

Janelle Carney, Esq. (Bar No. 201570)
JANELLE CARNEY – ATTORNEY AT LAW, APC
14758 Pipeline Ave., Suite E, 2nd Floor
Chino Hills, CA 91709
Tel.: (909) 521-9609 / Fax: (909) 393-0471
Email: Janelle@JanelleCarneyLaw.com

Manny Starr (319778)
Manny@frontierlawcenter.com
Adam Rose, Esq. (Bar No. 210880)
ada@frontierlawcenter.com
FRONTIER LAW CENTER
23901 Calabasas Road, #2074
Calabasas, CA 91302
Telephone: (818) 914-3433/ Facsimile: (818) 914-3433

Attorneys for Plaintiff, Lupe Morales

Justin F. Marquez (SBN 262417)
justin@wilshirelawfirm.com
Christina M. Le (SBN 237697)
cle@wilshirelawfirm.com
Zachary D. Greenberg (SBN 237697)
zgreenberg@wilshirelawfirm.com
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988/ Facsimile: (213) 381-9989

Attorneys for Plaintiffs, Erika Muniz and Blanca Navarro

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

Coordination Proceeding
Special Title (Rule 3.550)

**SUNSHINE RETIREMENT WAGE AND
HOUR CASES**

) JCCP No. 5247
) Hon. Lauri A. Damrell
) Dept. 28
)
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
) **PLAINTIFF'S MOTION FOR**
) **PRELIMINARY APPROVAL OF CLASS**
) **ACTION AND PAGA SETTLEMENT**
)
) Date: October 6, 2023
) Time: 9:00 a.m.
) Dept.: 28
)
) Action filed: September 22, 2021

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

TABLE OF CONTENTS

INTRODUCTION	1
i. THE CLASS REPRESENTED	2
II. THE TWO-STEP APPROVAL PROCESS	2
<u>1. Procedure for Payment of Individual Settlement Payments:</u>	4
III. THE PRESUMPTION OF FAIRNESS	5
IV. PROPOSED SHARE PER CLASS MEMBER.....	6
A. <u>Class Member Compensation</u>	6
V. LIMITED STANDING TO OBJECT TO PROPOSED SETTLEMENT.....	9
VI. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS.....	10
VII. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON OBJECTIVE EVIDENCE	10
VIII. CONDITIONAL CERTIFICATION OF THE CLASS	11
A. <u>Class Certification is Appropriate in this Case</u>	11
B. <u>The Proposed Class is Ascertainable and Numerous</u>	12
C. <u>Common Issues of Law or Fact Predominate</u>	12
D. <u>Plaintiff's Claims Are Typical of the Class Claims</u>	13
E. <u>Adequacy of Representation</u>	13
IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS.....	13
X. ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL	14

TABLE OF AUTHORITIES

Treatises

<u>Manual for Complex Litigation Second</u> states at §30.44 (1985).....	2
<u>Newberg on Class Actions</u> , 3 rd Ed., 11.26.....	3, 5, 6, 10

Rules and Statutes

CCP §382.....	11
---------------	----

State Cases

<u>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</u> (1987) 191 Cal.App.3d 1341, 1347	13
<u>Classen v. Weller</u> (1983) 145 Cal.App.3d 27, 46.....	13
<u>Clothesrigger, Inc. v. GTE Corp.</u> , (1987) 191 Cal.App.3d 605, 617.....	12
<u>Dunk v. Ford Motor Co.</u> (1996) 48 Cal.App.4th 1794.....	3
<u>Gould v. Alleco, Inc.</u> , 883 F.2d 281, 284 (4 th Cir. 1989)	10
<u>Kullar v. Foot Locker Retail, Inc.</u> 168 Cal. App 4th 116, 118	4
<u>L.A. Fire & Police Protective League</u> , supra, 23 Cal.App.3d at 74	12
<u>Linder v. Thrifty Oil Co.</u> (2000) 23 Cal. 4th 429, 435	11
<u>Richmond v. Dart Industries</u> (1981) 29 C3d 462, 469	11
<u>Sav-On Drug Stores, Inc. v. Superior Court</u> (2004) 34 Cal.4th 319, 326.....	11, 13
<u>Stephens v. Montgomery Ward & Co., Inc.</u> (1987) 193 Cal.App.3d 411, 421	13
<u>Tidewater Marine Western, Inc. v. Bradshaw</u> (1966) 14 Cal.4th 557, 561-562	12

