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County of Los Angeles
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David W. Slayton,
Executive Officer/Clerk of Court,
By S. Drew, Deputy Clerk

Attorneys for Plaintiffs
ALEJANDRO VALENZUELA and ANGELEIGH MANJARREZ, individually and on behalf of the
putative class

[additional counsel in signature page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ALEX FURTADO, an Individual, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

BAMIA 2, LLC, a California limited liability
company; REEF GLOBAL, INC., a Florida
Corporation; REEF TECHNOLOGY, INC., a
corporate form unknown; and DOES 1-100,
Inclusive,

Defendants.

CASE NO.: 21STCV37585

*[Assigned for all purposes to the Honorable Elihu
M. Berle, Department 006]*

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR AN ORDER (1)
PRELIMINARILY APPROVING THE CLASS
ACTION SETTLEMENT; (2) APPROVING
NOTICE OF CLASS ACTION SETTLEMENT;
(3) SETTING HEARING FOR FINAL
APPROVAL; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT THEREOF**

Date: TBD

Time: TBD

Dept.: 6

*[Filed concurrently with the Declaration of Danny
Yadidsion; Declaration of Kyle Nordrehaug;
Declaration of Mehrdad Bokhour; Declaration of
Alejandro Valenzuela; Declaration of Angeleigh
Manjarrez; Declaration of Paris Johnson;
Declaration of Lisa Mullins of Third-Party
Administrator, ILYM Group, Inc.; Joint Stipulation
of Class Settlement; Class Notice; and [Proposed]
Order]*

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

2 **PLEASE TAKE NOTICE** that on June 30, 2023, at 11:00 a.m., or as soon thereafter as the matter may be
3 heard in Department 6 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, CA
4 90012, Plaintiffs Alejandro Valenzuela, Angeleigh Manjarrez, and Paris Johnson (“Plaintiffs”), on behalf
5 of themselves and all persons similarly situated, will and hereby do move this Court, pursuant to California
6 Code of Civil Procedure § 382 and California Rule of Court 3.769, for an order as follows:

- 7 1. Granting preliminary approval of the proposed settlement;
- 8 2. Appointing ILYM Group, Inc. as the Settlement Administrator;
- 9 3. Conditionally certifying the class for settlement purposes only;
- 10 4. Approving the proposed Notice of Settlement as to form and content, and directing that it
11 be distributed to the Class Members pursuant to the terms of the Settlement; and
- 12 5. Scheduling a Final Approval Hearing.

13 This Notice of Motion and Motion is based on the fact that this is a fair and reasonable settlement
14 that benefits the class and was the product of informed, non-collusive negotiations by the parties who were
15 represented by experienced and able counsel. (*See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794,
16 1802; *Manual for Complex Litigation* (2nd Ed. 1985) § 30.44.) The proposed settlement meets the legal
17 standard for preliminary approval and is in the best interests of the class; the proposed Class Notice explains
18 the settlement terms in a clear and straightforward manner; the proposed procedures for notice provide the
19 best practical notice to the class; and class members will have an opportunity to participate in and/or object
20 to the settlement and/or opt-out of the settlement.

21 This Motion is based on this Notice, the attached Memorandum of Points and Authorities; the
22 Declarations of proposed Class Counsel (Danny Yadidsion, Kyle Nordrehaug, Mehrdad Bokhour, and
23 Joshua Falakassa), Plaintiffs, and ILYM Group, Inc. Senior Vice President of Sales Lisa Mullins on behalf
24 of the proposed Settlement Administrator and the exhibits attached thereto, the pleadings and other papers
25 filed in this action, and on any further oral or documentary evidence or argument presented at the time of
26 hearing.

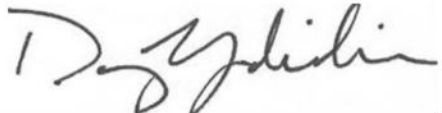
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28 ///

Respectfully Submitted,

DATED: June 30, 2023

LABOR LAW PC

By: 

Danny Yadidsion, Esq.

Shawn E. Fields, Esq.

Attorneys for Plaintiffs, ALEJANDRO

VALENZUELA and ANGELEIGH MANJARREZ, on
behalf of themselves and others similarly situated

DATED: June 30, 2023

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Attorneys for Plaintiffs

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capacity, and on behalf of the putative class

DATED: June 30, 2023

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Attorneys for Plaintiff

PARIS JONHSON, individually, in a representative
capacity, and on behalf of the putative class

DATED: June 30, 2023

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Joshua Falakassa

Attorneys for Plaintiff

PARIS JONHSON, individually, in a representative
capacity, and on behalf of the putative class

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1 **I. INTRODUCTION**

2 This Motion seeks provisional certification of a settlement class (the “Class”) of approximately
3 925 current and former employees of Defendant Bamia 2, LLC (“Defendant”). This Motion also seeks
4 preliminary approval of a common fund settlement reached in this case after extensive negotiations and a
5 private mediation between the parties (the “Settlement”). The parties reached this Settlement through
6 arm’s-length bargaining, after sufficient investigation and discovery, and with the involvement of a
7 professional mediator. The main elements of the Settlement, as memorialized in the Parties’ Class Action
8 and PAGA Settlement Agreement and Class Notice (Declaration of Danny Yadidsion (hereinafter referred
9 to as “Yadidsion Decl.”), Exhibit 1) are:

10 1. Defendant will pay up to a maximum of \$1,400,000.00 (“Settlement Sum”), on a
11 non-reversionary common fund basis to the Class;

12 2. The Settlement Sum includes administration costs (estimated not to exceed
13 \$15,750.00), attorneys’ fees to Class Counsel herein (Class Counsel will seek attorney’ fees in the
14 amount of one-third (1/3) of the Settlement Sum, or up to \$466,200.00), and case costs (Class
15 Counsel will seek costs in an amount not to exceed \$13,000.00).

16 3. Named Plaintiffs Alejandro Valenzuela, Angeleigh Manjarrez, and Paris Johnson
17 (“Plaintiffs”) will apply to the Court for a Service Payment of up to \$10,000.00 each;

18 4. The Class Period shall be from October 28, 2017 through February 16, 2023 (“Class
19 Period”);

20 5. \$30,000.00 of the Settlement Sum will be allocated to civil penalties under the
21 California Private Attorneys General Act of 2004 (“PAGA”), 75% of which (\$22,500.00) will be
22 paid to the LWDA and \$7,500.00 will be distributed on a pro rata basis to Class Members who
23 worked during the PAGA Class Period;

24 6. The remainder of the Settlement Sum, after deduction of attorneys’ fees and costs,
25 settlement administration costs, and Plaintiff’s Service Payment (i.e., the “Net Settlement Fund”),
26 will be distributed to Class Members who do not exclude themselves. The amount each Class
27 Member will receive is his or her Individual Class Payment, which will be calculated by (a)
28 dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating

1 Class Members during the Class Period and (b) multiplying the result by each Participating Class
2 Member's Workweeks.

3 For the purposes of this Settlement, the Parties agree that the Class satisfies each of the
4 requirements of Code of Civil Procedure Section 382. Furthermore, the Settlement is fair and reasonable
5 and confers a substantial benefit upon the Class Members. Accordingly, pursuant to California Rule of
6 Court 3.769, Plaintiffs request that the Court grant preliminary approval of the Settlement, certify the
7 Class for settlement purposes, set the deadline for filing objections to the Settlement, schedule a final
8 approval hearing, and approve the proposed Class Notice.

