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

YURI MILON, individually, and on behalf of
other members of the general public similarly
situated; OLIMPIA MEZA PELAYO,
individually, and on behalf of other members
of the general public similarly situated and
on behalf of other aggrieved employees
pursuant to the California Private Attorneys
General Act; EMILIO LOPEZ, individually,
and on behalf of other members of the
general public similarly situated and on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General
Act,

Plaintiffs,

vs.

DAVID & ESPERANZA CHAVEZ
FAMILY LIMITED PARTNERSHIP DBA
CHAVEZ SUPERMARKET, a California
limited partnership; and DOES 1-50,
inclusive,

Defendants.

Case No.: 20CV368379

Honorable Theodore C. Zayner
Department 19

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 and David D. Bibiyan);
Declaration of Proposed Class
Representatives (Yuri Milon, Olimpia
Meza Pelayo, and Emilio Lopez); and
[Proposed] Order filed concurrently
herewith]

Date: October 2, 2024
Time: 1:30 p.m.
Department: 19

Complaint Filed: July 17, 2020
FAC Filed: February 23, 2024
Trial Date: None Set

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

PLEASE TAKE NOTICE that on October 2, 2024 at 1:30 p.m. or as soon thereafter as the matter may be heard before the Honorable Theodore C. Zayner in Department 19 of the Superior Court of California for the County of Santa Clara, located at 191 North First Street, San Jose, California 95113, Plaintiffs Yuri Milon, Olimpia Meza Pelayo, and Emilio Lopez (together, “Plaintiffs” or “Class Representatives”) 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 Class Action and PAGA Settlement Agreement (“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, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Attorneys’ Costs to Class Counsel, Service Payments to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Yuri Milon, Olimpia Meza Pelayo, and Emilio Lopez as Class Representatives;
- Preliminarily appointing Arby Aiwazian, Joanna Ghosh, and Yasmin Hosseini of Lawyers for Justice, PC and David D. Bibyan and Vedang J. Patel, of Bibiyan Law Group, P.C. as Class Counsel;
- Approving the proposed Notice of Class Action and PAGA 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 for the Attorneys' Fees and Attorneys' Costs to Class Counsel, Service Payments to Plaintiffs, Settlement Administration Costs to Settlement Administrator, and the PAGA Allocation.

This motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of the settlement of a putative class action, allows the Court to preliminarily certify a class for settlement purposes, and permits the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Yasmin Hosseini and David D. Bibiyan) and Proposed Class Representatives (Yuri Milon, Olimpia Meza Pelayo, and Emilio Lopez) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: May 17, 2024

LAWYERS for JUSTICE, PC

By:



Yasmin Hosseini
Attorneys for Plaintiff Yuri Milon

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Yuri Milon (“Milon”), Olimpia Meza Pelayo (“Pelayo”), and Emilio Lopez (“Lopez”) (collectively, “Plaintiffs” or “Class Representatives”) seek preliminary approval of the Class Action and PAGA Settlement Agreement (“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 David & Esperanza Chavez Family Limited Partnership dba Chavez Supermarket (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to settle the lawsuit for a Gross Settlement Amount of Three Million Five Hundred Thousand Dollars and Zero Cents (\$3,500,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Distribution Fund;² (2) Service Payments to Plaintiffs of Twelve Thousand Dollars and Zero Cents (\$12,000.00) each, for a total of Thirty-Six Thousand Dollars and Zero Cents (\$36,000.00)³; (3) attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or \$1,225,000.00 (“Attorneys’ Fees”), and reimbursement of any actual litigation costs and expenses (“Attorneys’ Costs”) not to exceed Thirty-Two Thousand Dollars and Zero Cents (\$32,000.00) (collectively “Attorneys’ Fees and Costs”)⁴ to Class Counsel; (4) Settlement Administration Costs to the Settlement Administrator in an amount estimated not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00);⁵ and (5) the amount of Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$262,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$87,500.00) will be distributed to all current and former non-exempt employees

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Yasmin Hosseini (“Hosseini Decl.”), ¶ 19.

² *Id.*, ¶ 21.

³ *Id.*, ¶ 35.

⁴ *Id.*, ¶¶ 3-4.