Federal Cases

<u>Hammon v. Barry</u> , 752 F.Supp 1087 (D.D.C. 1990).....	5
<u>In re Armored Car Antitrust Litigation</u> , 472 F.Supp 1357 (N.D. Ga. 1979), aff'd in part, rev'd in part in 645 F.2d 488 (5 th Cir. 1981).....	5
<u>In re Chicken Antitrust Litigation</u> , 560 F.Supp 957, 962 (N.D. Ga. 1980).....	5
<u>Mars Steel Corp. v. Continental Illinois National Bank and Trust Co.</u> , 834 F.2d 677, 682 (7 th Cir. 1987).....	5
<u>Priddy v. Edelman</u> , 883 F.2d 438, 447 (6 th Cir. 1989)	5
<u>Sommers v. Abraham Lincoln Federal Savings & Loan Association</u> , 79 F.R.D. 571 (E.D. Pa. 1978)	

1		5
2	<u>Steinberg v. Carey</u> , 470 F.Supp. 471 (S.D.N.Y. 1979)	5

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 This Memorandum is submitted in support of Plaintiffs Lupe Morales, Erika Muniz, and
2 Blanca Navarro's¹ ("Plaintiffs") Motion for Preliminary Approval of Class Action and PAGA
3 Settlement. The proposed non-reversionary settlement in the gross sum of \$940,000.00 is on
4 behalf of approximately 1,130 class members except as to any Class Members who elect to exclude
5 themselves ("opt-out") from the Settlement Class.

6 **INTRODUCTION**

7 Plaintiff Morales filed her original complaint in Sacramento County Superior Court on
8 September 27, 2021. Thereafter, Plaintiff Morales filed a First Amended Complaint ("FAC") on
9 November 15, 2021. The parties in the *Morales* action have engaged in initial pre-certification
10 discovery. Plaintiff Muniz filed her class action Complaint on or about October 28, 2021, in the
11 Orange County Superior Court. On June 29, 2022, Plaintiffs filed a Petition for Coordination. The
12 Order Granting Plaintiffs' Petition for Coordination was entered September 16, 2022, coordinating
13 the two actions into the current action entitled Sunshine Retirement Wage and Hour Cases, JCCP
14 No. 5247.

15 Plaintiffs allege that Defendants failed to provide current and former employees with
16 accurate wage statements pursuant to Section 226 and the PAGA, failed to pay wages for all hours
17 worked, failed to pay accurate overtime wages, violated minimum wage laws, failed to provide
18 meal and rest periods, failed to timely pay all wages owed upon ending employment, and engaged
19 in unfair competition under California's Business and Professions Code.

20 On February 27, 2023, the Parties participated in an all-day mediation presided over by
21 Hon. Daniel Buckley (Retired). Judge Buckley continued to work with the parties to settle the
22 action months after the mediation concluded, which led to the Class Action and PAGA Settlement
23 Agreement; a true and correct copy of which is attached to the Declaration of Janelle Carney as
24 **Exhibit 1.**

25 Class Counsel have concluded, after taking into account sharply disputed factual and legal
26 issues involved in this litigation, the risks attending further prosecution, and the financial position
27 Defendant is in post COVID-19, that the substantial settlement to be received pursuant to the

28 ¹ Plaintiffs are amending the complaint to add Blanca Navarro as a class representative as part of the terms of the settlement.

