrust Litigation, 560 F.Supp 957,
16 962 (N.D. Ga. 1980); Priddy v. Edelman, 883 F.2d 438, 447 (6th Cir. 1989); Mars Steel Corp. v.
17 Continental Illinois National Bank and Trust Co., 834 F.2d 677, 682 (7th Cir. 1987). Courts do
18 not substitute their judgment for that of the proponents, particularly where, as here, settlement
19 has been reached with the participation of experienced counsel familiar with the litigation.
20 Hammon v. Barry, 752 F.Supp 1087 (D.D.C. 1990); Steinberg v. Carey, 470 F.Supp. 471
21 (S.D.N.Y. 1979); In re Armored Car Antitrust Litigation, 472 F.Supp 1357 (N.D. Ga. 1979),
22 aff'd in part, rev'd in part in 645 F.2d 488 (5th Cir. 1981); Sommers v. Abraham Lincoln Federal
23 Savings & Loan Association, 79 F.R.D. 571 (E.D. Pa. 1978).

24 While the recommendations of counsel proposing the settlement are not conclusive, the
25 Court can properly take them into account, particularly where, they have been involved in
26 litigation for some period of time, appear to be competent, have experience with this type of
27 litigation, and have obtained substantial evidence from the opposing party. See Newberg,
28 §11.47. Here, the two (2) Plaintiff firms involved in this action have a great deal of experience in

1 wage and hour class action litigation. Janelle Carney of Janelle Carney – Attorney at Law, APC
2 has been approved as Class Counsel in over 300 wage and hour class actions. Adam Rose and
3 Emanuel M. Starr of Frontier Law Center have been approved as Class Counsel in several
4 matters over the years. A sampling of such cases is listed in the concurrently filed declarations of
5 Janelle Carney and Manny Starr. Class Counsel and the Plaintiff have been actively engaged in
6 resolving this matter, hiring a damage expert at considerable cost to assist with the analysis of
7 the financial records produced by Defendants for mediation, and to prepare for filing class
8 certification.

9 The settlement amount is fair and reasonable based on a review of all objective evidence.
10 The Parties’ assessment of the matter is based on extensive research before and during the
11 litigation, and written exchange of information and documents.

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

13 **A. Class Member Compensation**

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

16 To Each Participating Class Member: Estimated proportionate share of the Net
17 Settlement Amount shall be determined by the Settlement Administrator pursuant to the
18 following formula:

- 19 1. Participating Class Members who worked as a Production
20 Employee and who were eligible to earn production bonuses will receive
21 two (2) points for each Eligible Workweek worked during the Class
22 Period;
- 23 2. Participating Class Members who worked a clerical and/or office
24 job will receive one (1) point for each Eligible Workweek worked during
25 the Class Period;
- 26 3. Each Eligible Workweek shall receive a point allocation pursuant to
27 the below (but not both), and shall not be double counted.
- 28 4. To calculate each Participating Class Members’ proportionate

share:

- a) Add all points for all Participating Class Members together to obtain the “Denominator”;
- b) Divide the number of points for each Participating Class Member by the Denominator to obtain each Participating Class Members’ “Portion of the Net Fund”;
- c) Multiply each Participating Class Members’ Portion of the Net Settlement Amount by the Net Settlement Amount to determine each Participating Class Members’ Net Amount.
- d) For each Participating Class Member, their Net Amount will be the amount of their Settlement Check.

The allocation between production employees and administrative employees is due to the difference in how employees were paid. Production employees earned production bonuses that were not factored into the regular rate. Further, meals/rest periods required production employees to be relieved of duty. Administrative employees did not have the same relief restrictions and did not earn production bonuses. (**Decl Carney ¶ 9**)

Tax Allocation of Individual Class Payments. 20% of each Participating Class Member’s Individual Class Payment will be allocated to settlement of wage claims (the “Wage Portion”). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80% of each Participating Class Member’s Individual Class Payment will be allocated to settlement of claims for [e.g., interest and penalties] (the “Non-Wage Portion”). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

1 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$25,000.00
2 to be paid from the Gross Settlement Amount, with 75% (\$18,750.00) allocated to the LWDA
3 PAGA Payment and 25% (\$6,250.00) allocated to the Individual PAGA Payments. Plaintiff
4 uploaded the Notice of Motion, the Memorandum of Points and Authorities, and the declarations
5 in support of the proposed settlement to the LWDA, pursuant to Labor Code § 2699 (1)(2).
6 **(Carney Decl. ¶ 16, Exh. 4)**

7 The Administrator will calculate each Individual PAGA Payment by (a) dividing the
8 amount of the Aggrieved Employees' 25% share of PAGA Penalties \$6,250.00 by the total
9 number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA
10 Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.
11 Aggrieved Employees assume full responsibility and liability for any taxes owed on their
12 Individual PAGA Payment.