⁵ *Id.*, ¶ 37.

of Defendant employed in the State of California during the PAGA Period (“PAGA Members”).⁶

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

All current and former non-exempt employees of Defendant employed in California during the Class Period (“Class” or “Class Members”).⁷

Class Members who do not submit a timely and valid request to be excluded from the Class Settlement (“Settlement Class Members”) will receive a share of the Net Distribution Fund (“Individual Settlement Payment”). Individual Settlement Payments will be distributed to Settlement Class Members *pro rata*, based on each Settlement Class Member’s share of the total number of Workweeks during the Class Period worked.⁸ “Workweeks” means any calendar week in which a Class Member was employed by Defendant for at least one day during the Class Period.⁹

PAGA Members will receive a *pro rata* share (“Individual PAGA Payment”) of twenty-five percent (25%) of the PAGA Allocation (i.e. \$87,500.00) (“Net PAGA Distribution Amount”), based on their Workweeks during the PAGA Period.¹⁰

The Settlement, if granted preliminary and final approval by the Court, will operate to resolve the Settled Class Claims of Plaintiffs and Settlement Class Members, and the Settled PAGA Claims of Plaintiffs Pelayo and Lopez, PAGA Members, and the State of California, against the Released Parties.¹¹

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⁶ Settlement Agreement, ¶ 27. “PAGA Period” is defined as the time period from August 19, 2019 through July 25, 2023, or, if applicable, the Alternate End Date pursuant to Paragraph 55 of the Settlement Agreement. *See id.*, ¶ 29.

⁷ *Id.*, ¶ 7. “Class Period” is defined as the time period from July 17, 2016 through July 25, 2023, or, if applicable, the Alternate End Date pursuant to Paragraph 55 of the Settlement Agreement. *See id.*, ¶ 9.

⁸ *Id.*, ¶ 54(f)(ii).

⁹ *Id.*, ¶ 41.

¹⁰ *Id.*, ¶¶ 20, 54(e)(ii).

¹¹ *See id.* at ¶ 38, for the full scope of the “Settled Class Claims” and *id.* at ¶ 39 for the full scope of the “Settled PAGA Claims.”

1 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

2 Defendant operates Chavez Supermarket, a supermarket chain specializing in Hispanic
3 foods. Plaintiffs are former employees of Defendant.

4 On July 17, 2020, Plaintiff Milon filed a Class Action Complaint for Damages, thereby
5 commencing a putative class action entitled *Yuri Milon v. David & Esperanza Chavez Family*
6 *Limited Partnership DBA Chavez Supermarket* in the Superior Court of California for the
7 County of Santa Clara, Case No. 20CV368379 (the “Milon Action” or “Action”) against
8 Defendant.

9 On August 19, 2020, Plaintiff Pelayo provided notice to the LWDA and to Defendant of
10 her intent to pursue civil penalties under PAGA for alleged violations of the California Labor
11 Code. On December 1, 2020, Pelayo filed a wage-and-hour Class Action Complaint in the
12 Superior Court for the County of Santa Clara captioned *Olivia Meza Pelayo v. David &*
13 *Esperanza Chavez Family Limited Partnership DBA Chavez Supermarket*, Case No.
14 20CV37367 (the “Pelayo Action”). On April 19, 2021, Pelayo filed a First Amended Class
15 Action Complaint in the Pelayo Action. On October 3, 2022, Plaintiffs Pelayo and Lopez
16 provided an amended PAGA notice to the LWDA.

17 On February 23, 2024, Plaintiffs filed a First Amended Class Action Complaint for
18 Damages & Enforcement Under the Private Attorneys General Act, California Labor Code §
19 2698, *Et Seq.* (“Operative Complaint”) in the Milon Action (Case No. 20CV368379), which
20 added Plaintiffs Pelayo and Lopez as named plaintiffs and proposed class representatives, and
21 also added a cause of action for unpaid vacation wages and a cause of action under PAGA. The
22 Parties have also agreed to dismiss the Pelayo Action (Case No. 20CV37367), without prejudice.

23 Plaintiffs’ core allegation is that Defendant has violated the California Labor Code by
24 engaging in a uniform practice and procedure, with respect to Plaintiffs, Class Members, and
25 PAGA Members of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide
26 compliant meal and rest periods and associated premium pay, failing to timely pay wages during
27 employment and upon termination of employment, failing to provide compliant wage
28 statements, failing to maintain requisite payroll records, failing to pay vested vacation wages,

1 and failing to reimburse necessary business expenses, and thereby engaged in unfair business
2 practices in violation of California Business and Professions Code section 17200, *et seq.* and
3 conduct that gives rise to penalties pursuant to PAGA. Plaintiffs contend that they, and the Class
4 Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to,
5 penalties pursuant to PAGA), and attorneys' fees.