1 compromise and settlement of the litigation is in the best interest of the Class Members. Plaintiffs
2 recognize the expense and length of continued proceedings necessary to continue the litigation
3 against Defendants through trial and through any possible appeals. Plaintiffs have also taken into
4 account the uncertainty and risk of denial of a motion for class certification, the challenges of
5 seeking PAGA relief for all PAGA Representative Action Members, the uncertain outcomes
6 resulting from further litigation, and the difficulties and delays inherent in such litigation. Plaintiff
7 is also aware of the burdens of proof necessary to establish liability for the claims asserted in the
8 Action, Defendants' defenses, and the difficulties in establishing damages for the Plaintiffs and
9 Class Members.

10 **I. THE CLASS REPRESENTED**

The Settlement Class consists of the following:

11 All current and former non-exempt hourly individuals employed by Defendants at any time
12 from September 27, 2017, until the date of preliminary approval or sixty (60) days after the
13 agreement is signed, whichever is earlier, at any of the Defendant's California facilities.

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

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

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

25 Thus, the preliminary approval of the trial court is simply a conditional finding that the
26 settlement appears to be within the range of reasonableness for acceptable settlements. As
27 Professor Newberg commented, "The strength of the findings made by a judge at a preliminary

1 hearing or conference concerning a tentative settlement proposal may vary. The court may find that
2 the settlement proposal contains some merit, is within the range of reasonableness required for a
3 settlement offer or is presumptively valid subject only to any objections that may be raised at a
4 final hearing.” Newberg on Class Actions, 3rd Ed., 11.26.

5 The procedures for submission of a proposed settlement for preliminary approval are
6 discussed at Newberg on Class Actions, 3rd Ed., §11.24 – 11.26. Newberg observes at §11.24:
7 **When the Parties to an action reach a monetary settlement, they will usually prepare and**
8 **execute a joint stipulation of settlement, which is submitted to the court for preliminary**
9 **approval. The stipulation should set forth the central terms of the agreement, including but**
10 **not limited to, the amount of the settlement, form of payment, manner of determining the**
11 **effective date of settlement, and any recapture clause.**

12 While the details of the recovery for each Class Member are set forth in the proposed
13 Settlement Agreement filed concurrently herewith and attached to the Declaration of Janelle
14 Carney in support of Preliminary Approval, the settlement for each participating Class Member and
15 PAGA Representative Action Member is fair, reasonable, and adequate, given the inherent risk of
16 litigation, the risk relative to class certification, and the costs of litigation. (**Declaration of Janelle**
17 **Carney ¶7**) As explained below, the average settlement share for each Class Member is \$831.86
(\$940,000.00 / 1,130 employees).

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

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

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

1 E. Presence (or lack thereof) of a governmental participant.

2 Further, the Court must take into consideration the additional Kullar factor which is "the
3 most important factor is the strength of the case for the plaintiffs on the merits, balanced against the
4 amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. 168 Cal. App 4th 116, 118) (*See*
5 **Carney Decl., ¶8**) Plaintiffs contend the settlement represents approximately **32%** of the
6 reasonable value of all claims. (**Carney Decl. ¶8**). The settlement is for a maximum amount of
7 \$940,000.00 for approximately 1,130 class member employees. (**Carney Decl. ¶8**). Plaintiffs
8 assert that this is an excellent settlement for each class member and PAGA Representative Action
9 member.

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

12 **1. Procedure for Payment of Individual Settlement Payments:**

13 Upon the Court entering an order granting Final Approval of the settlement, Defendants
14 shall fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay
15 Defendant's share of payroll taxes by transmitting the funds to the Administrator, as follows:

- 16 (a) Within 30 days of the Court entering an order granting final approval, Defendants
17 shall deposit \$200,000 with the Administrator.
- 18 (b) Within 6 months of the Court entering an order granting final approval,
19 Defendants shall deposit \$270,000 with the Administrator.
- 20 (c) Within 12 months of the Court entering an order granting final approval,
21 Defendants shall deposit \$470,000 with the Administrator.