13 1. Aggrieved Employees who worked as a Production Employee and who were
14 eligible to earn production bonuses will receive two (2) points for each Pay Period worked
15 during the PAGA Period;

16 2. Aggrieved Employees who worked a clerical and/or office job will receive one (1)
17 point for each Pay Period worked during the PAGA Period;

18 3. Each Eligible Pay Period shall receive a point allocation pursuant to the below (but
19 not both), and shall not be double counted.

20 4. To calculate each Aggrieved Employees' proportionate share:

21 a) Add all points for all Aggrieved Employees together to
22 obtain the "Denominator";

23 b) Divide the number of points for each Aggrieved Employee by the
24 Denominator to obtain each Aggrieved Employees' "Portion of the PAGA
25 Fund";

26 c) Multiply each Participating Aggrieved Employee's Portion of the PAGA
27 Fund by the LWDA PAGA Payment to
28 determine each Aggrieved Employee's Net PAGA Amount.

d) For each Aggrieved Employee, their Net PAGA Amount will be the amount of their PAGA Settlement Check.3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

Nothing above excludes the Administrator from calculating each Individual PAGA Payment in an identical manner for each Non-Participating Class Member who is also an Aggrieved Employee. (**Carney Decl., Exh. 1: Settlement Agreement ¶ 3.2.4 and 3.2.5**).

Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise. (**Carney Decl., Exh. 1: Settlement Agreement ¶ 13.8**). 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, Rory Massey, will request a Class Representative Enhancement of Seven Thousand Five Hundred Dollars (\$7,500.00) for his 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 (**Carney Decl., Exh. 1: Settlement Agreement ¶ 6.1**). 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. It is also intended to compensate Plaintiff for his efforts in protecting the class members' rights. (See **Declaration of Rory Massey** filed concurrently herewith.) The settlement achieved is broken down further:

1) Maximum Settlement Amount: \$800,000.00

- 1 2) Attorneys' Fees and Costs: Attorneys' Fees: \$266,666.66
2 (33.33% of the total settlement);
3 Costs not in excess of \$15,000.00, as
4 verified by Class Counsel and approved
5 by the Court;
- 6 3) Class Representative Enhancement: \$7,500.00;
- 7 4) Settlement Administration Costs: Not to exceed \$10,500.00 (maximum
8 amount);
- 9 5) PAGA Payment: \$25,000.00 (\$18,750.00 (75%) to the
10 LWDA and \$6,250 (25%) to the
11 aggrieved employees) of \$25,000
12 allocated as PAGA penalties per LC §
13 2649, et seq.); and
- 14 6) Net Settlement Amount: \$481,583.34 to be distributed to the
15 settlement class.

16 Each PAGA Representative Action Member, regardless of whether he or she timely
17 requests to opt-out of the class action portion of the Settlement (i.e., the Released Class Claims),
18 will receive a portion of the PAGA Settlement Share allocated on a per capita basis. Individual
19 PAGA Settlement Shares are calculated by dividing 25 percent of the PAGA Payment (\$6,250)
20 by the total number of PAGA Representative Class Members.

21 At the very least, the Net Settlement Amount (NSA) will be \$481,583.34. The NSA is
22 based on the court approving all the requested amounts listed above. To the extent any request is
23 not approved, the Net Settlement Amount will increase accordingly. With an NSA of
24 approximately \$481,583.34, each Class Member will receive an individual settlement share that
25 is equal to a pro rata share of the Net Settlement Amount.

26 Based on a review of its records as of August 25, 2022, Defendants estimate there are 323
27 Class Members who collectively worked a total of approximately 20,569 Workweeks, and 277
28

Aggrieved Employees who worked a total of 4,339 PAGA Pay Periods. Based on the number of workweeks and Class Members as of August 25, 2022, the average settlement share for each Class Member is \$1,490.97 (\$481,583.34 / 323 employees) 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).

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

VI. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

The Parties have finalized a formal Settlement Agreement. The Parties are filing all settlement and notice documents with this Motion for Conditional Certification and Preliminary Approval of Class Action and PAGA Settlement: (1) Class Action and PAGA Settlement Agreement (“Settlement Agreement”) (see **Exhibit 1** to the **Decl. Carney**); because this is a non-reversionary settlement, upon the expiration of the Objection period, Participating Class Members will receive one (1) check for their settlement amount based on the formulas listed *supra*. 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),

1 will receive a portion of the PAGA Settlement Share allocated on a per capita basis. The
2 Participating Class Members do not have to submit a claim form in order to receive their share of
3 the Settlement. The Parties respectfully request that this Court approve the Notice (attached to
4 the **Settlement Agreement** as **Exhibit 1**) to be disseminated to the Class Members consistent
5 with the manner and timing as set forth in this Memorandum and in the Settlement Agreement.

