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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

ASIA OSBY, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiff,

vs.

SELF-REALIZATION FELLOWSHIP, an
unknown business entity; and DOES 1 through
100, inclusive,

Defendants

MONICA MIRANDA individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

vs.

SELF-REALIZATION FELLOWSHIP
CHURCH, a California Corporation; SELF-
REALIZATION CHURCH, an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 21STCV30136 *[Lead Case]*

Honorable Carolyn B. Kuhl
Department 12

CLASS ACTION
PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES

[Declaration of Proposed Class Counsel
(Yasmin Hosseini); Declaration of
Plaintiff Asia Osby and Plaintiff Monica
Miranda); and [Proposed] Order filed
concurrently herewith]

Date: December 14, 2023
Time: 10:00 a.m.
Department: Department 12

Case No.: 21STCV41440
[Related Case]

Complaint Filed: November 10, 2021
Trial Date: None Set

ASIA OSBY, individually, and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act

Plaintiff,

vs.

SELF-REALIZATION FELLOWSHIP
CHURCH, a California Corporation; SELF-
REALIZATION CHURCH, an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

MONICA MIRANDA, individually, and on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General Act

Plaintiff,

vs.

SELF-REALIZATION FELLOWSHIP, an
unknown business entity; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 21STCV39999
[Related Case]

Complaint Filed: October 29, 2021
Trial Date: None Set

Case No.: 21STCV43015
[Related Case]

Complaint Filed: November 22, 2021
Trial Date: None Set

**TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF
RECORD:**

PLEASE TAKE NOTICE that on December 14, 2023 at 10:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Carolyn B. Kuhl in Department 12 of the Superior Court of California for the County of Los Angeles, located at Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012, Plaintiffs Asia Osby (“Plaintiff Osby”) and Monica Miranda (“Plaintiff Miranda”) (collectively, “Plaintiffs”), will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Yasmin Hosseini, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff Osby, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Asia Osby as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving ILYM Group, Inc. as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests

1 for the Attorneys' Fees and Costs to Class Counsel, Enhancement Payment for
2 Plaintiff Osby, and Settlement Administration Costs to Settlement Administrator.

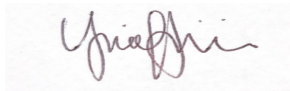
3 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules
4 of Court, which provides for approval by the Court of the settlement of a putative class action
5 and allows the Court to preliminarily certify a class for settlement purposes, and permit the
6 Court to extend the page limit for memoranda.

7 This motion is based upon the following memorandum of points and authorities, the
8 Settlement Agreement, the Declarations of Proposed Class Counsel (Yasmin Hosseini), Plaintiff
9 Asia Osby, and Plaintiff Monica Miranda, in support thereof, the pleadings and other records on
10 file with the Court in this matter, and such evidence and oral argument as may be presented at
11 the hearing on this motion.

12
13 Dated: November 6, 2023

LAWYERS for JUSTICE, PC

14
15 By:



16 Yasmin Hosseini
17 Attorneys for Plaintiffs
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Asia Osby and Monica Miranda (together, “Plaintiffs”) seek preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Self-Realization Fellowship Church (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Total Settlement Amount of Seven Hundred Thousand Dollars and Zero Cents (\$700,000.00).¹ The Total Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Enhancement Payment of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff Osby³; (3) the Miranda Individual Settlement Payment of Thirty Thousand Dollars and Zero Cents (\$30,000.00) to Plaintiff Miranda⁴; (4) the Attorneys’ Fees and Costs in the amount of thirty-five percent (35%) of the Class Settlement Fund Amount⁵, or \$234,500.00 if the Class Settlement Fund Amount remains \$670,000.00, and reimbursement of litigation costs and expenses not to exceed Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00)⁶; (5) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00);⁷ and (6) the amount of Seventy Thousand Dollars and Zero Cents (\$70,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA Amount”), of which 75% (i.e., \$52,500.00) will be distributed to the Labor and Workforce Development Agency

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Yasmin Hosseini (“Hosseini Decl.”), § 14.mm.

² *Id.*, § 14.r.

³ *Id.*, § 22.

⁴ *Id.*, § 18.

⁵ *Id.*, § 19, the “Class Settlement Fund Amount” is the Total Settlement Amount (i.e., \$700,000.00) less the Miranda Individual Settlement Payment (i.e., \$30,000.00).

⁶ *Id.*, § 21.

⁷ *Id.*, § 23.

1 (“LWDA”) and 25% (i.e., \$17,500.00) will be distributed to PAGA Members on a *pro rata*
2 basis, based on Workweeks during the PAGA Period.⁸

3 Plaintiffs also seeks to provisionally certify the following Class for settlement purposes,
4 which Defendant does not oppose:

5 All current and former hourly-paid and non-exempt employees of Defendant in the
6 State of California employed during the period from August 16, 2017 through May
7 15, 2023 (“Class” or “Class Members”).⁹

8 The Class is estimated to consist of approximately three hundred eighty-one (381)
9 individuals.¹⁰

10 Class Members who do not submit a timely and valid request to be excluded from the
11 Class Settlement (“Settlement Class Member”) will be eligible to receive a *pro rata* share of the
12 Net Settlement Amount (“Individual Settlement Share”) based upon the number of weeks each
13 Class Member was employed by Defendant in California as an hourly-paid or non-exempt
14 employee (“Workweeks”) during the Class Period.¹¹

15 All current and former hourly-paid or non-exempt employees of Defendant in the State
16 of California employed during the PAGA Period (“PAGA Members”) will receive a *pro rata*
17 share of the 25% share of the PAGA Amount (“Individual PAGA Payment”) based on the
18 PAGA Member’s number of Workweeks during the PAGA Period.¹²

19 The Settlement, if granted preliminary and final approval by the Court, will operate to
20 resolve the Released Class Claims of Plaintiffs and Settlement Class Members and the Released
21

22 ⁸ Settlement Agreement, § 24.