9 **II. STATEMENT OF RELEVANT FACTS**

10 **A. Procedural History**

11 On October 13, 2021, Plaintiff Alex Furtado filed a complaint in Los Angeles Superior Court
12 alleges causes of action against Defendants for violations of PAGA, *Alex Furtado v. REEF Global, Inc.,*
13 *Bamia 2, LLC, and Reef Technology, Inc.*, Case No. 21STCV37585 (the "Furtado Action"). On October
14 28, 2021, Furtado filed a class action complaint in Los Angeles Superior Court against Defendants for
15 employment law-related claims arising from the same core nucleus of operative facts as the earlier filed
16 PAGA action, *Alex Furtado v. Reef Global Inc. and Bamia 2, LLC*, Case No. 21STCV39813. On February
17 4, 2022, Plaintiff Paris Johnson filed a substantially similar class action complaint in Sacramento County
18 Superior Court, *Paris Johnson v. Bamia 2, LLC, Reef Global, Inc. and REEF Technologies, Inc.* (the
19 "Johnson Action"). On March 25, 2022, Plaintiffs Alejandro Valenzuela and Angeleigh Manjarrez filed a
20 substantially similar class action complaint in San Francisco Superior Court, *Alejandro Valenzuela and*
21 *Angeleigh Manjarrez v. Bamia 2, LLC* (the "Valenzuela and Manjarrez Action"). On March 25, 2022,
22 Plaintiffs Alejandro Valenzuela and Angeleigh Manjarrez filed a representative action in San Francisco
23 County Superior Court against Defendants for civil fines under PAGA arising from the same core nucleus
24 of operative facts as the earlier filed actions, *Alejandro Valenzuela and Angeleigh Manjarrez v. Bamia 2,*
25 *LLC*, Case No. CGC-22-598896. Defendants later removed the Johnson Action and the Valenzuela and

Manjarrez Action to federal court.¹

On November 15, 2022, after conducting substantial informal discovery, the Parties attended a full-day mediation before an experienced and well-regarded mediator, John Adler, Esq. Shortly thereafter, the Parties reached an agreement in principle to settle the Actions and seek approval of the settlement in the first-filed Furtado Action. Tragically, prior to filing the motion for preliminary approval of settlement, Plaintiff Furtado died suddenly and unexpectedly. After conferring about the best path forward, the Parties mutually agreed to seek Court approval to substitute Plaintiffs Johnson, Manjarrez, and Valenzuela as named plaintiffs in the first-filed Furtado Action and to file an omnibus First Amended Class and Representative Action Complaint (“FAC”) alleging all facts and claims brought in the various actions. This Court granted that request on June 2, 2023, and Plaintiffs filed the FAC on June 8, 2023.

The FAC alleges claims for: (1) failure to provide required meal periods; (2) failure to provide required rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wages; (5) failure to timely pay wages during employment; (6) failure to pay all wages due to discharged and quitting employees; (7) failure to maintain required records; (8) failure to furnish accurate, itemized wage statements; (9) failure to indemnify employees for necessary expenditures incurred in the discharge of duties; (10) unfair and unlawful business practices; and (11) civil penalties under the Private Attorneys General Act (PAGA).

B. Statement of the Claims

Plaintiffs contend that during the Class Period of October 28, 2017 through February 16, 2023, Defendant failed to provide them and other hourly, non-exempt employees with legally compliant meal and rest periods or meal and rest break premiums, all minimum and overtime wages due and owed, timely payment of wages each pay period, timely payment of final wages due and owed to separating employees, and accurate itemized wage statements. Plaintiff also alleges that Defendant failed to maintain required payroll records for him and other hourly, non-exempt employees, and asserts a violation of California’s Business and Professions Code Section 17200 based on the underlying Labor Code violations alleged in

¹ The Johnson Action is currently pending in the United States District Court for the Eastern District of California as Case Number 2:22-CV-0058-KJM-AC. The Valenzuela and Manjarrez Action is currently pending in the United States District Court for the Northern District of California as Case Number 4:22-CV-03675-HSG.

1 the FAC. Finally, Plaintiff asserts a representative claim for civil penalties under the PAGA.

2 The proposed class includes all of Defendant's hourly, non-exempt employees throughout the State
3 of California during the Class Period.

4 **C. Discovery and Investigation**

5 Before filing this lawsuit, Class Counsel investigated and researched the facts and circumstances
6 underlying the pertinent issues and the law applicable thereto. (Yadidsion Decl., ¶ 12.) After conducting
7 this thorough initial investigation, Class Counsel determined that Plaintiff's claims were well-suited for
8 class action adjudication due to what appeared to be a common course of conduct affecting a similarly
9 situated group of employees. (*Id.*)

10 Subsequently, the Parties undertook significant investigation, including formal and informal
11 discovery, during the prosecution of this Action. (*Id.*, ¶¶13-14, 17.) Such discovery and investigation
12 included extensively interviewing Plaintiffs, conducting a detailed damages analysis, reviewing
13 Defendant's voluminous document production, which included the review of personnel records, policies,
14 time and pay records for Class Members, and other detailed information relevant to the Class Members'
15 claims. (*Id.*) Counsel for the Parties have investigated the law as applied to the facts discovered regarding
16 the alleged claims of the Class and potential defenses thereto, and potential damages claimed by the Class.
17 (*Id.*, ¶13.)

18 Plaintiffs sought relevant records from Defendant through informal discovery mechanisms. In
19 response, Defendant produced voluminous documents and data, including Plaintiffs' personnel files and
20 related records, Defendant's employee handbook, Defendant's company policies and procedures relating
21 to its employment practices, and allegedly enforceable arbitration agreements. (*Id.*, ¶14.) Plaintiffs'
22 counsel also prepared notices of depositions of Defendant's person most knowledgeable before the Parties
23 agreed to postpone depositions until after mediation. (*Id.*) The parties also participated in the *Belaire-West*
24 process and interviewed putative class members in furtherance of their investigation. (*Id.*)

25 After Plaintiffs and Defendant conducted significant discovery in this action, the Parties agreed to
26 participate in mediation. To prepare for mediation, Defendant informally produced additional information
27 to Plaintiffs to evaluate the class claims, including a spreadsheet containing information regarding the
28 periods of employment, hourly rate of pay and number of weeks worked for each putative class member.

(*Id.*, ¶17.) Plaintiffs’ counsel thoroughly reviewed, investigated, and analyzed this information, which taken together with documents formally produced by Defendant during discovery, amounted to hundreds of pages of data and information. (*Id.*) Counsel for the Parties also investigated the law as applied to the discovered facts regarding the alleged claims of Plaintiffs and the Class, potential defenses thereto, as well as the potential damages claimed by Plaintiffs and the Class. This informal discovery process occurred over a period of several months and involved significant meet and confer efforts between counsel for the parties. (*Id.*)

The Parties’ attorneys have engaged in extensive discussions about the strengths and weaknesses of the claims and defenses in the Actions.

D. Mediation

On November 15, 2022, the Parties attended a full–day mediation before an experienced and well–regarded mediator, John Adler, Esq. (Yadision Decl. ¶18.) The Parties did not resolve the case at mediation. (*Id.*) However, the mediator engaged in extensive follow-up efforts, and the Parties continued settlement discussions post-mediation. In or about January 2022, the Parties reached an agreement regarding the resolution of this Actions, which is embodied in the terms of the Agreement. (*Id.*, Exh. 1.) From Class Counsel’s review of the facts, strengths and weaknesses of the case, the risks and delays posed by further litigation and Class Counsel’s own prior class action litigation experience, Class Counsel believes that the recovery for each class member is fair and reasonable. (*Id.*, ¶19.)

III. SUMMARY OF THE SETTLEMENT

A. The Settlement Class

The Settlement Class is comprised of: all individuals who are or were previously employed by Defendant Bamia 2 LLC in California and classified as a non-exempt employee at any time during the period of October 28, 2017, through February 16, 2023. (Yadision Decl. ¶21.)

B. The Consideration

Defendant has agreed to pay a maximum settlement amount of \$1,400,000.00 (“Gross Settlement Amount”). The Settlement provides for the following payments to be made from this common fund:

Gross Settlement Amount	\$1,400,000.00
Attorney’s Fees	- \$466,200.00

Attorney's Costs	- \$13,000.00
Service Payments	- \$30,000.00
Settlement Administration	- \$15,750.00
PAGA Penalties	- \$30,000.00
Net Settlement Amount ("NSA")	\$845,050.00

C. Individual Settlement Calculations

The NSA will be allocated entirely to the Settlement Class Members and includes the employee portion of payroll taxes. Payments to Class Members shall be allocated as 20% wages, and the remaining 80% to interest and penalties. (Yadidsion Decl., Exh. 1 at ¶3.2.4.1.)²

The Net Settlement Amount shall be divided among and distributed to individual Settlement Class Members. Individual Settlement Payments shall be calculated using the following formula:

$$\text{(Net Settlement Amount} \div \text{All Settlement Class Members' Qualifying Workweeks)} \times \text{Participating Class Member's Workweeks}$$

(Yadidsion Decl., Exh. 1 at ¶3.2.4.)