22 **Payments from the Gross Settlement Amount.**

23 Within fourteen (14) days after Defendants fund the Gross Settlement Amount, the
24 Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments,
25 the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees
26 Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service
27 Payments. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation
28 Expenses Payment and the Class Representative Service Payments shall not precede disbursement

1 of Individual Class Payments and Individual PAGA Payments.

2 The Administrator will issue checks for the Individual Class Payments and/or Individual
3 PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid.
4 The face of each check shall prominently state the date (not less than 180 days after the date of
5 mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the
6 void date. The Administrator will send checks for Individual Settlement Payments to all
7 Participating Class Members (including those for whom Class Notice was returned undelivered).
8 The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees
9 including Non-Participating Class Members who qualify as Aggrieved Employees (including those
10 for whom Class Notice was returned undelivered). The Administrator may send Participating Class
11 Members a single check combining the Individual Class Payment and the Individual PAGA
12 Payment. Before mailing any checks, the Settlement Administrator must update the recipients'
13 mailing addresses using the National Change of Address Database.

14 The settlement amount balanced against the merits of the Plaintiffs' case is strong as all
15 factors listed supra are discussed in detail consistent with **Declaration of Janelle Carney (Carney
16 Decl.)**, filed concurrently herewith.

17 **III. THE PRESUMPTION OF FAIRNESS**

18 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
19 evidence to the contrary is offered. In short, there is a presumption that the negotiations were
20 conducted in good faith. Newberg, §11.51; In re Chicken Antitrust Litigation, 560 F.Supp 957, 962
21 (N.D. Ga. 1980); Priddy v. Edelman, 883 F.2d 438, 447 (6th Cir. 1989); Mars Steel Corp. v.
22 Continental Illinois National Bank and Trust Co., 834 F.2d 677, 682 (7th Cir. 1987). Courts do not
23 substitute their judgment for that of the proponents, particularly where, as here, settlement has been
24 reached with the participation of experienced counsel familiar with the litigation. Hammon v.
25 Barry, 752 F.Supp 1087 (D.D.C. 1990); Steinberg v. Carey, 470 F.Supp. 471 (S.D.N.Y. 1979); In
26 re Armored Car Antitrust Litigation, 472 F.Supp 1357 (N.D. Ga. 1979), aff'd in part, rev'd in part in
27 645 F.2d 488 (5th Cir. 1981); Sommers v. Abraham Lincoln Federal Savings & Loan Association,
28 79 F.R.D. 571 (E.D. Pa. 1978).

1 While the recommendations of counsel proposing the settlement are not conclusive, the
2 Court can properly take them into account, particularly where, they have been involved in litigation
3 for some period of time, appear to be competent, have experience with this type of litigation, and
4 have obtained substantial evidence from the opposing party. See Newberg, §11.47. Here, the two
5 (2) Plaintiff firms involved in this action have a great deal of experience in wage and hour class
6 action litigation. Janelle Carney of Janelle Carney – Attorney at Law, APC has been approved as
7 Class Counsel in over 300 wage and hour class actions. Adam Rose and Manny Starr of Frontier
8 Law Center have been approved as Class Counsel in several matters over the years. A sampling of
9 such cases is listed in the concurrently filed declarations of Janelle Carney, Manny Starr of Frontier
10 Law Center, and Justin F. Marquez of Wilshire Law Firm. Class Counsel and the Plaintiff have
11 been actively engaged in resolving this matter, hiring a damage expert at considerable cost to assist
12 with the analysis of the financial records produced by Defendants for mediation, and to prepare for
13 filing class certification.