23 ⁹ *Id.*, § 14.f. “Class Period” is defined as the period of time from August 16, 2017 through May 15, 2023, subject
24 to the Escalator Clause §49 (Defendant represents that there are approximately 57,020 Workweeks during the
25 period from August 16, 2017 to November 10, 2022. Should the Workweeks increase beyond ten percent (10%)
26 on or before May 15, 2023 (i.e., the Workweeks increase by more than 5,702 Workweeks, so that the Workweeks
27 total exceeds 62,722), Defendant, at its sole discretion, shall have the option of either: (1) agreeing to increase the
28 Total Settlement Amount on a *pro-rata* basis according to the number of additional Workweeks over the 10% cap,
or (2) agreeing to end the Class Period just before the date on which the number of Workweeks exceed the 10%
cap). *See id.*, § 14.aa. The “PAGA Period” means the period from August 25, 2020 through the date of Preliminary
Approval.

¹⁰ Hosseini Decl., ¶ 9.

¹¹ Settlement Agreement, §§ 14.ll., 14.s., and 14.nn.

¹² *Id.*, §§ 14.y. and 14.q.

PAGA Claims of Plaintiffs, the State of California, and PAGA Members, against the Released Parties.¹³

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a worldwide religious organization that has over 600 temples and centers internationally. Plaintiffs are former employees of Defendant.

On August 16, 2021, Plaintiff Osby filed a Class Action Complaint for Damages (“Osby Class Action”) in the Superior Court of California for the County of Los Angeles (“Court”), thereby commencing the above-captioned lawsuit entitled *Asia Osby v. Self Realization Fellowship*, Case No. 21STCV30136.

On August 25, 2021, Plaintiff Osby provided written notice to the LWDA by online submission and to Defendant by Certified Mail, giving notice of her intent to pursue civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, Et. Seq. (“PAGA”), on behalf of herself and the State of California (“Osby LWDA Notice”).

On October 29, 2021, Plaintiff Osby filed a Complaint for Enforcement under the Private Attorneys General Act, California Labor Code § 2698 *et seq.*, against Defendant, in Superior Court of California for the County of Los Angeles, thereby commencing the action entitled *Asia Osby v. Self-Realization Fellowship Church, et al.*, Case No. 21STCV39999 (“Osby PAGA Action”).

On September 17, 2021, Plaintiff Miranda provided written notice to the LWDA by online submission and to Defendant by Certified Mail, giving notice of her intent to seek civil penalties for Defendant’s alleged violations of the California Labor Code and Industrial Welfare Commission Wage Orders (“Miranda LWDA Notice”).

On November 10, 2021, Plaintiff Miranda filed a Class Action Complaint for Damages against Defendant in the Superior Court of California for the County of Los Angeles, thereby commencing the action entitled *Monica Miranda v. Self-Realization Fellowship Church, et al.*, Case No. 21STCV41440 (“Miranda Class Action”).

¹³ See *id.* at § 14.ee, for the full scope of the “Released Class Claims,” *id.* at § ff, for the full scope of the “Released PAGA Claims,” and *id.* at § gg, for the definition of the “Released Parties.”

1 On November 22, 2021, Plaintiff Miranda filed a Complaint for Enforcement Under the
2 Private Attorneys General Act, California Labor Code § 2698, *et seq.* in the Superior Court of
3 California for the County of Los Angeles, thereby commencing the action entitled *Monica*
4 *Miranda v. Self-Realization Fellowship Church, et al.*, Case No. 21STCV43015 (“Miranda
5 PAGA Action”).

6 On December 9, 2021, the Osby Class Action, Osby PAGA Action, Miranda Class
7 Action, and Miranda PAGA Action (collectively, the “Actions”) were deemed related within
8 the meaning of California Rules of Court, rule 3.300(a), with the Osby Class Action being
9 deemed the lead case.

10 Plaintiffs’ core allegation is that Defendant has violated the California Labor Code by
11 engaging in a uniform practice and procedure, with respect to Plaintiffs and the Class Members,
12 of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal
13 and rest periods and associated premium pay, failing to timely pay wages during employment
14 and upon termination of employment, failing to provide compliant wage statements, failing to
15 maintain requisite payroll records, and failing to reimburse necessary business expenses, and
16 thereby engaged in unfair business practices in violation of California Business and Professions
17 Code section 17200, *et seq.* and conduct that gives rise to civil penalties pursuant to PAGA.
18 Plaintiffs contend that they, the Class Members, and the PAGA Members are entitled to, *inter*
19 *alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and
20 attorneys’ fees.

21 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
22 associated with any of the allegations in the Actions, and further denies that the Actions are
23 appropriate for class treatment or representative adjudication for any purpose other than for
24 settlement purposes only.