6 The Parties have agreed to retain ILYM Group, Inc. ("ILYM"), as the Settlement
7 Administrator to perform the notice and other claims administration functions set forth within the
8 Settlement Agreement. (ILYM's qualifications and estimate are attached as **Exhibits 2-3** to the
9 **Decl. Carney ¶¶ 14-15**). The current estimate of ILYM is in the amount of \$9,700.00. Any
10 amount less than the estimated amount to administer will be returned to the Net Settlement
11 Amount for distribution to Participating Class Members.

12 **VII. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON**
13 **OBJECTIVE EVIDENCE**

14 The settlement that has been reached, subject to this Court's approval, is the product of
15 tremendous effort, time, and expense by the Parties and their counsel. The settlement was
16 reached after factual and legal research, informal data exchange, including an analysis of
17 Plaintiff's and a 24 percent sampling of Class Members' payroll records, wage statements, and
18 time records, review of hundreds of pages of documents, including Defendant's policies, and one
19 (1) full-day mediation. (**Carney Decl. ¶ 11**) The settlement amount is, of course, a compromise
20 figure. It also considered the possibility that if a settlement were reached after many months or
21 even years of litigation, the great expenses and attorneys' fees of litigation would cause
22 Defendants to decrease what it was willing to offer. Furthermore, Plaintiff also took into
23 consideration the time delay and financial repercussions in the event of liability trials, numerous
24 damages trials, and appeal by Defendants.

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26 /////

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28 /////

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

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

3 The proposed settlement seeks conditional certification of a settlement class pursuant to
4 Rule of Court 3.769(d). The certification of the class is essential to the settlement. California
5 public policy favors the use of the class action device. Richmond v. Dart Industries (1981) 29
6 C3d 462, 469. CCP §382 authorizes class suits in California when "the questions is one of the
7 common or general interest, of many persons, or when the parties are numerous, and it is
8 impracticable to bring them all before the courts, one or more may sue or defend for the benefit
9 of all." To obtain certification, a party must establish the existence of both an ascertainable class
10 and a well-defined community of interest among class members. Linder v. Thrifty Oil Co.
11 (2000) 23 Cal. 4th 429, 435. The "community of interest" requirement depends on three factors:
12 (1) whether common issues of law or fact predominate; (2) whether the class representatives
13 have claims that are typical of the class; and (3) whether the class representatives will adequately
14 represent the class. Richmond, 29 Cal.3d at 470. Because the policy of favoring use of class
15 actions is so strong, any doubts as to the appropriateness of class treatment must be resolved in
16 favor of certification, subject to later modification. Richmond, 29 Cal.3d at 473-75. Except in
17 extraordinary circumstances, the trial court does not weigh the merits of the claims in ruling on a
18 motion for class certification. Linder, supra, 23 Cal.4th at 443. The seminal California Supreme
19 Court decision of Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th 319, 326 has
20 reemphasized the procedural nature of the certification motion.

21 Here, class treatment is warranted for the class for purposes of this Settlement only.
22 **(Carney Decl. ¶ 8).** Plaintiff contends that evidence of Defendants' policies and procedures
23 with the class member information establish that these claims should be conditionally certified at
24 this time for Settlement only. Plaintiff contends that the evidence consists of payroll records,
25 time records, and pay stubs given to all hourly non-exempt employees.

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

27 For a class to exist, the class description must be sufficiently definite so that it is
28 administratively feasible for the court to determine whether a particular individual is a member

1 of the proposed class by reference to objective criteria. Plaintiff contends that for this settlement,
2 the class definition is sufficiently specific to enable potential class members, and the court, to
3 readily determine the parameters of the class. (See, Clothesrigger, Inc. v. GTE Corp., (1987) 191
4 Cal.App.3d 605, 617.) At approximately 323 class members as of August 25, 2022, this is
5 sufficient to satisfy numerosity requirements.

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

7 Plaintiff contends that for purposes of settlement only, that common questions of law and
8 fact predominate. As employers, Defendants are required to pay wages to all their employees in
9 accordance with the Labor Code and IWC Wage Order 16-2001. (See, LC §§1173, 1178.5,
10 1182; Tidewater Marine Western, Inc. v. Bradshaw (1966) 14 Cal.4th 557, 561-562). As
11 indicated supra, Plaintiff contends that the predominant legal and factual issues in this case are
12 whether the meal break claims through Plaintiff's prism of the case warrants certification for the
13 purposes of settlement. Plaintiff contends that, in assessing whether common issues predominate
14 over individual issues for the purposes of settlement, it is not necessary that the class members'
15 claims or their circumstances be identical. L.A. Fire & Police Protective League, supra, 23
16 Cal.App.3d at 74 (in an overtime action, the fact that there were 19 different subgroups of
17 employees did not preclude finding that common issues predominated.) Plaintiff contends that
18 for the purposes of settlement, California law authorizes class actions when a defendant's
19 corporate policies result in injury to a group of plaintiffs. In Stephens v. Montgomery Ward &
20 Co., Inc. (1987) 193 Cal.App.3d 411, 421 See Sav-On, supra. Plaintiff has objective evidence that
21 Defendants failed to properly pay Plaintiff and employees at their correct regular rate.