If a check is returned to the Settlement Administrator, the Settlement Administrator will re-mail the check to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. If the check remains uncashed by the expiration of the 60-day period after this notice, the Settlement Administrator will keep an accounting of such funds, including the identification of the Participating Class Member. If a Class Member's check is not cashed within 180 calendar days, the check will be void and a stop payment order may be placed on the check. In such event, the Settlement nevertheless will be binding upon the Settlement Class Member. The funds represented by all uncashed settlement checks will be transmitted by the Settlement Administrator to the California State Controller's Unclaimed Property Fund in the name of the individual Settlement Class Member. (Yadidsion Decl., Exh. 1 at ¶4.4.3.) However, if the Court disapproves of the forgoing and instead determines that pursuant to Code of Civil Procedure section 384, funds from uncashed settlement checks must be distributed to a qualifying *cy pres*, the Parties agree that the *cy pres* recipient shall be the State Controller's Office.

² The employer's share of payroll taxes shall be paid by Defendant. (Yadidsion Decl., Exh. 1 at ¶3.4.2.)

1 **D. Release By Class Members**

2 Participating Settlement Class members shall provide the following limited release:

3 Plaintiffs and their respective former and present spouses, representatives,
4 agents, attorneys, heirs, administrators, successors, and assigns generally,
5 release and discharge Released Parties from all claims, transactions, or
6 occurrences that occurred during the Class Period, including, but not limited
7 to: (a) all claims that were, or reasonably could have been, alleged, based on
8 the facts contained, in the Operative Complaint and (b) all PAGA claims
9 that were, or reasonably could have been, alleged based on facts contained
10 in the Operative Complaint, and Plaintiffs' PAGA Notices. ("Plaintiffs'
11 Release.") Plaintiffs' Release does not extend to any claims or actions to
 enforce this Agreement, or to any claims for vested benefits, unemployment
 benefits, disability benefits, social security benefits, workers' compensation
 benefits that arose at any time, or based on occurrences outside the Class
 Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law
 different from, or in addition to, the facts or law that Plaintiffs now knows
 or believes to be true but agrees, nonetheless, that Plaintiffs' Release shall
 be and remain effective in all respects, notwithstanding such different or
 additional facts or Plaintiffs' discovery of them.

12 (Yadidsion Decl., Exh. 1 at ¶6.1.) In addition, Class Members, regardless of whether they opt-out of the
13 Settlement, will receive their share of PAGA civil penalties and will be deemed to have released all claims
14 for civil penalties under the PAGA during the PAGA Class Period with respect to the underlying wage
15 and hour claims pled in the FAC. (*Id.*, Exh. 1 at ¶6.3.)

16 The time period governing the Released Claims shall be the Class Period only. The October 28,
17 2017, start date of the Class Period was chosen as four years prior to filing of the Complaint. (Yadidsion
18 Decl. ¶28.) The Parties have agreed that the Class Period shall extend through February 16, 2023. (*Id.*)

19 Upon entry of the Final Approval Order and Defendant's payment of the Gross Settlement
20 Amount, and except as to such rights or claims as may be created by this Settlement Agreement, on behalf
21 of themselves, and each of their heirs, representatives, successors, assigns, and attorneys, Participating
22 Class Members shall be deemed to have, and by operation of the final judgment shall have, fully released
23 and discharged the Defendant from any and all Released Claims.

24 **E. Notice Program**

25 **1. Mailing of Notice**

26 Within seven (7) calendar days following the Court's order granting Preliminary Approval of the
27 Settlement, Defendant will provide the Settlement Administrator with the Class List and Data in the form
28 of a readable Microsoft Excel spreadsheet. This information will remain confidential and will not be

disclosed to anyone, except as required to applicable taxing authorities, pursuant to Defendant's express written authorization, by order of the Court, or as otherwise provided for in this Agreement. (Yadidsion Decl., Exh. 1, at ¶8.4.)

Within fourteen days (14) after receipt of the Class List and Data, the Settlement Administrator will: (1) create a Class Member Settlement Information Sheet for each Class Member, including the number of Qualifying Workweeks worked by and estimated Individual Settlement Payment due to each Class Member; (2) determine each Class Member's eligibility to receive payment as a member of the PAGA Class; (3) finalize and print the Notice of Settlement; (4) check all addresses against the National Change of Address database; and (5) within fourteen (14) days of receiving the Class List and Data, send to each Class Member via First-Class United States mail the Notice of Settlement, with the information in English and Spanish, to the most recent address known for each Class Member. (Yadidsion Decl., Exh. 1, at ¶8.4.3.)

If a Notice of Settlement is returned as undeliverable, the Settlement Administrator will perform a utility database search or other skip trace to attempt to locate a current address for the Class Member in question. The returned Notices of Settlement will be re-mailed to the new addresses obtained for such Class Members. Such searching and re-mailing will be completed within five (5) calendar days of the date a Notice of Settlement is returned as undeliverable. (Yadidsion Decl., Exh. 1, at ¶8.4.4.)

2. Dispute Procedure

If a Class Member disagrees with the number of Qualifying Workweeks, as stated in his or her Notice of Settlement, the Class Member may dispute his or her number of Qualifying Workweeks or date of separation from Defendant's employment by informing the Settlement Administrator of the number of Qualifying Workweeks and/or Pay Periods he or she claims to have worked during the Class Period, and provide any supporting documentation (such as, without limitation, payroll or time keeping records, and paycheck stubs) on or before the Response Deadline. If there is a dispute, the Settlement Administrator will consult with Class Counsel and Defendant's counsel to determine whether an adjustment is warranted. However, Defendant's records shall be presumed to be accurate. The Settlement Administrator shall determine any such disputes, subject to Court approval. The Settlement Administrator shall be obligated to notify Defendant of any disputes regarding the number of Qualifying Workweeks within three (3)

business days of their receipt, and after receiving Defendant's verification of the number of Qualifying Workweeks or date of separation from employment within five (5) business days of providing that notice, to resolve any disputes submitted by a Class Member within three (3) business days thereafter, and in no event later than the date of the Final Approval Hearing. (Yadidsion Decl., Exh. 1, at ¶8.6.) If a dispute arises after settlement checks have been distributed, the initial calculation shall stand (as Defendant shall be under no obligation to pay any amounts in excess of the Gross Settlement Amount under this Agreement).

3. Exclusion Procedure

Any Class Member who wishes to be excluded from the Settlement must notify the Settlement Administrator in writing of his or her desire to be excluded by mailing his or her own Request for Exclusion to the Settlement Administrator that clearly expresses such desire, acknowledges they will not receive any money from the settlement, and is signed by such Class Member. Any such Request for Exclusion shall include the Class Member's full name, current address and telephone number, and signature. (Yadidsion Decl., Exh. 1, at ¶8.5.1.)

To be valid, the Request for Exclusion must be postmarked by no later than the Response Deadline (e.g., sixty (60) days after the postmark date of the Class Notice). Any Class Member who submits a valid and timely Request for Exclusion shall be barred from participating in this Settlement, shall be barred from objecting to this Settlement, and shall receive no benefit from the Class Settlement. (Yadidsion Decl., Exh. 1, at ¶8.5.4.)

Any Class Member who fails to submit a timely, complete, and valid Request for Exclusion shall be barred from opting-out of the Settlement. It shall be conclusively presumed that, if a Request for Exclusion is not postmarked on or before the Response Deadline, the Class Member did not make the request in a timely manner. Under no circumstances shall the Settlement Administrator have the authority to extend the deadline for Class Members to submit a Request for Exclusion. (Yadidsion Decl., Exh. 1, at ¶8.5.2.)