25 The Parties have actively litigated the Actions since the Osby Class Action was
26 commenced on August 16, 2021. On January 23, 2023, the Parties participated in a formal, full-
27 day mediation conducted by Jeffrey Krivis, Esq. (the “Mediator”), a well-respected mediator
28 experienced in mediating complex wage and hour actions; however the cases did not settle.

With the aid of the Mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Actions.

No later than ten (10) calendar days after the entry of the Final Approval Order and Judgment, Plaintiff Miranda will file with the Court in the Miranda Class Action and Miranda PAGA Action a Request for Dismissal with prejudice as to Plaintiff Miranda's individual claims and without prejudice as to the current and former employees of Defendant.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Total Settlement Amount to resolve the Released Class Claims of Plaintiffs and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Settlement Class Members) and Released PAGA Claims of Plaintiffs, the State of California with respect to all PAGA Members, and all PAGA Members with respect to the Released Parties.¹⁴ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) attorneys' fees of not more than thirty-five percent (35%) of the Class Settlement Fund Amount (i.e., \$234,500.00 if the Class Settlement Fund Amount (defined as the Total Settlement Amount less the Miranda Individual Settlement Payment) remains \$670,000.00) and reimbursement of costs and expenses in an amount not to exceed Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) the PAGA Amount of Seventy Thousand Dollars and Zero Cents, with seventy-five percent (75%) (i.e., \$52,500.00) to be paid to the LWDA ("LWDA Payment") and twenty-five percent (25%) (i.e., \$17,500.00), to be distributed to PAGA Members on a *pro rata* basis; (4) payment in the amount of up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff Osby ("Enhancement Payment"); and (5) payment in the amount of Thirty Thousand Dollars and Zero Cents

¹⁴ Settlement Agreement, § 14.mm.

1 (\$30,000.00) to Plaintiff Miranda (“Miranda Individual Settlement Payment”).¹⁵ The Parties
2 have agreed to retain ILYM Group, Inc. (“ILYM” or “Settlement Administrator”) to handle the
3 notice and settlement administration process.

4 The Parties have agreed that the Settlement Administrator will determine each Class
5 Member’s share of the available Net Settlement Amount (“Individual Settlement Share”), in
6 accordance with the Settlement Agreement and as follows:

- 7 a. After Preliminary Approval, the Settlement Administrator will divide the Net
8 Settlement Amount by the Workweeks of all Class Members during the Class Period
9 to yield the “Estimated Workweek Value,” and multiply each Class Member’s
10 individual Workweeks during the Class Period by the Estimated Workweek Value to
11 yield his or her estimated Individual Settlement Share that he or she may be eligible
12 to receive under the Class Settlement.¹⁶
- 13 b. After Final Approval, the Settlement Administrator will divide the final Net
14 Settlement Amount by the Workweeks of all Settlement Class Members during the
15 Class Period to yield the “Final Workweek Value,” and multiply each Settlement
16 Class Member’s individual Workweeks during the Class Period by the Final
17 Workweek Value to yield his or her Individual Settlement Share.¹⁷

18 The Parties have agreed that the Settlement Administrator will determine each PAGA
19 Member’s’s *pro rata* share of the 25% share of the PAGA Amount (i.e., Individual PAGA
20 Payment), in accordance with the Settlement Agreement and as follows:

- 21 a. The Settlement Administrator will divide the 25% portion of the PAGA Amount
22 attributed to PAGA Members, i.e., \$17,500.00, by the total number of Workweeks
23 during the PAGA Period for all PAGA Members to yield the “PAGA Workweek
24 Value,” and multiply each PAGA Member’s individual Workweeks during the PAGA
25 Period by the PAGA Workweek Value to yield his or her Individual PAGA
26 Payment.¹⁸

27 Each Settlement Class Member’s Individual Settlement Share will be allocated as
28 follows: twenty percent (20%) as wages, which will be reported on an IRS Form W-2; and the
remaining eighty percent (80%) as penalties, interest, and other non-wage damages, which will
be reported on an IRS Form 1099.¹⁹ Settlement Class Members will be issued payment of their
Individual Settlement Share subject to reduction for the employee’s share of taxes and
withholdings with respect to the wage portion of each Individual Settlement Share (the net

¹⁵ Settlement Agreement, §§ 21, 23, 24, and 22.

¹⁶ *Id.*, § 25.a.

¹⁷ *Id.*, § 25.b.

¹⁸ *Id.*, § 26.

¹⁹ *Id.*, § 36.

1 payment is referred to as an “Individual Settlement Payment”).²⁰ The Individual PAGA
2 Payments to PAGA Members will be allocated as one hundred percent (100%) penalties, will
3 not be subject taxes or withholdings, and will be reported on an IRS Form 1099-MISC, if
4 necessary.²¹ The Settlement Administrator will have the option to pay the Individual Settlement
5 Payment and Individual PAGA Payment by way of a single check. Defendant will pay the
6 employer’s share of payroll taxes and contributions with respect to the wage portion of
7 Individual Settlement Shares separately and in addition to the Total Settlement Amount.²²

8 Each Individual Settlement Payment and Individual PAGA Payment checks will be valid
9 and negotiable for one hundred eighty (180) calendar days from the date of issuance.²³
10 Individual Settlement Payment checks that are not negotiated within the 180-day period will be
11 cancelled.²⁴ All funds from associated with such cancelled checks will be transmitted to the
12 State Controller’s Office, Unclaimed Property Division in the name of the Settlement Class
13 Member and/or PAGA Member .²⁵