6 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
7 associated with any of the allegations in the Operative Complaint, and further denies that the
8 Action is appropriate for class treatment or representative adjudication for any purpose other
9 than for settlement purposes only.

10 The Parties have actively litigated the claims since the Milon Action was commenced
11 on July 17, 2020. On November 30, 2022, the Parties participated in mediation with Jeffrey A.
12 Ross, Esq. ("Mediator"), a respected mediator of complex wage and hour actions, and although
13 the Parties did not resolve their claims at this mediation, with the assistance of the Mediator's
14 evaluations and continued settlement discussions, the Parties ultimately reached the Settlement
15 described herein to resolve the Action in its entirety.

16 **III. SUMMARY OF THE SETTLEMENT TERMS**

17 Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to
18 resolve the Action.¹² Subject to approval by the Court, the Net Distribution Fund will be
19 calculated by deducting the following amounts from the Gross Settlement Amount: (1)
20 Attorneys' Fees in an amount not to exceed One Million Two Hundred Twenty-Five Thousand
21 Dollars and Zero Cents (\$1,225,000.00) (i.e., up to 35% of the Gross Settlement Amount) and
22 Attorneys' Costs in an amount not to exceed Thirty-Two Thousand Dollars and Zero Cents
23 (\$32,000.00) to Class Counsel; (2) Settlement Administration Costs, which are currently
24 estimated not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) to the
25 Settlement Administrator ("Settlement Administration Costs"); (3) PAGA penalties of Three
26 Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00) ("PAGA Allocation"); and (4)
27 payment in the amount of up to Twelve Thousand Dollars and Zero Cents (\$12,000.00) each to
28

¹² Settlement Agreement, ¶ 19.

all three Plaintiffs (“Service Payments”).¹³ The Parties have agreed to retain ILYM Group, Inc. (“ILYM” or “Settlement Administrator”) to handle the notice and settlement administration process.

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

- a. Defendant will calculate each Settlement Class Member’s number of Workweeks and provide them to the Settlement Administrator.¹⁴
- b. The Settlement Administrator will calculate the total aggregate number of Workweeks of all Settlement Class Members.¹⁵
- c. The Settlement Administrator will calculate the value of a single Workweek during the Class Period by dividing the Net Distribution Fund by the number of total Workweeks of all Settlement Class Members.¹⁶
- d. Each Settlement Class Member’s Individual Settlement Payment will then be determined by multiplying each individual Settlement Class Member’s number of Workweeks by the value of a single Workweek during the Class Period.¹⁷

The Parties have agreed that the Settlement Administrator will determine each PAGA Member’s share of the Net PAGA Distribution Amount (“Individual PAGA Payment”), in accordance with the Settlement Agreement and as follows:

- a. Defendant will calculate each PAGA Member’s number of Workweeks during the PAGA Period (“Qualifying PAGA Workweeks”).¹⁸
- b. The Settlement Administrator will calculate the total aggregate number of PAGA Workweeks of all PAGA Members.¹⁹
- c. The Settlement Administrator will divide the Net PAGA Distribution Amount, i.e., \$87,500, by the total number of Workweeks worked by all PAGA Members during the PAGA Period to yield the value of a single Workweek during the PAGA Period.²⁰
- d. Each PAGA Member’s Individual PAGA Payment will then be determined by multiplying each PAGA Member’s number of Qualifying PAGA Workweeks by the value of a single Workweek during the PAGA Period.²¹

¹³ Settlement Agreement, ¶ 23.

¹⁴ *Id.*, ¶ 54(f)(i).

¹⁵ *Id.*

¹⁶ *Id.*, ¶ 54(f)(iii).

¹⁷ *Id.*

¹⁸ *Id.*, ¶ 54(e)(i).

¹⁹ *Ibid.*

²⁰ *Id.*, ¶ 54(e)(iii).