4. Objection Procedure

In order for any Class Member to object to the Settlement, he or she must either (1) send to the Settlement Administrator, postmarked no later than the Response Deadline, a Notice of Objection, signed

1 by the objecting Class Member, or his or her attorney, along with all supporting papers (if any); or (2)
2 appear at the Final Approval Hearing and state their objection. The date a signed Notice of Objection is
3 postmarked shall be conclusively determined according to the records of the Settlement Administrator.
4 The Settlement Administrator shall immediately send any Notices of Objections it receives to Defendant's
5 counsel and Class Counsel. The Court retains final authority with respect to the consideration and
6 admissibility of any Notice of Objection. (Yadidsion Decl., Exh. 1, at ¶8.7.)

7 **IV. PRELIMINARY SETTLEMENT APPROVAL**

8 As a matter of public policy, settlement is a strongly favored method for resolving disputes. (See
9 *Utility Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 443 (9th Cir. 1989).) This is especially
10 true in complex class actions such as the one before the Court. (See *Officers for Justice v. Civil Serv.*
11 *Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982); *Wilkerson v. Martin Marietta Corp.*, 171 F.R.D. 273, 284 (D.
12 Colo. 1997).)

13 Any class settlement must be reviewed and approved by the Court. California Rules of Court, Rule
14 3.769; Fed. R. Civ. Proc., Rule 23(e). This is done in two steps: (1) early (preliminary) review by the court
15 and (2) final review after notice has been distributed to the class members for their comments or
16 objections. The *Manual for Complex Litigation* succinctly describes the scope of the preliminary approval
17 inquiry as follows:

18 Approval of class action settlements involves a two-step process. First,
19 counsel submits the proposed terms of settlement and the court makes a
20 preliminary fairness evaluation. If the preliminary evaluation of the
21 proposed settlement does not disclose grounds to doubt its fairness or other
22 obvious deficiencies, such as unduly preferential treatment of class
23 representatives or of segments of the class, or excessive compensation for
24 attorneys, and appears to fall within the range of possible approval, the court
25 should direct that notice...be given to the class members of a formal fairness
26 hearing, at which arguments and evidence may be presented in support of
27 and in opposition to the settlement.

28 (*Manual for Complex Litigation* (4th Ed. 2004) § 30.41.)

Thus, preliminary approval by the trial court is simply a conditional finding that the settlement
appears to be within the range of acceptable settlements. As Professor Newberg comments, "[t]he strength
of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement

proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer or is presumptively valid subject only to any objections that may be raised at a final hearing.” (4 William B. Rubenstein, et al., *Newberg on Class Actions* (5th Ed. 2016) § 11.26.)

In short, the Court need find only that the settlement falls within the range of possible final approval, also described as the “reasonable range.” (See, e.g., *North County Contractor's Assn. v. Touchstone Ins. Services*. (1994) 27 Cal. App. 4th 1085.) Trial courts have broad discretion to determine whether a class action settlement is fair. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) The trial court must exercise its discretion through the application of several well-recognized factors when deciding whether a class action settlement is fair. (See *Clark v. American Residential Services, LLC* (2009) 175 Cal. App. 4th 785, 799.) The list of factors, which “is not exhaustive and should be tailored to each case,” includes “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” (*Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 581; *Kullar*, 168 Cal.App.4th at p. 128, quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) The most important factor the trial court should consider in determining whether to approve a class action settlement is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement. (See, e.g., *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 408; *Kullar*, 168 Cal. App. 4th 116 at p. 130.) In sum, at the preliminary approval stage, the trial court must determine that the settlement was not the product of fraud, overreaching or collusion, and that the settlement is fair, reasonable and adequate. (*Nordstrom*, 186 Cal.App.4th. at p. 581.) In order to elicit the class members’ “reaction ... to the proposed settlement,” they must first receive notice of the proposed resolution. The preliminary approval process allows that to happen.

A. The Settlement Agreement Resulted from Arm’s-Length Negotiations

The presumption is that a proposed settlement is fair and reasonable when it is the result of arm’s-length negotiations. (See *Williams v. Vukovich*, 720 F.2d 909, 922-923 (6th Cir.1983) (“The court should

1 defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs.”);
2 *In re Excess Value Ins. Coverage Litig.*, No. M-21-84 (RMB), 2004 U.S. Dist. LEXIS 14822, at *34
3 (S.D.N.Y. July 30, 2004) (“Where ‘the Court finds that the settlement is the product of arm's length
4 negotiations conducted by experienced counsel knowledgeable in complex class litigation, the Settlement
5 will enjoy a presumption of fairness’”); *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 359, 380
6 (N.D. Ohio 2001) (granting preliminary settlement approval) (“when a settlement is the result of extensive
7 negotiations by experienced counsel, the Court should presume it is fair”); *see also* 4 Rubenstein, et al.,
8 *Newberg on Class Actions* (5th Ed. 2016) §11.41; *Manual For Complex Litigation* (4th Ed. 2004) §21.612.)

9 The proposed settlement here is the product of arm's-length negotiations, assisted by a well-
10 respected and independent mediator for which the Parties prepared by exchanging substantial relevant
11 information and documents.

12 Counsel for the parties have investigated the applicable law, as applied to the facts discovered,
13 regarding the alleged claims of Plaintiffs and potential defenses thereto, and the damages claimed by
14 Plaintiffs. Armed with this extensive body of knowledge and analysis, the Parties engaged in mediation
15 with a skilled mediator. At all times, the negotiations leading to the Settlement have been adversarial, non-
16 collusive and at arm’s length.

17 **B. The Strength of Plaintiffs’ Case and Complexities of Further Litigation**

18 Plaintiffs believe that the Settlement Class claims in this action are legally meritorious and present
19 a reasonable probability of a favorable determination on behalf of the class. At the same time, there is
20 undeniably significant litigation risk avoided by the proposed Settlement, both at class certification
21 proceedings, at trial, and in the appellate courts.

22 Liability remains highly contested by Defendant, which denies that it engaged in any violations of
23 the law, and further denies any liability or engagement in wrongdoing of any kind associated with the
24 claims alleged in the Action by the Named Plaintiffs or any Class Member. Defendant contends that at all
25 times it complied with all wage-and-hour laws in connection with the employment and/or retention of
26 services of Plaintiffs and the Class Members.

27 Plaintiffs’ counsel understood and appreciated the defenses and position of Defendant but believed
28 Plaintiffs would ultimately succeed in the action. In light of their strongly divergent views, the Parties,

1 with the assistance of the mediator, were able to negotiate a fair settlement, considering the costs and risks
2 of continued litigation. The negotiations were at all times conducted professionally and at arm's length
3 and have produced a result that the Parties believe to be in their respective best interests.

4 The Parties have also considered the uncertainty and risk of the outcome of further litigation, and
5 the difficulties and delays inherent in such litigation. Plaintiffs are also aware of the burdens of proof
6 necessary to establish liability for the claims asserted in the action, the defenses thereto, the difficulties in
7 establishing damages.

8 In evaluating the settlement, the Court will seek a reasonable estimate of the nature and amount of
9 recovery that each class member could have obtained if the Plaintiffs had prevailed in the litigation.
10 Numerous decisions summarize a trial court's task when considering whether to approve the settlement
11 of a putative class action. As one Court stated:

12 The trial court has broad discretion to determine whether the settlement is
13 fair. [Citation.] It should consider relevant factors, such as the strength of
14 plaintiffs' case, the risk, expense, complexity and likely duration of further
15 litigation, the risk of maintaining class action status through trial, the
16 amount offered in settlement, the extent of discovery completed and the
stage of the proceedings, the experience and views of counsel, the presence
of a governmental participant, and the reaction of the class members to the
proposed settlement.

17 (*Cellphone Fee Termination Cases* (2009) 180 Cal. App. 4th 1110, 1117-18, quoting *Dunk v. Ford Motor*
18 *Co.* (1996) 48 Cal.App.4th 1794, 1801.)