14 Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must
15 notify the Settlement Administrator in writing by sending a letter indicating that they want to
16 exclude themselves.²⁶ To be timely, the Class Member must mail a written Request for
17 Exclusion to the Settlement Administrator, postmarked on or before the date that is sixty (60)
18 calendar days from the initial mailing of the Class Notice (“Response Deadline”).²⁷ A Request
19 for Exclusion must indicate the Class Member’s election to be excluded from the Class
20 Settlement and must: (a) contain the case name and number of the Osby Class Action, (b) contain
21 the full name, signature, address, telephone number, and the last four (4) digits of his or her
22 Social Security Number of the Class Member requesting exclusion, (c) clearly state that the
23 Class Member does not wish to be included in the Class Settlement, and (d) be returned by mail
24

25 ²⁰ *Ibid.*

26 ²¹ *Ibid.*

27 ²² *Ibid.*

28 ²³ Settlement Agreement, § 31.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Id.*, § 14.hh.

²⁷ *Id.*, § 14.ii.

1 to the Settlement Administrator at the specified address, postmarked on or before the Response
2 Deadline.²⁸ Class Members who submit a valid and timely request for exclusion will not be
3 bound by the terms of the Class Settlement.²⁹ PAGA Members shall be bound to the PAGA
4 Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.³⁰

5 Only Class Members who do not exclude themselves from the Class Settlement (i.e.,
6 Settlement Class Members) may object to the Class Settlement.³¹ Settlement Class Members
7 who wish to object to the Class Settlement may send written objections to the Settlement
8 Administrator by mail (“Notice of Objection”). Settlement Class Members may appear in Court
9 (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
10 Hearing, regardless of whether they have submitted a Notice of Objection. The Notice of
11 Objection must (a) contain the case name and number of the Osby Class Action, (b) contain the
12 Settlement Class Member’s full name, signature, address, telephone number, and the last four
13 (4) digits of his or her Social Security Number, (c) contain a written statement of all grounds for
14 the objection accompanied by any legal support for such objection, (d) include copies of any
15 papers, briefs, or other documents upon which the objection is based, and (e) be returned by
16 mail to the Settlement Administrator at the specified address, postmarked on or before the
17 Response Deadline.³²

18 Class Members who wish to dispute the number of Workweeks credited to them in their
19 Class Notice may do so by submitting a written letter to the Settlement Administrator that must:
20 (a) contain the case name and number of the Osby Class Action, (b) contain the full name,
21 signature, address, telephone number, and the last four (4) digits of his or her Social Security
22 Number of the disputing Class Member, (c) clearly state that the Class Member disputes the
23 number of Workweeks credited to him or her and what he or she contends is the correct number
24 to be credited to him or her, (d) include information and/or attach documentation demonstrating
25 that the number of Workweeks that he or she contends should be credited to him or her are

26 ²⁸ Settlement Agreement, § 14.hh.

27 ²⁹ *Id.*

28 ³⁰ *Id.*, § 32

³¹ *Id.*, § 14.w.

³² *Ibid.*

correct, and (e) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.³³

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or reject a proposed settlement is within the court’s discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 (“In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court’s broad discretion.”). Accordingly, a court’s decision to approve a class action settlement may be reversed only upon a strong showing of “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

Courts review class action settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later detailed review after the period during which notice is distributed to class members for their comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th Ed. 2002). This procedure, which is commonly utilized by both federal and state courts, assures class members of the protection of procedural due process safeguards and enables a court to fulfill its role as the guardian of the interest of the settlement class.

Preliminary approval of a settlement does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to voice their views of the settlement or to exclude themselves from the settlement. Cal. R. Ct. 3.769(g).

³³ Settlement Agreement, § 30.

1 In considering a potential class settlement, a court need not reach any ultimate
2 conclusions on the issues of fact and law which underlie the merits of the dispute and need not
3 engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495
4 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San*
5 *Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required for
6 the trial court to grant provisional class certification and preliminary approval; the court may
7 grant such relief upon an informal application by the settling parties and may conduct any
8 necessary hearing in court or in chambers, at the court's discretion. *Newberg*, § 11.25.

9 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

10 The trial court has broad powers to determine whether a proposed settlement is fair under
11 the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make
12 this fairness determination, courts must consider several relevant factors, including "the strength
13 of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the
14 risk of maintaining class action status through trial, the amount offered in settlement, the extent
15 of discovery completed and the stage of the proceedings, the experience and view of counsel,
16 the presence of a governmental participant, and the reaction of the class members to the
17 proposed settlement." *Dunk, supra*, 48 Cal.App.4th at 1801. "The list of factors is not exclusive
18 and the court is free to engage in a balancing and weighing of the factors depending on the
19 circumstances of each case." *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give
20 "proper deference to the private consensual decision of the parties." *Hanlon, supra*, 150 F.3d
21 at 1027 (citation omitted).

22 The proponent of the settlement has the burden to show that it is fair and reasonable.
23 *Wershba, supra*, 91 Cal.App.4th at 245. "A presumption of fairness exists where: (1) the
24 settlement is reached through arm's-length bargaining; (2) investigation and discovery are
25 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
26 litigation; and (4) the percentage of objectors is small." *Id.*; *Dunk, supra*, 48 Cal.App.4th at
27 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
28 1151.