²¹ *Ibid.*

Each Settlement Class Member's Individual Settlement Payment will be allocated as follows: twenty percent (20%) as wages (the "Wage Portions"), which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as penalties and interest (the "Non-Wage Portions"), which will be reported on an IRS Form 1099.²² Settlement Class Members will be issued payment of their Individual Settlement Shares subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Payment (the net payment is referred to as an "Individual Settlement Payment").²³ Each Individual PAGA Payment will be allocated as one hundred percent (100%) non-wage penalties, and will reported on an IRS Form 1099, and will be paid out without reduction for any taxes or withholdings.²⁴ Defendant will pay the employer's share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Payments in addition to the Gross Settlement Amount.²⁵

The payment checks issued to Settlement Class Members and PAGA Members will be negotiable for one hundred eighty (180) calendar days from the date of issuance.²⁶ Those payment checks that are not negotiated within the 180-day period will be cancelled.²⁷ The funds associated with such cancelled checks will be transmitted by the Settlement Administrator to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code section 1500, *et seq.*²⁸

Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must notify the Settlement Administrator in writing by sending a letter indicating that they want to exclude themselves.²⁹ To be timely, the Class Member must send a written opt out request from the Class Settlement to the Settlement Administrator, postmarked or fax stamped on or before the date that is forty-five (45) calendar days from the initial mailing of the Class Notice

²² Settlement Agreement, ¶ 57(a).

²³ *Id.*, ¶¶ 21-22.

²⁴ *Id.*, ¶ 57(b).

²⁵ *Id.*, ¶ 57(a).

²⁶ *Id.*, ¶ 64.

²⁷ *Ibid.*

²⁸ *Id.*, ¶ 65.

²⁹ *Id.*, ¶¶ 25 & 59(d).

1 (“Response Deadline”).³⁰ An Opt Out Request must: (1) contain the name and case number of
2 the Milon Action; (2) contain the full name, address, and telephone number of the Class Member
3 requesting exclusion from the Class Settlement; (3) be signed by the Class Member; (4) contain
4 a clear written statement indicating that the Class Member seeks exclusion from the Class
5 Settlement; and (5) be postmarked or fax stamped on or before the Response Deadline and
6 returned to the Settlement Administrator at the specified address or fax number (“Opt Out
7 Request”).³¹ Class Members who submit a valid and timely Opt Out Request will not be a
8 Settlement Class Member, will not be entitled to receive an Individual Settlement Payment, will
9 not be bound by the Class Settlement, and will not have any right to object, appeal or comment
10 thereon.³² Notwithstanding the foregoing, Class Members who submit timely and valid Opt Out
11 Requests will, nevertheless, be deemed to settle and resolve all Settled PAGA Claims if they
12 were employed by Defendant during the PAGA Period (i.e. PAGA Members), and they will still
13 be issued Individual PAGA Payments.³³

14 Only Class Members who do not exclude themselves from the Class Settlement (i.e.,
15 Settlement Class Members) have standing to object to the Class Settlement.³⁴ A Settlement
16 Class Member may submit a written objection to the Class Settlement (“Objection”), which
17 must: (1) contain the name and case number of the Milon Action; (2) contain the full name,
18 address, and telephone number of the Settlement Class Member objecting; (3) be signed by the
19 Settlement Class Member; (4) contain a written statement of all grounds for the Objection
20 accompanied by any legal support for such Objection; (5) contain copies of any papers, briefs,
21 or other documents upon which the Objection is based; and (6) be postmarked or fax stamped
22 on or before the Response Deadline and returned to the Settlement Administrator at the specified
23 address or fax number.³⁵ Settlement Class Members may also present their objection orally at
24 the Final Approval Hearing, irrespective of whether they submit a written Objection.³⁶

25 ³⁰ Settlement Agreement, ¶ 25.

26 ³¹ *Ibid.*

27 ³² *Id.*, ¶¶ 51(a) & 59(e).

28 ³³ *Id.*, ¶ 5(d).

³⁴ *Id.*, ¶ 59(e).

³⁵ *Id.*, ¶ 24.

³⁶ *Id.*, ¶ 59(e).

Class Members and/or PAGA Members who wish to dispute the number of Workweeks credited to them (“Workweeks Dispute”) in their Class Notice may do so by sending a written dispute by mail or fax to the Settlement Administrator on or before the Response Deadline.³⁷ A Workweeks Dispute must: (1) contain the name and case number of the Milon Action; (2) contain the full name, address, and telephone number of the Class Member and/or PAGA Member; (3) be signed by the Class Member and/or PAGA Member; (4) clearly state that the Class Member and/or PAGA Member disputes of the number of Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her; (5) attach any documentation that he or she has to support the dispute; and (6) be postmarked or fax stamped on or before the Response Deadline and returned to the Settlement Administrator at the specified address or fax number.³⁸

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

³⁷ Settlement Agreement, ¶ 60.