19 The court's consideration of relevant factors, however, does not transform the settlement approval
20 "into a trial or rehearsal for trial on the merits." (*7-Eleven Owners for Fair Franchising v. Southland Corp.*
21 (2000) 85 Cal. App. 4th 1135, 1145, quoting *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th
22 Cir. 1992).) The record need only provide the trial court with an understanding of the amount that is in
23 controversy and the realistic range of outcomes of the litigation.

24 Because settlements are inherently a compromise, once the parties have provided it with the
25 requisite "basic information," the trial court must only "satisfy itself that the class settlement is within the
26 'ballpark' of reasonableness." (*Tech-Bilt, Inc. v. Woodward-Clyde & Assoc.* (1985) 38 Cal.3d 488, 499-
27 500.)

1 Here, in preparation for mediation, Plaintiffs calculated Defendant's liability to Class Members to
2 be in excess of the settlement amount. Plaintiffs' valuation assumed that Plaintiffs: (1) prevailed in
3 certifying the case and (2) prevailed in establishing liability on the merits. (Yadidsion Decl. ¶18.)

4 The realistic range of outcomes for this litigation was significantly discounted due to the present
5 state of the law regarding alleged "off-the-clock" work, meal and rest break claims, and the other claims
6 brought in the Actions, Defendant's defenses for each claim, and the likelihood of prevailing on a class
7 certification motion as well as trial and any appeals. (Yadidsion Decl. ¶¶37-71.) Where both sides face
8 significant uncertainty, the attendant risks favor settlement. (*See Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
9 1026 (9th Cir. 1998).)

10 **1. Kullar v. Footlocker Analysis**

11 To allow this Court to make an informed assessment pursuant to *Kullar v. Foot Locker Retail, Inc.*
12 (2008) 168 Cal.App.4th 116, Plaintiffs' Counsel provides the following assessment of the case and
13 settlement. Plaintiffs' Counsel believes the settlement is a very good one for the class members. In this
14 case, Plaintiffs sought unpaid wages and statutory penalties as well as equitable remedies such as
15 restitution. In advance of mediation, Plaintiffs reviewed all relevant facts and legal authority, and in
16 collaboration with their expert, prepared a damages model for this action. If Plaintiffs were to prevail
17 both on certification and on the merits of each of his claims, assuming 50% liability for meal period
18 violations, 50% liability for rest period damages, a substantial amount of unpaid overtime hours (5 minutes
19 per shift), 100% liability for unpaid wages (5 minutes per shift), 100% recovery for waiting time and wage
20 statement penalties under Labor Code Section 203, and 100% recovery for all PAGA penalties, total
21 recoverable damages through the date of mediation in November 2022 would be, excluding interest,
22 approximately \$10,931,212 (\$4,613,626 in damages, \$5,077,586 in waiting time and wage statement
23 penalties, and \$1,240,000 in PAGA penalties). (Yadidsion Decl. ¶¶37-71.)

24 The proposed settlement before the Court amounts to approximately 12.8% of Defendant's
25 maximum total damages exposure. (Yadidsion Decl. ¶73.) Courts have determined that settlements are,
26 of course, reasonable even where plaintiffs recover only a portion of their actual losses. (*See Behrens v.*
27 *Wometco Enters., Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990) ("[T]he
28 fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the

1 settlement is unfair or inadequate.”.) Indeed, “[a] settlement can be satisfying even if it amounts to a
2 hundredth or even - a thousandth of a single percent of the potential recovery.” (*Id.*; see also *City of Detroit*
3 *v. Grinnell Corp.*, 356 F. Supp. 1380, 1386 (S.D.N.Y. 1972) (a recovery of 3.2% to 3.7% of the amount
4 sought is “well within the ball park”), *aff’d in part, rev’d on other grounds*, 495 F.2d 448 (2d Cir. 1974);
5 *Martel v. Valderamma*, 2015 U.S. Dist. LEXIS 49830, at * 17 (C.D. Cal. 2015) (approving a settlement
6 of \$75,000 when potential damages were \$1.2 million); *In re Toys R US FACTA Litig.*, 295 F.R.D. 438,
7 453 (C.D. Cal. 2014) (approving settlement with vouchers (not cash) potentially worth a maximum of
8 three percent (3%) if all possible claims were actually made, or \$391.5 million aggregate voucher potential
9 where the class could have recovered \$13.05 billion); *Ma v. Covidien Holding, Inc.*, No. SACV 12-02161-
10 DOC, 2014 WL 360196 at *5 (C.D. Cal. Jan. 31, 2014) (finding a settlement worth 9.1% of the total
11 value of the action “within the range of reasonableness”); *Balderas v. Massage Envy Franchising, LLC*,
12 No. 12-CV-06327 NC, 2014 WL 3610945 at *5 (N.D. Cal. July 21, 2014) (granting preliminary approval
13 of a net settlement amount representing 5% of the projected maximum recovery at trial); *Glass v. UBS*
14 *Fin. Servs., Inc.*, No. C-06-4068 MMC, 2007 WL 221862, at *9 (N.D. Cal. Jan. 26, 2007), *aff’d*, 331 Fed.
15 Appx. 452 (9th Cir. 2009) (approving a settlement of an action claiming unpaid overtime wages where
16 the settlement amount constituted approximately 25% to 35% of the estimated actual loss to the class); 4
17 William B. Rubenstein *et al.*, *Newberg on Class Actions* (5th ed. 2016) § 13:15 (the range of
18 reasonableness percentage could be as low as 1/100th or 1/1000th of 1%).

19 Collectively, the damages were broken down as follows:

20 **Meal and Rest Break Claims**

21 Plaintiffs’ expert conducted an analysis of Defendant’s records and determined that there were
22 approximately 925 Class Members. Based on information developed since the Parties’ November 2022
23 mediation, the Parties currently estimate that there are approximately 925 Class Members. (*Id.*, ¶13.)

24 Plaintiffs’ expert valued the meal and rest break claims at a maximum of approximately
25 \$3,669,119.00 for each type of violation, assuming 50% liability for every meal break and 75% liability
26 for every rest break. Plaintiffs’ expert determined this value based on a class period from October 28,
27 2017 through the date of mediation on November 15, 2022. (Yadidsion Decl. ¶¶37-44.)

1 **Unpaid Overtime Wages**

2 After reviewing Defendant's business records, Plaintiffs' expert determined that the total damages
3 for unpaid overtime is approximately \$781,075. (Yadidsion Decl. ¶¶45-49.)

4 **Unpaid Minimum Wages**

5 After reviewing Defendant's business records, Plaintiffs' expert determined that the total damages
6 for unpaid minimum wages is approximately \$163,432. (Yadidsion Decl. ¶¶50-52.)

7 **Late/Termination Pay**

8 Plaintiffs' late pay claim is derivative of his claim for unpaid wages. Thus, assuming that
9 Plaintiffs prevailed on their claims, Plaintiffs' expert calculated Defendant's exposure under Labor Code
10 Sections 201 through 203 to be approximately \$3,879,986, assuming 100% liability and the Court rules
11 that Defendant willfully violated the law as the statute expressly requires. (Yadidsion Decl. ¶¶53-56.)

12 **Wage Statement Damages**

13 Plaintiffs' expert valued Defendant's exposure for alleged wage statement violations, assuming
14 100% liability, to be approximately 12,400 violations, giving rise to approximately \$1,197,600 in
15 penalties. (Yadidsion Decl. ¶¶60-65.)

16 **PAGA Penalties**

17 Assuming approximately 848 members of the PAGA Class, Plaintiffs' expert valued Defendant's
18 exposure for alleged civil penalties under the PAGA, assuming 100% liability, to be approximately
19 \$1,240,000.00. (Yadidsion Decl. ¶¶67-71.)

20 **Risks of Litigation Which Necessitated Settlement Discounts**

21 In determining the reasonable settlement value of the asserted claims, Plaintiffs' Counsel
22 considered a number of issues necessitating deductions to be taken from the maximum potential value to
23 arrive at the Gross Settlement Value.