1 **A. The Settlement Resulted from Arm’s-Length Negotiations Based Upon**
2 **Extensive Investigation and Discovery.**

3 The Parties actively litigated the Actions since the Osby Class Action was commenced
4 on August 16, 2021. Both sides used the pre-mediation time period to investigate the veracity,
5 strength, and scope of the claims, and Class Counsel was actively preparing the cases for class
6 certification and trial.³⁴

7 Prior to engaging in mediation, Class Counsel conducted significant investigation and
8 informal discovery regarding the facts of the cases, including and not limited to, the exchange,
9 review, and analysis of thousands of pages of documents and data produced by Defendant.³⁵
10 The volume of data and documents that Class Counsel reviewed and analyzed included and was
11 not limited to: employment records of Plaintiffs and other Class Members, Class Members’ time
12 and pay data, Defendant’s Employment Policies, financial information (including but not
13 limited to pay statements and earning statements), job descriptions, Defendants’ operations and
14 employment practices, forms, procedures, and policies (including but not limited to, Meal Period
15 and Rest Break Policy, Overtime Policy, Business Expense Reimbursement Policy, Dress Code
16 Policy), among other information and documents.³⁶ Class Counsel had the opportunity to
17 interview Plaintiffs and other Class Members to gather facts and to identify potential
18 witnesses.³⁷ Counsel for the Parties met and conferred on numerous occasions, e.g., to discuss
19 issues relating to the pleadings, discovery, and the production of documents and data prior to
20 the mediation.³⁸ Class Counsel drafted Plaintiffs’ mediation brief and prepared for and attended
21 court proceedings, settlement negotiations, and the mediation, among other tasks.³⁹

22 The Parties engaged in extensive settlement negotiations and participated in a formal,
23 full-day mediation conducted by Jeffrey Krivis, Esq., a well-respected mediator experienced in
24 mediating complex wage and hour matters.⁴⁰ Prior to and during the mediation and settlement

25 ³⁴ Hosseini Decl., ¶¶ 11-13.

26 ³⁵ *Id.*, ¶ 12.

27 ³⁶ *Ibid.*

28 ³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Id.*, ¶ 11.

1 discussions, the Parties exchanged class information and engaged in an intensive discussion
2 regarding their evaluations of the case and various aspects of the case, including but not limited
3 to, the risks and delays of further litigation, the risks to the Parties of proceeding with class
4 certification and/or representative adjudication, the law relating to off-the-clock theory, meal
5 and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as the
6 evidence produced and analyzed, and the possibility of appeals, among other things.⁴¹ During
7 all settlement discussions, the Parties conducted their negotiations at arm's length in an
8 adversarial position.⁴² Arriving at a settlement that was acceptable to both Parties was not easy.
9 Defendant and its counsel felt strongly about their ability to prevail on the merits and at
10 certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class
11 certification and prevail at trial.⁴³ After conducting investigations, significant formal and
12 informal discovery, extensive settlement negotiations, and with the aid of the Mediator's
13 evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal
14 issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that
15 would attend further litigation.⁴⁴

16 The Settlement takes into account the strengths and weaknesses of each side's position
17 and the uncertainty of how the case might have concluded at certification and trial.⁴⁵ The Parties
18 have had the opportunity to interview and obtain information from their respective witnesses.⁴⁶
19 Counsel for the Parties have also reviewed documents and information relating to Plaintiffs',
20 the Class Members', and PAGA Members' employment with Defendant and performed
21 significant research into the law concerning class certification, PAGA representative actions,
22 off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiffs' claims, and
23 Defendant's defenses thereto, as well as facts discovered.⁴⁷ The Parties have reached the
24 Settlement based on this large volume of facts, evidence, and investigation. In addition, Class

25 ⁴¹ Hosseini Decl., ¶ 11.

26 ⁴² *Ibid.*

27 ⁴³ *Id.*, ¶¶ 11, 16-18.

28 ⁴⁴ *Id.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Id.*, ¶¶ 11-13 & 16-18.

Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁸

B. The Settlement Is Fair, Reasonable, and Adequate.

The Settlement, which provides for a Total Settlement Amount of Seven Hundred Thousand Dollars and Zero Cents (\$700,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁹ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of information.⁵⁰ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁵¹ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵²

Assuming that the Attorneys' Fees and Costs, Enhancement Payment, PAGA Amount, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, in addition to the Miranda Individual Settlement Payment, the Settlement provides for a Net Settlement Amount that is currently estimated to be Three Hundred and Three Thousand Dollars (\$303,000.00).⁵³ Additionally, the 25% of the PAGA Amount, which is \$17,500.00 out of \$70,000.00, will be distributed to PAGA Members. As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Payment and the amount of each PAGA Members' Individual PAGA Payment will be calculated based on his or her Workweeks.⁵⁴ There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended

⁴⁸ Hosseini Decl., ¶¶ 6-7.

⁴⁹ *Id.*, ¶¶ 11, 13, 14 & 21.

⁵⁰ *Id.*, ¶¶ 11-13.

⁵¹ *Id.*, ¶¶ 16-18.

⁵² *Id.*, ¶¶ 11, 13, & 21.