³⁸ *Id.*, ¶ 59(f).

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).

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

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make this fairness determination, courts must consider several relevant factors, including “the strength of the 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 view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the

1 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give
2 “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d
3 at 1027 (citation omitted).

4 The proponent of the settlement has the burden to show that it is fair and reasonable.
5 *Wershba, supra*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the
6 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
7 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
8 litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at
9 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
10 1151.

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

13 The Parties have actively litigated the matter since the Milon Action was commenced on
14 July 17, 2020. Both sides used the pre-settlement time period to investigate the veracity,
15 strength, and scope of the claims, and Class Counsel was actively preparing for class
16 certification and trial.³⁹

17 Prior to engaging in settlement negotiations, Class Counsel conducted significant
18 investigation and informal discovery regarding the facts of the cases, including and not limited
19 to, the exchange, review, and analysis of a large volume of documents and data obtained from
20 Defendant, Plaintiffs, and other sources.⁴⁰ The volume of data and documents that Class
21 Counsel reviewed and analyzed included and was not limited to: Plaintiffs and other Class
22 Members’ employment records; a detailed sampling of Class Members’ time and pay data;
23 multiple versions of employee handbooks; timekeeping training manuals; training documents,
24 including Safety tests, Safety Program documents and WIC Exams; new hire paperwork; job
25 descriptions; performance evaluations, disciplinary notices; and meal period waivers; among
26 other information and documents.⁴¹ Class Counsel had the opportunity to interview Plaintiffs

27 ³⁹ Hosseini Decl., ¶ 12.

28 ⁴⁰ *Ibid.*

⁴¹ *Id.*, ¶ 12.

1 and other Class Members to gather facts and to identify potential witnesses.⁴² Counsel for the
2 Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the
3 pleadings, discovery, negotiating a stipulated protective order, and the production of documents
4 and data prior to the mediation.⁴³ Class Counsel also drafted pleadings and the mediation brief
5 and prepared for and attended court proceedings, mediation, and settlement negotiations, among
6 other tasks.⁴⁴

7 The Parties engaged in extensive settlement negotiations.⁴⁵ Prior to and during the
8 settlement discussions, the Parties exchanged class information and engaged in an intensive
9 discussion regarding their evaluations of the cases and various aspects of the cases, including
10 but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding
11 with class certification and/or representative adjudication, the law relating to off-the-clock
12 theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as
13 well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴⁶
14 During all settlement discussions, the Parties conducted their negotiations at arm's length in an
15 adversarial position.⁴⁷ Arriving at a settlement that was acceptable to both Parties was not easy.
16 Defendant and its counsel felt strongly about their ability to prevail on the merits and at
17 certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class
18 certification and prevail at trial.⁴⁸ After conducting investigations, significant formal and
19 informal discovery, and extensive settlement negotiations, the Parties have agreed that the
20 matter is well-suited for settlement given the legal issues relating to Plaintiffs' principal claims,
21 as well as the costs and risks to both sides that would attend further litigation.⁴⁹

22 The Settlement takes into account the strengths and weaknesses of each side's position
23 and the uncertainty of how the case might have concluded at certification and trial.⁵⁰ The Parties

24 ⁴² *Ibid.*

25 ⁴³ Hosseini Decl., ¶ 12.

26 ⁴⁴ *Id.*

27 ⁴⁵ *Id.*, ¶ 11.

28 ⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Id.*, ¶¶ 11, 16-18.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

1 have had the opportunity to interview and obtain information from their respective witnesses.⁵¹
2 Counsel for the Parties have also reviewed documents and information relating to Plaintiffs' and
3 the Class Members' employment with Defendant and performed significant research into the
4 law concerning class certification, PAGA representative actions, off-the-clock theory, meal and
5 rest periods, wage-and-hour enforcement, Plaintiffs' claims, and Defendant's defenses thereto,
6 as well as facts discovered.⁵² The Parties have reached the Settlement based on this large volume
7 of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in
8 employment class actions, including significant experience in California wage-and-hour
9 litigation.⁵³