24 Risks of Certification in General: The great discretion afforded trial courts in electing to grant or
25 deny class certification, and the resultant possibility that this Court would deny certification of any of the
26 proposed classes, resulting in no recovery whatsoever for those unnamed class members, further weighed
27 in favor of settlement. Going into mediation, Class Counsel were realistic about cases wherein class
28 certification was denied in meal period and rest break cases. (*See, e.g., In re Lamps Plus Overtime Cases*

(2012) 209 Cal. App. 4th 35; *Washington v. Joe's Crab Shack*, 271 F.R.D. 629 (N.D. Cal. 2010) (“individualized inquiry will be required to determine whether any single employee failed to take a meal break because he/she was too busy, and also to determine whether a particular employee signed a waiver based on a decision not to take meal breaks”); *Hernandez v. Chipotle Mexican Grill, Inc.* (2012) 146 Cal. Rptr. 3d 424.)

Defenses to Claims of Willful Violations: Defendant has asserted a number of defenses to Plaintiffs’ claims for willful violations of the Labor Code. Initially, waiting time penalties under Labor Code Section 203 may not be recoverable in this instance in light of the fact that an employer’s good faith mistaken belief that no wages are owed may negate a finding of willfulness. A good faith dispute that *any* wages are due “will preclude imposition of waiting time penalties under Section 203,” and an employer’s good faith mistaken belief that wages are owed may negate a finding of willfulness. (8 C.C.R. § 13520; *Road Sprinkler Fitters Local 669 v. G & G Fire Sprinklers, Inc.* (2002) 102 Cal. App. 4th 765, 782.) Accordingly, on remand from the Supreme Court’s decision in *Troester v. Starbucks Corp.*, the district court granted summary judgment for Starbucks on the waiting time penalty claim, finding that a good faith dispute existed based on Starbucks’ defense to the unpaid wage claim in reliance on the *de minimis* doctrine that had not previously been addressed by the California courts. (*See Troester v. Starbucks Corp.*, 387 F.Supp.3d 1019, 1030 (C.D. Cal. 2019).)

Plaintiffs also allege that Labor Code Section 1194.2 entitles the class to double the amount of unpaid minimum wages as liquidated damages. But that Section provides that:

(b) Notwithstanding subdivision (a), if the employer demonstrates to the satisfaction of the court or the Labor Commissioner that the act or omission giving rise to the action was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of any provision of the Labor Code relating to minimum wage, or an order of the commission, the court or the Labor Commissioner may, as a matter of discretion, refuse to award liquidated damages or award any amount of liquidated damages not exceeding the amount specified in subdivision (a).

The courts have held that pursuant to Labor Code Section 1194.2, an employee who has not received the minimum wage is entitled to recover the amounts unlawfully withheld plus additional amounts as penalties and liquidated damages only where *culpable conduct* is shown. (*See Brewer v. Premier Golf Properties* (2009) 168 Cal. App. 4th 1243, fn. 8 (citing *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 325–

326).) As with the waiting time penalty claim discussed above, Plaintiffs may be unable to prove willfulness in this instance.

Finally, Plaintiffs have a claim under Labor Code Section 226(e), which provides that an employee suffering injury as the result of a knowing and intentional failure to comply with Section 226 is subject to a penalty of up to \$100 per pay period up to \$4,000 per employee. Similar defenses appear to exist in response to that claim, however, because Plaintiffs may not be able to establish that Defendant's alleged violation was "knowing and intentional" as the statute requires. In *Arroyo v. International Paper Co.*, ___ F.Supp.3d ___, 2020 WL 887771 at *10-12 (N.D. Cal. 2020), the district court held that an employer's good faith belief that it is in compliance with Section 226 precludes liability for the statutory penalty provided by Section 226(e).

Trial and Manageability Issues: While Plaintiffs were confident in the strength of their claims, as is always the case with a trial, Plaintiffs needed to accept that there was a possibility that they would not prevail at trial. (Yadidsion Decl. ¶¶74-77.)

Compromise is inherent and necessary in the settlement process. Thus, even if "the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated," this is no bar to a class settlement because "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." (*Wershba*, 91 Cal. App. 4th at 241 (quoting *Air Line Stewards, Loc. 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972).) The Ninth Circuit observed "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" (*Officers for Justice v. Civil Serv. Commission*, 688 F.2d 615, 624 (9th Cir.1982) (citation omitted).) Thus, when analyzing the amount offered in settlement, the Court should examine "the complete package taken as a whole," and the amount is "not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." (*Id.* at 625, 628.)

Given the difficulties Plaintiffs and the Class faced, both in terms of certification and in adjudicating their claims on the merits, the litigation discounts afforded by Plaintiffs are reasonable and the proposed Settlement is fair, reasonable and adequate.

1 In the present case, it is clear that the proposed Settlement before this Court is the best course of
2 action as it ensures fair, reasonable and adequate redress and recovery for the members of the class. Thus,
3 it was clearly reasonable for Plaintiffs to negotiate a smaller certain award rather than seek the full
4 recovery but risk recovering nothing.

5 **C. The Settlement Has No Obvious Deficiencies**

6 The proposed Settlement has no obvious deficiencies. The settlement provides no preferential
7 treatment for the Plaintiffs or other settlement class members. The Plaintiffs will receive distributions
8 from the settlement proceeds calculated in the same manner as the distributions to all other Participating
9 Class Members, plus any service payment award approved by the Court.

10 The proposed Settlement does not place the named Plaintiffs' interests ahead of the class as a
11 whole. Apart from a reasonable incentive payment for his efforts on behalf of the class, typical in class
12 action litigation (and subject to Court approval after notice to the Settlement Class), the named Plaintiffs'
13 personal recovery in this action and settlement will be the same as those with whom they share a common
14 set of facts among the Settlement Class. The named Plaintiffs have not in any way tried to leverage a class
15 action for personal agenda or gain.

16 Plaintiffs contend that the proposed Settlement does not place Class Counsel's interests ahead of
17 Class Members' interests. Further, the Settlement provides only for a maximum permissible amount of
18 the request for any award of attorneys' fees and litigation expenses. Any award of fees and expenses
19 remains to be determined by the Court at the time of the Final Approval Hearing and must necessarily be
20 found to be fair and reasonable to the Settlement Class based on applicable law.

21 Each Settlement Class Member has the right to object and be heard regarding the amount of fees
22 and expenses requested. Any amounts not awarded by the Court as fees and expenses will remain in the
23 net settlement fund to be distributed to the Class. Counsel will file a separate motion for approval of the
24 fee award sought herein, at the time of and in conjunction with the filing of the Motion for Final Approval,
25 should Preliminary Approval be granted, and a Final Approval Hearing be scheduled by the Court.

26 //

27 //

28 //

1 **D. The Class Representative’s Payment, Class Counsel Fees Payment, and Class**
2 **Counsel Litigation Expenses Payment**

3 **1. The Enhancement Award Requested by Plaintiff Is Reasonable**

4 As part of the Settlement, Plaintiffs will seek a class representative service payment award of
5 \$10,000 each in addition to their share of the Net Settlement Amount.

6 Plaintiffs were formerly employed by Defendant. (Declaration of Alejandro Valenzuela
7 (“Valenzuela Decl.”), ¶3; Declaration of Angeleigh Manjarrez (“Manjarrez Decl.”), ¶3; Declaration of
8 Paris Johnson (“Johnson Decl.”), ¶3.) Plaintiffs have taken an extraordinary step to challenge their former
9 employer’s actions by bringing this lawsuit. They did so in the belief that they, and the members of the
10 Class, were, in fact, entitled to the relief sought in this case. Plaintiffs’ actions have resulted in a
11 substantial recovery for the members of the Class, and the enhancement award he seeks is reasonable.

12 Plaintiffs fully participated in the analysis and planning of this action throughout the pendency of
13 the litigation. (Valenzuela Decl., ¶¶6, 10-17; Manjarrez Decl., ¶¶6, 10-17; Johnson Decl. ¶¶6, 10-17.)
14 They were kept well informed of the nature and extent of settlement discussions and approved the same.
15 (*Id.*)

16 The service payment award sought for Plaintiffs is entirely reasonable, consistent with awards in
17 this Court and represents a mere two percent (2%) of the Gross Settlement Fund. Absent the actions taken
18 by Plaintiffs, none of the Class Members would have reaped the rewards of this action.