22 **D. Plaintiff's Claims Are Typical of the Class Claims**

23 Plaintiff contends that typicality simply means that the representative's claims are similar
24 to those of class members, and that the interests of the class representative need not be identical
25 to those of other class members; the class representative must simply be similarly
26 situated. B.W.I. Custom Kitchen v. Owens-Illinois, Inc. (1987) 191 Cal.App.3d 1341, 1347;
27 Classen v. Weller (1983) 145 Cal.App.3d 27, 46. According to the Plaintiff, he worked pursuant
28

1 to Defendants' corporate policies and procedures, which he claims were applicable to all hourly
2 non-exempt employees.

3 **E. Adequacy of Representation**

4 Adequacy of representation depends on whether the named class Plaintiff and the
5 Plaintiff's attorneys qualify to conduct the proposed litigation and whether the named
6 Plaintiff's interests are antagonistic to those of the classes. In this case, Plaintiff contends that
7 the representative Plaintiff's injuries and damages are similar to those of the class he seeks to
8 represent. Plaintiff claims that he has no claims that are antagonistic to the class. (see **Decl.**
9 **Massey ¶ 11**). Plaintiff's counsel is experienced and qualified. (**Carney Decl. ¶¶ 2-4; Decl.**
10 **Starr**)

11 **IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS**

12 The Parties propose the following schedule for the fairness hearing and final proceedings,
13 presuming the Court enters its order granting approval on the date of the hearing:

- | | | |
|----|--|-------------------------------------|
| 14 | 1. Deadline for Defendants to provide Class List to | within fourteen (14) calendar days |
| 15 | Settlement Administrator and Plaintiff's Counsel: | of service of Preliminary Approval |
| 16 | | Order); |
| 17 | 2. First Mailing of Notice, etc., to the Class: | within fourteen (14) calendar days |
| 18 | | after Settlement Administrator |
| 19 | | receives Class List; |
| 20 | 3. Follow-up mailing to Class (when mail returned): | Within five (5) business days after |
| 21 | | receipt of returned mail; |
| 22 | 4. Objection/Exclusion Deadline Date: | 45 calendar days from the date |
| 23 | | Notice mailed |
| 24 | 5. Filing date for Supplemental Briefs, Attorney's | 16 court days prior to Fairness |
| 25 | Fees Request and Request for Reimbursement of Costs: | Hearing |
| 26 | | |
| 27 | | |
| 28 | | |

6. Filing date for Final Approval Papers & file any (16 court days prior to the heading
response to any objectors and Settlement Administrator for Final Approval/ Fairness
Report/declaration to be filed no later than: Hearing)

7. Date for Final Fairness Hearing: Plaintiff requests a hearing date in
at least 75 days after the hearing on
preliminary approval.

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

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

1. Review and approve the proposed Class Action and PAGA Settlement Agreement.
2. Conditionally certify for settlement purposes only, a Class consisting of: All current and former non-exempt hourly individuals employed by Defendants at any time from July 27, 2017, until the date of preliminary approval or November 1, 2022, whichever occurs first.
3. Confirm Janelle of Janelle Carney – Attorney at Law, APC and Emanuel Starr, Dan Ginzburg, and Adam Rose of Frontier Law Center as Class Counsel; and Rory Massey as Class Representative.
4. Conditionally approve the PAGA settlement amount of \$25,000.00, subject to obtaining Final Approval of the class action settlement.
5. Approve an order preliminarily approving the proposed settlement on a class basis, direct notice to be given to the Class, and setting a hearing for final review of the proposed settlement on or about 75 calendar days after the hearing on the motion for preliminary approval; and
6. Approve ILYM Group, Inc. as Settlement Administrator to handle the notice procedures as set forth in its proposal. (A true and correct copy of which is attached as **Exhibit 2 to Decl. Carney**).

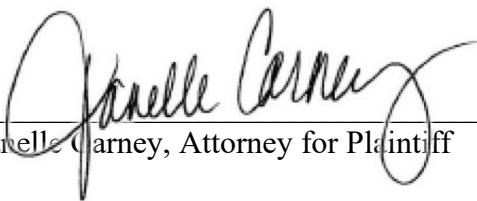
1 **CONCLUSION**

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
4 the settlement documents attached to the Declaration of Janelle Carney filed concurrently
5 herewith.

6
7 Dated: October 10, 2022

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

8
9
10
11 By:


Janelle Carney, Attorney for Plaintiff