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

11 The Settlement, which provides for a Gross Settlement Amount of Three Million Five
12 Hundred Thousand Dollars and Zero Cents (\$3,500,000.00), represents a fair, adequate, and
13 reasonable resolution of the matter.⁵⁴ The Settlement was calculated using the information and
14 data uncovered during litigation, case investigation, as well as the informal exchange of
15 information.⁵⁵ The Settlement takes into account the potential risks and rewards inherent in any
16 case and, in particular, in the matter at issue.⁵⁶ Moreover, considering all of the facts and
17 circumstances of the case, the Settlement represents a fair, reasonable, and adequate recovery
18 for the Class.⁵⁷

19 Assuming that the Attorneys' Fees and Costs, Service Payments, PAGA Allocation, and
20 Settlement Administration Costs are approved by the Court and paid in the full amounts
21 provided for by the Settlement, the Settlement provides for a Net Distribution Fund that is
22 currently estimated to be One Million Eight Hundred Thirty-Two Thousand Dollars and Zero
23 Cents (\$1,832,000.00).⁵⁸ Additionally, 25% of the PAGA Allocation (i.e., Net PAGA
24

25 ⁵¹ *Ibid.*

26 ⁵² Hosseini Decl., ¶¶ 11-13 & 16-18.

27 ⁵³ *Id.*, ¶¶ 2-7.

28 ⁵⁴ *Id.*, ¶¶ 11, 13, 14 & 27.

⁵⁵ *Id.*, ¶¶ 11-13.

⁵⁶ *Id.*, ¶¶ 16-18.

⁵⁷ *Id.*, ¶¶ 11, 13, & 27.

⁵⁸ *Id.*, ¶ 14.

Distribution Amount), which is \$87,500.00 out of \$350,000.00, will be distributed to the PAGA Members, for their respective portion of the PAGA Allocation. As discussed in Part III, *supra*, the entire Net Distribution Fund will be fully paid out to the Settlement Class Members and the PAGA Allocation will be fully paid out to the State of California (the LWDA) and PAGA Members, in accordance with the Settlement Agreement. The Individual Settlement Payments will be paid out to the Settlement Class Members and the Individual PAGA Payments will be paid out to PAGA Members. The amount of each Settlement Class Member's Individual Settlement Payment will be calculated based on his or her Workweeks during the Class Period and each PAGA Member's Individual PAGA Payment will be calculated based on their Workweeks during the PAGA Period.⁵⁹ 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 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 Members, and the State of California.⁶⁰ 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 extensive information prior to settlement negotiations.⁶¹ The discovery and information that Class Counsel obtained from

⁵⁹ Settlement Agreement, ¶ 54(e)-(f).

⁶⁰ Hosseini Decl., ¶¶ 11, 13, & 27.

⁶¹ *Id.*, ¶¶ 11-13 & 18.

Defendant, Plaintiffs, and 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.⁶² As outlined in the Declaration of Yasmin Hosseini, Class Counsel performed an extensive analysis of the claims pursuant to *Kullar* prior to entering into the Settlement.⁶³

VI. CERTIFICATION OF THE SETTLEMENT 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.⁶⁴ 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 "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

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

A. The Class Is Ascertainable and Sufficiently Numerous.

"Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*." *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. "A class is ascertainable if it identifies a group of unnamed plaintiffs

⁶² Hosseini, ¶ 18.

⁶³ *Id.*, ¶¶ 11-13 & 16-18, 25.

⁶⁴ Settlement Agreement, ¶ 51.

1 by describing a set of common characteristics sufficient to allow a member of that group to
2 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
3 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
4 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

5 This matter involves a class of approximately 3,139 individuals.⁶⁵ This class is
6 sufficiently numerous. See *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35
7 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is
8 not practical at that point). Further, all Class Members can and will be identified by Defendant
9 to the Settlement Administrator through a review of Defendant’s employment records regarding
10 non-exempt employees in California during the Class Period. As such, the Class is ascertainable
11 and sufficiently numerous.

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

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

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

27
28

⁶⁵ Hosseini Decl., ¶ 9.