19 **2. The Fees and Costs Requested by Class Counsel Are Reasonable**

20 As for the fees to be awarded to Class Counsel, California Rules of Court, Rule 3.769 (b) provides,
21 in pertinent part:

22 Any agreement, express or implied, that has been entered into with respect to the payment
23 of attorney’s fees ... must be set forth in full in any application for of the ... settlement of
 an action that has been certified as a class action.

24 The proposed Class Notice provides Class Members with information as to the amount of
25 attorneys’ fees and litigation-expense reimbursement that will be sought in this matter. Although Class
26 Counsel will provide further argument when they file their motion for the award of fees and expenses in
27 connection with the Final Approval Hearing, the following is a brief statement of the law concerning the
28

1 same.

2 As noted, *supra*, the Settlement provides for Class Counsel to apply to the Court for an award of
3 fees in the maximum amount of one third (1/3) of the Gross Settlement Fund, plus reimbursement of their
4 litigation expenses in an amount not to exceed \$13,000.00. This percentage award is commensurate with
5 (1) the risk Class Counsel took in commencing this action, (2) the time, effort and expense dedicated to
6 the case, (3) the skill and determination they have shown, (4) the results they have achieved throughout
7 the litigation, (5) the value of the Settlement which they have achieved for Class Members, and (6) the
8 other cases they have turned down in order to devote their time and efforts to this matter.

9 California encourages attorneys to take the risks of time and money necessary to vindicate the
10 public interest. To fulfill this policy, California law provides that attorneys' fees awards should be
11 equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred.
12 (*See Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19.) Accordingly, Class Counsel's request is
13 based on marketplace standards. In *Lealao*, the First Appellate District held that when an action leads to
14 a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure
15 that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable
16 litigation." (*Id.* at 50.)

17 The governing principles, as well as a survey of attorneys' fees jurisprudence (both in California
18 and throughout the country), are set out in *Lealao*. As *Lealao* notes, trial courts have "wide latitude" in
19 assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest
20 abuse of discretion." (82 Cal. App. 4th at 41.) Indeed, it is long settled that the "experienced trial judge
21 is the best judge of the value of professional services rendered in his court" (*Ketchum v. Moses* (2001)
22 24 Cal.4th 1122, 1132.) As the court in *Lealao* explained, in determining an attorney fee request, courts
23 should strive to award fees equivalent to those "freely negotiated in the legal marketplace in comparable
24 litigation." (82 Cal.App.4th at 50.) "If courts were to ask what fee structure an informed, sophisticated
25 client would use to compensate his attorney when close monitoring is not feasible, they would at least
26 have focused on the correct question." (*Id.* at 48.) As *Lealao* recognizes, fee awards that are too small
27 will "chill the private enforcement essential to the vindication of many legal rights and obstruct the
28 representative actions that often relieve the courts of the need to separately adjudicate numerous claims."

(*Id.* at 53.) Finally, an attorneys’ fees motion should not turn into “a second major litigation.” (*Id.* at 31 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).)

As in many cases of this type, Class Counsel seek a fee award for their successful prosecution and resolution of this action, calculated as a percentage of the total value of benefits afforded the Class Members by the Settlement. (*See Serrano v. Priest* (1977) 20 Cal.3d 25, 49 (*Serrano III*); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977).) The purpose of this equitable doctrine is not only to avoid unjust enrichment of counsel, but also to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. (*See Vincent*, 557 F.2d at 769.) Where the amount of a settlement is a “certain easily calculable sum of money,” California courts may calculate attorney fees as a reasonable percentage of the settlement created. (Weil and Brown, *California Practice Guide: Civil Procedure Before Trial* § 14:145; *see also Dunk*, 48 Cal.App.4th at 1808.)

E. Claims Administration

Plaintiffs seek the appointment of ILYM Group, Inc. as the Settlement Administrator. ILYM is a well-established class action administration company that has served as administrator in hundreds of wage and hour cases throughout the country. (*See Declaration of Lisa Mullins (“Mullins Decl.”)*, ¶2.) The Settlement Administrator has estimated the cost for administering the settlement will not exceed \$15,750.

F. The Proposed Class Notice is Adequate

Rule 3.769(e) of the California Rules of Court provides:

If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing.

Here, the parties have negotiated the form of a notice (the “Class Notice,” attached as Exhibit A to the Settlement Agreement, which is attached as Exhibit 1 to the Yadidsion Declaration). The Class Notice will be disseminated to all Class Members and will be provided in both English and Spanish. Class Notices returned as undeliverable will be subjected to a further follow up and re-mailing procedure. (Yadidsion Decl. ¶¶78-83.)

1 The content of the proposed Class Notice meets all requirements for appropriately providing full
2 disclosure and information to the Class Members. “Notice is satisfactory if it generally describes the terms
3 of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come
4 forward and be heard.” (4 *Newberg on Class Actions* § 8.32.)

5 In light of the foregoing, the Class Notice is proper and affords the best possible notice under the
6 circumstances presented in this case.

7 **V. CLASS CERTIFICATION IS APPROPRIATE**

8 As part of their negotiations, the Parties have stipulated to class certification for the purposes of
9 settlement only. Should this Court decline to approve the Parties’ settlement, Defendant reserves all rights
10 to challenge class certification and nothing contained in this motion or the documents submitted in
11 connection with the settlement shall be a waiver by Defendant of any argument as to why the class should
12 not be certified. Additionally, in the event approval of the proposed Settlement is denied, this Motion and
13 the documents submitted for settlement may not be used as evidence against Defendant’s argument that
14 the class should not be certified.

15 California has a very strong public policy favoring the use of class actions to resolve claims
16 asserting violations of its strict wage and hour laws. In *Gentry v. Superior Court* (2007) 64 Cal. Rptr. 3d
17 773, the California Supreme Court addressed the issue of a class arbitration waiver clause in an
18 employment agreement in relation to a Plaintiff seeking overtime compensation, and observed that:

19 Given these risks and economic realities, class actions play an important
20 function in enforcing overtime laws by permitting employees who are
21 subject to the same unlawful payment practices a relatively inexpensive way
22 to resolve their disputes. We have acknowledged as much in a case
23 involving overtime litigation similar to that at issue in the present case. “By
24 establishing a technique whereby the claims of many individuals can be
resolved at the same time, the class suit both eliminates the possibility of
repetitious litigation and provides small claimants with a method of
obtaining redress for claims which would otherwise be too small to warrant
individual litigation.”

25 *Id.* at 784 (quoting *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 340.) In light of
26 this well-settled California public policy, the conditional certification of the proposed Class for purposes
27 of settlement only is appropriate.

1 **A. Standard for Pre-Certification Settlements**

2 “[P]re-certification settlements are routinely approved if found to be fair and reasonable.”
3 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244; *accord Dunk*, 48 Cal.App.4th at 1803
4 (although the settlement was reached before any “adversary certification,” the court was satisfied that it
5 was “fair, adequate and reasonable”); *see also In re Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y.
6 1984) (“many courts have employed this practice in the name of judicial efficiency in order to facilitate
7 apparently beneficial settlement proposals”).)

8 “The strength of the findings made by a judge at a preliminary hearing or conference concerning
9 a tentative settlement proposal... may be set out in conditional orders granting tentative approval to the
10 various items submitted to the court. Three basic rulings are often conditionally entered at this preliminary
11 hearing. These conditional rulings may approve a temporary Settlement Class, the proposed settlement,
12 and the class counsel’s application for fees and expenses.” (4 *Newberg on Class Actions* § 11.26.)