⁵³ *Id.*, ¶ 14.

⁵⁴ Settlement Agreement, §§ 25 and 26.

by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, PAGA Member, and the State of California.⁵⁵ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant informal discovery and exchanged thousands of pages of documents, data, and information prior to mediation.⁵⁶ The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant’s defenses thereto.⁵⁷ As outlined in the Declaration of Yasmin Hosseini, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁸

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵⁹ California Code of Civil Procedure Section 382 “authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies

⁵⁵ Hosseini Decl., ¶¶ 11, 13, & 21.

⁵⁶ *Id.*, ¶¶ 11-13 & 18.

⁵⁷ *Id.*, ¶ 18.

⁵⁸ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁹ Settlement Agreement, § 15.

1 “both [1] an ascertainable class and [2] a well-defined community of interest among class
2 members.” *Id.*

3 The Class is ascertainable and numerous as to make it impracticable to join all Class
4 Members, and there are common questions of law and fact that predominate over any questions
5 affecting any individual Class Member. Further, Plaintiffs’ claims are typical of the claims of
6 the Class Members, and Class Counsel will fairly and adequately protect the interests of the
7 Class. Finally, prosecution of separate actions by individual Class Members would create the
8 risk of inconsistent or varying adjudications, and a class action is superior to other available
9 means for the fair and efficient adjudication of the case. The Class is amenable to class
10 certification for settlement purposes as discussed below.

11 **A. The Class Is Ascertainable and Sufficiently Numerous.**

12 “Ascertainability is required in order to give notice to putative class members as to whom
13 the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001)
14 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs
15 by describing a set of common characteristics sufficient to allow a member of that group to
16 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
17 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
18 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

19 This action involves a class of approximately three hundred eighty-one (381)
20 individuals.⁶⁰ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126
21 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity
22 requirement as joinder is not practical at that point). Further, all Class Members can and will
23 be identified by Defendant to the Settlement Administrator through a review of Defendant’s
24 employment records regarding non-exempt employees in California during the Class Period. As
25 such, the Class is ascertainable and sufficiently numerous.

26 ///

27 ///

28 _____
⁶⁰ Hosseini Decl., ¶ 9.

1 **B. The Class Members Share a Well-Defined Community of Interest.**

2 The community of interest requirement “embodies three factors: (1) predominant
3 common questions of law or fact; (2) class representative with claims or defenses typical of the
4 class; and (3) class representative who can adequately represent the class.” *Sav-On, supra*, 34
5 Cal.4th at 326. “[T]he community of interest requirement for certification *does not mandate*
6 *that class members have uniform or identical claims.*” *Capitol People First v. Dep’t of*
7 *Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts
8 focus on the Defendant’s internal policies and “pattern and practice . . . in order to assess whether
9 that common behavior toward similarly situated plaintiff renders class certification appropriate.”
10 *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

11 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
12 of recovery’ is likely to prove compatible with class treatment.” *Capitol People, supra*, 155
13 Cal.App.4th at 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at 327). Furthermore,
14 the commonality inquiry centers on the “reasonableness” of the defendant’s labor policies as
15 applied to the potential class. *Ghazaryan, supra*, 169 Cal.App.4th at 1534.

16 Here, common issues of fact and law predominate as to each of the claims alleged and
17 asserted in the Osby Class Action and Osby PAGA Action. Based on the documents and
18 information obtained through informal discovery and exchange of information in this case,
19 Plaintiffs contend that Class Members were subject to the same or similar job duties and uniform
20 operations and employment practices, policies, and procedures during the time period at issue.⁶¹
21 Plaintiffs’ claims arise from Defendant’s alleged uniform policy and systematic scheme, with
22 respect to Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay overtime and
23 minimum wages for all hours worked, failing to provide compliant meal and rest periods and
24 associated premium pay, failing to timely pay wages during employment and upon termination
25 of employment, failing to provide complaint wage statements, failing to keep requisite payroll
26 records, and failing to reimburse necessary business-related expenses.⁶²

27
28 ⁶¹ Hosseini Decl., ¶ 16.

⁶² *Ibid.*

1 Plaintiffs also contend that Defendant's payroll and recordkeeping practices with respect
2 to Plaintiffs and the Class Members were substantially the same during the time period at issue.⁶³

3 As a result, Plaintiffs claims that all of the Class Members were uniformly not paid all
4 compensation due to them from Defendant during the time period at issue.⁶⁴

5 Plaintiffs maintain that the outcome of this litigation would be determined by
6 Defendant's alleged uniform operations and employment policies and procedures that applied
7 across its hourly-paid or non-exempt employees who worked in California during the Class
8 Period. Accordingly, the Court should certify the Class for settlement purposes only.