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Operative Complaint. Based on the documents and information obtained through informal discovery and exchange of information in the cases, Plaintiffs contend that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.⁶⁶ Plaintiffs' claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to keep requisite payroll records, failing to pay vested vacation wages upon termination of employment, and failing to reimburse necessary business-related expenses.⁶⁷

Plaintiffs also contend that Defendant's payroll and recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.⁶⁸ As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁶⁹

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

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

Class Counsel has litigated the matter for well over three (3) years, and was actively preparing the matter for class certification and trial.⁷⁰ The ongoing work has been extensive, demanding, and ultimately successful in achieving a reasonable settlement resolution. Class

⁶⁶ Hosseini Decl., ¶ 16.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Id.*, ¶¶ 11-13.

Counsel reviewed documents and data⁷¹ and also had the opportunity to interview and obtained information from Plaintiffs and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel prior to and during settlement negotiations.⁷² Counsel for the Parties also undertook extensive settlement discussions.⁷³

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁷⁴

The Settlement establishes a Gross Settlement Amount of Three Million Five Hundred Thousand Dollars and Zero Cents (\$3,500,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$1,225,000.00) and an amount not to exceed Thirty-Two Thousand Dollars and Zero Cents (\$32,000.00) for actual litigation costs and expenses.⁷⁵ 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 their 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.⁷⁶

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

⁷¹ Hosseini Decl., ¶ 12.

⁷² *Ibid.*

⁷³ *Id.*, ¶ 11.

⁷⁴ *Id.*, ¶¶ 2-7; Bibiyan Decl., ¶3-12.

⁷⁵ Settlement Agreement, ¶¶ 3-4, and 19.

⁷⁶ *Id.*, Exh. A.

“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.

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

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

1 Class Counsel has borne all of the risks and costs of litigation and will not receive any
2 compensation until recovery is obtained.⁷⁷

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

8 **VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE.**

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

14 The proposed Class Notice⁷⁸ describes the Settlement, the deadlines and procedures to
15 submit an Objection to the Class Settlement, Opt Out Request from the Class Settlement, and/or
16 submit a dispute regarding Workweeks, and the date and time set for the Final Approval
17 Hearing.⁷⁹

18 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.
19 *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class
20 members to make an informed decision about their participation." *Manual for Complex*
21 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the
22 proceedings to date and the terms and conditions of the Settlement in an informative and
23 coherent manner.⁸⁰ The proposed Class Notice recognizes that the Court has not yet granted
24 final approval of the settlement.⁸¹ The proposed Class Notice also apprises the Class Members
25 of, *inter alia*, how their Individual Settlement Payment and, if applicable, their Individual PAGA

26 ⁷⁷ Hosseini Decl., ¶ 19.

27 ⁷⁸ Settlement Agreement, Exh. A.

28 ⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

Payment are calculated and the number of Workweeks credited to them.⁸²

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.

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 within fourteen (14) calendar days after receipt of the Class List.⁸³ 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.⁸⁴ 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 one skip-trace, and re-mail the Class Notice to the Class Member.⁸⁵ The Response Deadline to submit an Opt Out Request, Objection, or Workweeks Dispute, for Class Members to whom a Class Notice is re-sent after having been returned as undeliverable to the Settlement Administrator, will be fourteen (14) calendar days from the original Response Deadline.⁸⁶ The Settlement Administrator will receive and process Opt Out Requests, Objections, and any Workweek Disputes.⁸⁷

The Settlement Administrator’s duties will include, translating the Class Notice to Spanish, calculating the amounts of the Individual Settlement Payments and the Individual

⁸² *Ibid.*

⁸³ Settlement Agreement, ¶ 59(c).

⁸⁴ *Id.*, ¶ 59(f)(i).

⁸⁵ *Ibid.*

⁸⁶ *Id.*, ¶ 34.

⁸⁷ *Id.*, ¶ 59-60.

PAGA Payments; deducting and transmitting applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Payments; mailing the payment checks to Settlement Class Members and PAGA Members; issuing W-2 and 1099 forms; calculating and disbursing the Attorneys' Fees and Costs, Service Payments, and LWDA Payment; and performing such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸⁸ The Administration Costs are currently estimated to be Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸⁹

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, Plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁹⁰

Within twenty-one (21) calendar days after the date on which the Court grants preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with the following information for each Class Member: full name, last-known mailing address, last known telephone number, Social Security Number, the number of Workweeks during the Class Period and, if applicable, Workweeks during the PAGA Period (collectively, "Class List").⁹¹

Within fourteen (14) calendar days of receipt of the Class List, the Settlement Administrator will mail the Class Notice to the Class Members via First-Class U.S. Mail.⁹² If a

⁸⁸ *Ibid.*; Hosseini Decl., ¶ 15.