13 The standard for class certification in the settlement context is a significantly lower threshold than
14 in a contested proceeding or a trial context:

15 The two basic purposes for the Rule 23 certification requirements, as they
16 relate to questions of a nationwide class are: (1) to keep the lawsuit
17 manageable for trial; and (2) to protect the interests of the nonrepresentative
18 members. The first purpose is inapposite in the settlement context, and the
19 second, as it relates to commonality of issues, only makes a difference if the
 nonrepresentative class members would do much better by litigating on
 their own or in their own jurisdiction. The second category concerns are
 protected by the trial court's fairness review of the settlement.”

20 (*Dunk*, 48 Cal.App.4th at 1807, fn. 19 (*emphasis added*)).) The reason for this is that no trial is anticipated
21 in the settlement context, so any case management issues inherent in determining if the class should be
22 certified need not be confronted. (*See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1987).)

23 The very liberal standard expressed in *Dunk* is plainly satisfied here. The requirements for class
24 certification in the settlement context – ascertainability, numerosity, predominance of common questions
25 of law and fact, typicality, and adequacy – all are met. It certainly cannot be said that the class members
26 would do “much better by litigating on their own.” (*Dunk*, 48 Cal.App.4th at 1807, fn. 19.) The Settlement
27 Class should be conditionally certified as requested.

1 **B. The Requirements for Class Certification in the Settlement Context Are Satisfied**

2 **1. Ascertainability and Numerosity**

3 The proposed Settlement Class is ascertainable and sufficiently numerous. A “class is ascertainable
4 if it identifies a group of unnamed Plaintiffs by describing a set of common characteristics sufficient to
5 allow a member of that group to identify himself or herself as having a right to recover based on the
6 description.” (*Bartold v. Glendale Fed. Bank* (2000) 81 Cal.App.4th 816, 828.) The class definition, the
7 size of the class and the means for identifying the members of the class determine whether the class is
8 ascertainable. (*Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1274.)

9 Whether a class is ascertainable is determined by examining the class definition, the size of the
10 class and the means available for identifying class members. *See Vasquez*, 4 Cal. 3d at 821-22; *Reyes*, 196
11 Cal. App. 3d at 1271. Class members are “ascertainable” where they may be readily identified without
12 unreasonable expense or time. Plaintiffs contend that the requirements of numerosity and ascertainable
13 class membership are met here, and for settlement purposes only, Defendant does not dispute that both of
14 these requirements are met. The Class Period is defined as the period from October 28, 2017 through
15 February 16, 2023. (Yadidsion Decl., Exh. 1 at ¶A.) The Settlement Class is defined as all individuals who
16 are or were previously employed by Defendant Bamia 2 LLC in California and classified as a non-exempt
17 employee at any time during the period of October 28, 2017 through February 16, 2023. (*Id.*, Exh. 1 at
18 ¶1.5.)

19 In this case, the members of the proposed Settlement Class are identifiable from Defendant’s own
20 records. (Yadidsion Decl., ¶83.) The Settlement Class members are also sufficiently numerous to justify
21 class certification. Defendant has preliminarily identified at least 925 employees comprising the
22 Settlement Class.

23 **2. Predominance of Common Questions of Law and Fact**

24 The interrelated commonality and predominance requirements are satisfied if common issues
25 predominate. At its heart, this is a procedural inquiry asking “whether... the issues which may be jointly
26 tried, when compared with those requiring separate adjudication, are so numerous or substantial that the
27 maintenance of a class action would be advantageous to the judicial process and to the litigants.” (*Sav-On*
28 *Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (citing *Collins v. Rocha* (1972) 7 Cal.3d

232, 238).) Under the lower threshold applicable in the settlement context, “commonality of issues only makes a difference if the non-representative class members would do much better by litigating on their own.” (*Dunk*, 48 Cal.App.4th at 1807, fn. 19.)

The Settlement Class members’ claims here all stem from a common set of facts, circumstances and occurrences. Common questions of law and fact relevant to adjudication of the Class Members’ claims include the following:

- Whether Defendant maintains a policy and/or practice that deprives Plaintiff and Class Members of wages earned and their meal and/or rest breaks;
- Whether Defendant unlawfully and/or willfully deprived Plaintiffs and Class Members of meal and rest breaks and pay for missed breaks pursuant to California Labor Code Sections 200, 226.7, 512, and 8 C.C.R. Section 11160;
- Whether Defendant failed to pay all wages owed to Plaintiffs and other Class Members upon their separation from Defendant’s employment; and
- Whether Defendant maintains a policy and/or practice that results in the issuance of inaccurate wage statements to Plaintiffs and the Class.

The complex common questions implicated by the facts and law in this case strongly suggest that Settlement Class Members could not do substantially better than this Settlement by litigating individually. (*See Dunk*, 48 Cal.App.4th at 1807, fn. 19.) Commonality and predominance requirements for certification, particularly in the less intensive context of a Settlement Class, are therefore satisfied.

3. Typicality

Typicality means merely that the class representative is similarly situated to the members of the class, not that his claims are identical. (*See Classen v. Weller* (1983) 145 Cal. App. 3d 27, 45-46.) The typicality requirement is satisfied if the class representative’s claims arise from the same events or course of conduct that gives rise to the class claims, and are premised upon the same legal theories. (*Id.*)

The Class Representatives have claims or defenses typical of the class and can adequately represent the class. (*See Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429.) Section 382 of the Code of Civil Procedure authorizes class suits in California 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

1 court.” To obtain certification, a party must establish the existence of both an ascertainable class and a
2 well-defined community of interest among the class members, which involves three factors: predominant
3 common questions of law or fact, class representatives with claims or defenses typical of the class and
4 class representatives who can adequately represent the class.” (*Id.* at 435.)

5 In this case, Plaintiffs’ claims are typical of the members of the Class. (Valenzuela Decl., ¶¶3-6, 8;
6 Yadidsion Decl., ¶93.) Plaintiffs, like other members of the Class, worked for Defendant in California and
7 was subjected to Defendant’s policies and practices. Plaintiffs discovered that they and other employees
8 were not being paid for all hours worked and were not provided with legally compliant meal and rest
9 periods. (Valenzuela Decl., ¶¶3-6, 8; Manjarrez Decl., ¶¶3-6, 8; Johnson Decl., ¶¶3-6, 8.) Apart from
10 seeking a moderate incentive, common in class litigation, Plaintiffs seek to gain nothing personally from
11 this litigation or settlement which is not made available to the Settlement Class members. Plaintiffs have
12 at all times been willing and able to aggressively and competently assert the interests of the Settlement
13 Class members, and, but for this Settlement, would continue to do so. (*Id.*, ¶¶3-6, 8-10.)

14 **4. Adequacy**

15 “Adequacy of representation depends on whether the plaintiff’s attorney is qualified to conduct the
16 proposed litigation and the plaintiff’s interests are not antagonistic to the interests of the class.” (*McGee*
17 *v. Bank of Am.* (1976) 60 Cal.App.3d 442, 487.) Plaintiffs’ counsel are experienced class action litigators,
18 with particular experience in litigating similar wage and hour class cases. (Yadidsion Decl., ¶¶3-8.) In
19 addition, the proposed class representatives have at all times been willing and able to aggressively and
20 competently assert the interests of the Settlement Class members. (Valenzuela Decl., ¶¶3-6, 8-10;
21 Manjarrez Decl., ¶¶3-6, 8-10; Johnson Decl., ¶¶3-6, 8-10.) Adequacy of representation exists here.

22 **VI. CONCLUSION**

23 Based upon the foregoing, Plaintiffs respectfully request that this Court issue an Order:

- 24 1. Granting preliminary approval to the class action Settlement achieved in this matter;
- 25 2. Certifying the Settlement Class for settlement purposes, pending final approval of the
26 Settlement;
- 27 3. Preliminarily approving Plaintiffs Alejandro Valenzuela, Angeleigh Manjarrez, and Paris
28 Johnson as the Class Representatives of the Settlement Class;

1 DATED: June 30, 2023

FALAKASSA LAW, P.C.

2
3 By: Joshua Falakassa (with permission DY)

4 Joshua Falakassa

5 Attorneys for Plaintiff PARIS JONHSON,
6 individually, in a representative capacity, and on
7 behalf of the putative class
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