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

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

18 **A. Class Member Compensation**

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

21 To Each Participating Class Member: The estimated proportionate share of the Net
22 Settlement Amount shall be determined by the Settlement Administrator pursuant to the following
23 formula:

24 a. The Settlement Administrator shall calculate the total aggregate number of weeks
25 that all Class Members were employed by, and worked for, Defendants as non-exempt hourly
26 individuals employed in California at any time during the Class Period, excluding weeks when the
27 Class Members did not work or were on leave for the entire week (“Total Workweeks”).

28 b. The value of each individual Qualifying Workweek shall then be determined by

1 dividing the Net Settlement Amount by the Total Workweeks, resulting in the “Workweek Value.”
2 Each Individual Settlement Share shall then be determined by multiplying the individual
3 Participating Class Member’s number of Qualifying Workweeks by the Workweek Value.

4 c. The Parties stipulate to a) class certification for purposes of settling the Action only;
5 and b) stipulate to stay the action pending approval. The Parties agree that class certification will
6 be revoked if the Court denies preliminary or final approval of the settlement, or if the settlement
7 does not become final for any other reason.

8 Tax Allocation of Individual Class Payments. For tax purposes, settlement payments to
9 Class Members shall be allocated (a) 80 percent as penalties and interest and (b) 20 percent as
10 wages. Class Members shall be issued an IRS Form W-2 for amounts paid under this settlement
11 deemed wages, and an IRS Form 1099 for the amounts allocated to penalties and interest.
12 Settlement payments to PAGA Representative Action Members shall be allocated 100 percent as
13 penalties, and PAGA Representative Action Members shall be issued an IRS Form 1099 and be
14 responsible for payment of any and all taxes that are due as a result of their PAGA penalty
15 settlement payments. Any representative service award approved by the Court will result in the
16 issuance of an IRS Form 1099 to Plaintiffs, who shall assume full responsibility and liability for the
17 payment of taxes due on such award.

18 **To calculate each PAGA Individual’s proportionate share:**

19 The Settlement Administrator shall calculate the total aggregate number of Pay Periods that
20 all PAGA Individuals were employed by, and worked for, Defendants as non-exempt hourly
21 individuals employed in California at any time during the PAGA Period.

22 The value of each individual Qualifying Pay Period shall then be determined by dividing
23 the employee’s share of the PAGA Payment Amount of \$12,500.00 by the Total pay periods,
24 resulting in the “Pay Period Value.” Each Individual PAGA Share shall then be determined by
25 multiplying the Individual PAGA Member’s number of Qualifying Pay Periods by the Pay Period
26 Value.

27 Nothing above excludes the Administrator from calculating each Individual PAGA
28 Payment in an identical manner for each Non-Participating Class Member who is also an

1 Aggrieved Employee. (**Carney Decl., Exh. 1: Settlement Agreement ¶ 3**).

2 Neither Plaintiffs, Class Counsel, Defendants nor Defense Counsel are providing any
3 advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such
4 within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as
5 amended) or otherwise. (**Carney Decl., Exh. 1: Settlement Agreement ¶ 13.8**). Each Class
6 Member will receive a notice that details their estimated claim amount based on the number of
7 Qualifying Workweek and pay periods worked during the applicable time period. In this case,
8 Class Members who do not opt out will receive an Individual Settlement Share.

9 In addition to the settlement sums paid to Participating Class Members, the named
10 Plaintiffs, Lupe Morales, Erika Muniz, and Blanca Navarro will request a Class Representatives
11 Enhancement of Ten Thousand Dollars (\$10,000.00) each, for their role as a class representative
12 during the tenure of this litigation. The Class Representative Enhancements also includes Plaintiffs'
13 execution of a general release of all claims, known or unknown, pursuant to Civil Code ¶ 1542
14 (**Carney Decl., Exh. 1: Settlement Agreement ¶ 6.1**). The enhancement takes into consideration
15 the risks, time, effort, and expenses incurred by the named Plaintiffs in coming forward to litigate
16 this matter on behalf of all Class Members. It is also intended to compensate Plaintiffs for their
17 efforts in protecting the class members' rights. (See **Declarations of Lupe Morales, Erika Muniz**
and **Blanca Navarro** filed concurrently herewith.) The settlement achieved is broken down further:

- | | | |
|----|--------------------------------------|--|
| 18 | 1) Maximum Settlement Amount: | \$940,000.00 |
| 19 | 2) Attorneys' Fees and Costs: | Attorneys' Fees: \$313,333.33 |
| 20 | | (33.33% of the total settlement); |
| 21 | | Costs not in excess of \$25,000.00, as |
| 22 | | verified by Class Counsel and approved |
| 23 | | by the Court; |
| 24 | 3) Class Representative Enhancement: | \$10,000.00 each for Lupe Morales, |
| 25 | | Erika Muniz, and Blanca Navarro; |
| 26 | 4) Settlement Administration Costs: | Not to exceed \$22,000.00 (maximum |
| 27 | | amount); |

- 1 5) PAGA Payment: \$50,000.00 (\$37,500.00 (75%) to the
2 LWDA and \$12,500.00 (25%) to the
3 aggrieved employees) of \$50,000
4 allocated as PAGA penalties per LC §
5 2649, et seq.); and
6 6) Net Settlement Amount: \$499,666.67 to be distributed to the
7 settlement class members.

8 Each PAGA Representative Action Member, regardless of whether he or she timely
9 requests to opt-out of the class action portion of the Settlement (i.e., the Released Class Claims),
10 will receive a portion of the PAGA Settlement Share allocated on a per capita basis. Individual
11 PAGA Settlement Shares are calculated by dividing 25 percent of the PAGA Payment (\$12,500.00)
12 by the total number of PAGA Representative Class Members.

13 At the very least, the Net Settlement Amount (NSA) will be approximately \$499,666.67.
14 The NSA is based on the court approving all the requested amounts listed above. To the extent any
15 request is not approved, the Net Settlement Amount will increase accordingly.

16 Based on a review of its records as of June 30, 2023, Defendants estimate there are 1,130
17 Class Members who collectively worked a total of approximately 58,367 Workweeks, and 885
18 Aggrieved Employees who worked a total of 30,306 PAGA Pay Periods. Fairness of the settlement
19 is further demonstrated by risks of non-certification, trial or appeal. It is extremely unlikely that
20 the majority of the current employees in the Class could or would maintain individual actions
21 against Defendants.

22 **V. LIMITED STANDING TO OBJECT TO PROPOSED SETTLEMENT**

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

1 281, 284 (4th Cir. 1989).

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

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

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

19 The Parties have agreed to retain ILYM Group, Inc. (“ILYM”), as the Settlement
20 Administrator to perform the notice and other claims administration functions set forth within the
21 Settlement Agreement. (ILYM’s qualifications and estimate are attached as **Exhibits 2-3** to the
22 **Decl. Carney ¶¶ 14-15**). The current estimate of ILYM is in the amount of \$22,000. Any amount
23 less than the estimated amount to administer will be returned to the Net Settlement Amount for
24 distribution to Participating Class Members.

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

27 The settlement that has been reached, subject to this Court's approval, is the product of
28

1 tremendous effort, time, and expense by the Parties and their counsel. The settlement was reached
2 after factual and legal research, informal data exchange, including an analysis of Plaintiffs' and a
3 sampling of Class Members' payroll records, wage statements, and time records, review of
4 hundreds of pages of documents, including Defendants, policies, and one (1) full-day mediation.
5 (**Carney Decl. ¶ 11**) The settlement amount is, of course, a compromise figure. It also considered
6 the possibility that if a settlement were reached after many months or even years of litigation, the
7 great expenses and attorneys' fees of litigation would cause Defendants to decrease what it was
8 willing to offer. Furthermore, Plaintiffs also took into consideration the time delay and financial
9 repercussions in the event of liability trials, numerous damages trials, and appeal by Defendants.

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

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

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

1 reemphasized the procedural nature of the certification motion.