⁸⁹ Settlement Agreement, ¶ 37.

⁹⁰ *Id.*, ¶ 59.

⁹¹ *Id.*, ¶ 6.

⁹² *Id.*, ¶ 59(c).

Class Notice is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send the Class Notice to the forwarding address.⁹³ If no forwarding address is provided, then the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Class Notice to the Class Member.⁹⁴ Class Members will have until the applicable Response Deadline to submit a Opt Out Request, Workweeks Dispute, and/or Objection.⁹⁵ With respect to any Class Notice that is re-mailed, the Response Deadline will be extended an additional fourteen (14) calendar days.⁹⁶

Defendant will make a one-time deposit of the Gross Settlement Amount into an interest-bearing account to be established by the Settlement Administrator, within thirty (30) days of the Effective Date.⁹⁷ Within fourteen (14) days of Defendant funding the Gross Settlement Amount, the Settlement Administrator will distribute: (1) the Individual Settlement Payments to Settlement Class Members; (2) the Individual PAGA Payments to PAGA Members; (3) the Court-approved Service Payments to Plaintiffs; (4) the Court-approved Attorneys' Fees and Costs to Class Counsel; (5) the LWDA Payment to the LWDA; and (6) the Court-approved Settlement Administration Costs to itself.⁹⁸

The payment checks will remain negotiable for one hundred and eighty (180) calendar days from the date of their issuance.⁹⁹ Checks that are not negotiated within the 180-day period will be cancelled.¹⁰⁰ The funds associated with such cancelled checks will be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code section 1500 *et seq.*, in the names of and for the benefit of those Settlement Class Members and/or PAGA Members who did not cash, deposit, or otherwise negotiate their checks until such time that they claim their property.¹⁰¹

⁹³ Settlement Agreement, ¶ 59(f)(i).

⁹⁴ *Ibid.*

⁹⁵ *Id.*, ¶ 34.

⁹⁶ *Ibid.*

⁹⁷ *Id.*, ¶ 63.

⁹⁸ *Id.*, ¶ 63(b)-(c).

⁹⁹ *Id.*, ¶ 64.

¹⁰⁰ *Id.*, ¶ 65.

¹⁰¹ *Ibid.*

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR SERVICE PAYMENTS

Plaintiffs Yuri Milon, Olimpia Meza Pelayo, and Emilio Lopez respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Service Payments in an amount up to Twelve Thousand Dollars and Zero Cents (\$12,000.00) each, for a combined amount of \$36,000.00.¹⁰² 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 Service Payments 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 Service Payments are 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.¹⁰³ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.¹⁰⁴ Accordingly, it is appropriate and just for Plaintiffs to receive Service Payments for their services on behalf of the Class, PAGA Members, and the State of California, in addition to their 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

¹⁰² Settlement Agreement, ¶ 35.

¹⁰³ Hosseini Decl., ¶ 20; Declaration of Yuri Milon in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Milon Decl."), ¶ 4; Declaration of Olimpia Meza Pelayo in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Pelayo Decl."), ¶ 9-15; Declaration of Emilio Lopez in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Lopez Decl."), ¶ 9-15.

¹⁰⁴ Hosseini Decl., ¶ 20; Milon Decl., ¶¶ 3-6; Pelayo Decl., ¶ 9-15; Lopez Decl., ¶ 9-15.

1 appoint and designate Lawyers *for* Justice, PC and Bibiyan Law Group, P.C. as Class Counsel;
2 preliminary appoint and designate Plaintiffs Yuri Milon, Olimpia Meza Pelayo, and Emilio
3 Lopez as Class Representatives; appoint ILYM Group, Inc. as Settlement Administrator;
4 preliminarily approve the allocations for Attorneys' Fees and Costs, Service Payments, PAGA
5 Allocation, and Settlement Administration Costs; approve the proposed Class Notice; direct the
6 Settlement Administrator to undertake the notice and settlement administration process in
7 conformity with the deadlines and procedures provided by the Settlement Agreement; and
8 schedule a Final Approval Hearing to take place in approximately six (6) months.

9 Dated: May 17, 2024

LAWYERS *for* JUSTICE, PC

10
11 By:



Yasmin Hosseini
Attorneys for Plaintiff Yuri Milon