9 **VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR**
10 **ATTORNEYS' FEES AND COSTS**

11 Class Counsel has litigated the matters for over two (2) years and was actively preparing
12 the matter for class certification and trial.⁶⁵ The ongoing work has been extensive, demanding,
13 and ultimately successful in achieving a substantial settlement resolution. Class Counsel
14 conducted extensive investigations into the facts of the case and informal discovery. Class
15 Counsel reviewed thousands of pages of documents and data⁶⁶ and also interviewed and
16 obtained information from Plaintiffs and other Class Members, researched applicable law,
17 undertook damages/valuation calculations, and met and conferred with Defendant's counsel
18 regarding the pleadings and the production of documents and data prior to mediation.⁶⁷ Counsel
19 for the Parties also undertook extensive settlement discussions, which included participating in
20 a formal, full-day mediation.⁶⁸

21 Class Counsel is well-experienced in wage-and-hour class action litigation and used that
22 experience to obtain a great result for the Class.⁶⁹

23 The Settlement establishes a Total Settlement Amount of Seven Hundred Thousand
24 Dollars and Zero Cents (\$700,000.00), and provides for Class Counsel to apply to the Court for

25 ⁶³ *Ibid.*

26 ⁶⁴ *Ibid.*

27 ⁶⁵ Hosseini Decl., ¶¶ 11-13.

28 ⁶⁶ *Id.*, ¶ 12.

⁶⁷ *Ibid.*

⁶⁸ *Id.*, ¶ 11.

⁶⁹ *Id.*, ¶¶ 6-7.

Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Class Settlement Fund Amount (i.e., \$234,500.00 if the Class Settlement Fund Amount remains \$670,000.00) and an amount not to exceed Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00) for costs and expenses.⁷⁰ The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the cases, (2) the extensive time, effort and expense that Class Counsel dedicated to the cases, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.⁷¹

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Id.* at 50. In cases where class members present claims against a settlement fund and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

⁷⁰ Settlement Agreement, § 21.

⁷¹ *Id.*, Exh. A.

1 The propriety of calculating and awarding attorneys’ fees as a percentage of a settlement
2 that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed
3 by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California
4 Supreme Court has taken the position that “[t]rial courts have discretion to conduct a lodestar
5 cross-check on a percentage fee,” “they also retain the discretion to forgo a lodestar cross-check
6 and use other means to evaluate the reasonableness of a requested percentage fee[,]” and “[t]he
7 percentage of fund method survives in California.” *Id.* (internal quotation marks omitted).

8 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
9 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin*
10 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45%
11 of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*
12 (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’
13 fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around
14 one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower
15 court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class
16 actions); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case
17 No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior
18 Court Case No. BC263646 (Sept. 2006) (wage and hour).

19 Class Counsel has borne all of the risks and costs of litigation and will not receive any
20 compensation until recovery is obtained.⁷²

21 Class Counsel will provide extensive evidence as to the time worked, litigation efforts,
22 and further argument at the time of filing Plaintiffs’ motion for final approval of the Settlement
23 and application for the Attorneys’ Fees and Costs and at the Final Approval Hearing.
24 Considering the work performed and the risks incurred, the attorneys’ fees provided for by the
25 Settlement and to be requested by Class Counsel are well within the range of reasonableness.

26 ///

27 ///

28 _____
⁷² Hosseini Decl., ¶ 19.

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

California statutory and case law vests the Court with broad discretion in fashioning appropriate class notice. See Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. A class notice is adequate if it “present[s] a fair recital of the subject matter and proposed terms” of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

The proposed Class Notice⁷³ describes the Settlement, the deadlines and procedures to submit an objection to the Class Settlement, a Request for Exclusion from the Class Settlement, and/or a dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.⁷⁴

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class members to make an informed decision about their participation.” *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷⁵ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁶ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Payment, and if applicable, their Individual PAGA Payment are calculated and the number of Workweeks credited to them.⁷⁷

The proposed Class Notice satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt, supra*, 50 Cal.App.3d at 960 (“The essentials of due process of law in class suits would appear to be afforded by fair representation in the assertion of claims of class members against the opposing parties in any lawsuit, and notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

⁷³ Settlement Agreement, Exh. A.

⁷⁴ *Id.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

**IX. APPOINTMENT OF ILYM GROUP, INC. AS THE SETTLEMENT
ADMINISTRATOR**

The Parties have selected ILYM Group, Inc. to administer the Settlement.

The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. mail.⁷⁸ Any undeliverable Class Notice that is returned to the Settlement Administrator with a forwarding address on or before the Response Deadline, will be re-mailed to the forwarding address within five (5) calendar days.⁷⁹ With respect to any undeliverable Class Notice returned on or before the Response Deadline without a forwarding address, the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting a search of the National Change of Address database, and re-mail the Class Notice to the Class Member within five (5) calendar days.⁸⁰ The Response Deadline to submit a Request for Exclusion, Notice of Objection, or dispute regarding Workweeks shall be extended by fifteen (15) calendar days for those Class Members to whom Class Notices are resent after having been returned undeliverable to the Settlement Administrator.⁸¹ The Settlement Administrator will receive and process Requests for Exclusion, Notices of Objection, and any disputes regarding Workweeks.⁸²

The Settlement Administrator will translate the Class Notice into Spanish, calculate the amounts of the Individual Settlement Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Shares; mail the Individual Settlement Payment checks to Settlement Class Members and Individual PAGA Payment checks to PAGA Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Enhancement Payment, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸³ The Settlement Administration Costs are currently estimated to be Twenty Thousand Dollars and Zero Cents

⁷⁸ Settlement Agreement, § 29.

⁷⁹ *Id.*, § 29.b.

⁸⁰ *Id.*

⁸¹ *Ibid.*

⁸² *Id.*, § 30.

⁸³ *Ibid.*; Hosseini Decl., ¶ 15.

1 (\$20,000.00) and will be paid out of the Total Settlement Amount, subject to approval by the
2 Court.⁸⁴

3 Accordingly, Plaintiff respectfully requests that the Court appoint ILYM Group, Inc. as
4 the Settlement Administrator and direct the mailing of the Class Notice to the Class Members
5 and PAGA Members in the manner outlined and based on the proposed deadlines as described
6 herein and set forth in the Settlement Agreement.

7 **X. PROPOSED DEADLINES FOR THE NOTICE PROCESS**

8 At this preliminary approval stage, Plaintiffs seek approval of the proposed deadlines for
9 the notice and settlement administration process. *Newberg*, at § 11.26. The notice process
10 entails mailing of the Class Notice, in the form approved by the Court, to all known and
11 reasonably ascertainable Class Members based on Defendant's records.⁸⁵

12 Within thirty (30) calendar days after the Court grants Preliminary Approval of the
13 Settlement, Defendant will provide the Settlement Administrator with the following information
14 for each Class Member: full name, last known mailing address, Social Security Number, start
15 and end dates employed as an hourly-paid or non-exempt employee of Defendant in California
16 during the Class Period and PAGA Period, and such other information as is necessary for the
17 Settlement Administrator to calculate the number of Workweeks to be credited to each Class
18 member during the Class period and the number of Workweeks to be credited to each PAGA
19 Member during the PAGA Period (collectively, "Class List").⁸⁶

20 Within fourteen (14) calendar days of receipt of the Class List, the Settlement
21 Administrator will mail the Class Notice to the Class Members identified in the Class Data via
22 First-Class United States Postal Service ("USPS") in English and Spanish.⁸⁷ If a Class Notice
23 is returned to the Settlement Administrator with a forwarding address, the Settlement
24 Administrator will re-send the Class Notice to the forwarding address within five (5) calendar
25 days.⁸⁸ If no forwarding address is provided, then the Settlement Administrator will make

26 ⁸⁴ Settlement Agreement, § 23.

27 ⁸⁵ *Id.*, § 29.

28 ⁸⁶ *Id.*, § 14.c.

⁸⁷ *Ibid.*

⁸⁸ *Id.*, § 29.b.

1 reasonable efforts to obtain an updated mailing address, including but not limited to conducting
2 a search of the National Change of Address database, and re-mail the Class Notice to the Class
3 Member within five (5) calendar days.⁸⁹ Class Members and PAGA Members will have until
4 the applicable Response Deadline to submit a Request for Exclusion, dispute regarding
5 Workweeks, and/or a Notice of Objection.⁹⁰

6 Defendant will make a one-time deposit of the Total Settlement Amount, less the
7 Miranda Individual Settlement Payment (i.e., \$670,000.00), together with an amount sufficient
8 to pay employer taxes, into an account to be established the Settlement Administrator, within
9 thirty (30) calendar days after the Effective Date.⁹¹ Within seven (7) calendar days after
10 Defendant funds the Total Settlement Amount, the Settlement Administrator will distribute: (1)
11 the Individual Settlement Payments to Settlement Class Members; (2) the Individual PAGA
12 Payments to PAGA Members; (3) the Court-approved Enhancement Payment to Plaintiff Osby;
13 (4) the Court-approved Attorneys' Fees and Costs to Class Counsel; (4) the LWDA Payment to
14 the LWDA; and (5) the Court-approved Settlement Administration Costs to itself.⁹²

15 The Individual Settlement Payment and Individual PAGA Payment checks will remain
16 negotiable for one hundred eighty (180) calendar days from the date of their issuance.⁹³ Checks
17 that are not negotiated within the one hundred eighty (180) day period will be cancelled.⁹⁴ The
18 funds associated with such cancelled checks will be tendered by the Settlement Administrator
19 to the State Controller's Office, Unclaimed Property Division in the name of the Settlement
20 Class Member and/or PAGA Member.⁹⁵

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22 ///

23 ///

24 ///

25 ⁸⁹ Settlement Agreement, § 29.b.

26 ⁹⁰ *Id.*, §§ 32, 30, and 33.

27 ⁹¹ *Id.*, § 19.

28 ⁹² *Id.*, § 20.

⁹³ *Id.*, § 31.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

**XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR
ENHANCEMENT PAYMENT**

Plaintiff Osby respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Enhancement Payment in an amount up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff Osby.⁹⁶ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Enhancement Payment to Plaintiff Osby is fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁷ Plaintiff Osby was available whenever Class Counsel needed her and actively tried to obtain and provide information that would benefit the Class.⁹⁸ Accordingly, it is appropriate and just for Plaintiff Osby to receive an Enhancement Payment for her services on behalf of the Class, State of California, and PAGA Members, in addition to her individual settlement payments.

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Osby as Class Representatives; appoint ILYM Group, Inc. as Settlement

⁹⁶ Settlement Agreement, § 22.

⁹⁷ Hosseini Decl., ¶ 20; Declaration of Asia Osby in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Osby Decl."), ¶ 4; Declaration of Monica Miranda in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Miranda Decl."), ¶ 4

⁹⁸ Hosseini Decl., ¶ 20; Osby Decl., ¶¶ 3-6; Miranda Decl., ¶¶ 3-6.

Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payment, PAGA Amount, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately five (5) months.

Dated: November 6, 2023

LAWYERS for JUSTICE, PC

By:



Yasmin Hosseini
Attorneys for Plaintiffs