2 Here, class treatment is warranted for the class for purposes of this Settlement only.
3 (**Carney Decl. ¶ 8**). Plaintiffs contend that evidence of Defendants' policies and procedures with
4 the class member information establish that these claims should be conditionally certified at this
5 time for Settlement only. Plaintiffs contend that the evidence consists of payroll records, time
6 records, and pay stubs given to all hourly non-exempt employees.

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

8 For a class to exist, the class description must be sufficiently definite so that it is
9 administratively feasible for the court to determine whether a particular individual is a member of
10 the proposed class by reference to objective criteria. Plaintiffs contend that for this settlement, the
11 class definition is sufficiently specific to enable potential class members, and the court, to readily
12 determine the parameters of the class. (See, Clothesrigger, Inc. v. GTE Corp., (1987) 191
13 Cal.App.3d 605, 617.) At approximately 1,130 class members as of June 30, 2023, this is
sufficient to satisfy numerosity requirements.

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

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

Cal.App.3d 411, 421 See Sav-On, supra. Plaintiffs have objective evidence that Defendants failed to properly pay Plaintiffs and employees at their correct regular rate. See also, **Declaration of Janelle Carney, ¶10**, filed concurrently herewith.

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

Plaintiffs contend that typicality simply means that the representative's claims are similar to those of class members, and that the interests of the class representative need not be identical to those of other class members; the class representative must simply be similarly situated. B.W.I. Custom Kitchen v. Owens-Illinois, Inc. (1987) 191 Cal.App.3d 1341, 1347; Classen v. Weller (1983) 145 Cal.App.3d 27, 46. According to the Plaintiffs, they worked pursuant to Defendants' corporate policies and procedures, which they claim were applicable to all hourly non-exempt employees. (See **Decl. Morales ¶8; Decl. Muniz ¶5; Decl. Navarro ¶5**)

E. Adequacy of Representation

Adequacy of representation depends on whether the named class Plaintiff and the Plaintiffs' attorneys qualify to conduct the proposed litigation and whether the named Plaintiffs' interests are antagonistic to those of the classes. In this case, Plaintiffs contend that the representative Plaintiffs' injuries and damages are similar to those of the class they seek to represent. Plaintiffs claim that they have no claims that are antagonistic to the class. (see **Decl. Morales ¶11; Decl. Muniz ¶ 5; Decl. Navarro ¶5**). Plaintiffs' counsel is experienced and qualified. (**Carney Decl. ¶¶ 2-4; Decl. Starr ¶¶2-4; Decl. Marquez ¶¶ 4-11**)

IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS

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

1. Deadline for Defendants to provide Class List to Settlement Administrator and Plaintiff's Counsel: within fifteen (15) calendar days of service of Preliminary Approval Order);
2. First Mailing of Notice, etc., to the Class: within fourteen (14) calendar days after Settlement Administrator receives Class List;

3. Follow-up mailing to Class (when mail returned): Within five (5) business days after receipt of returned mail;
4. Objection/Exclusion Deadline Date: 45 calendar days from the date Notice mailed
5. Filing date for Supplemental Briefs, Attorney's Fees Request and Request for Reimbursement of Costs: 16 court days prior to Fairness Hearing
6. Filing date for Final Approval Papers & file any response to any objectors and Settlement Administrator Report/declaration to be filed no later than: (16 court days prior to the heading for Final Approval/ Fairness Hearing)
7. Date for Final Fairness Hearing: Plaintiffs request a hearing January 9, 2024 or after said date.

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

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

1. Review and approve the proposed Class Action and PAGA Settlement Agreement.
2. Conditionally certify for settlement purposes only, a Class consisting of: All current and former non-exempt hourly individuals employed by Defendants at any time from September 27, 2017, until the date of preliminary approval or sixty (60) days after the agreement is signed, whichever is earlier, at any of the Defendant's California facilities.
3. Confirm Janelle of Janelle Carney – Attorney at Law, APC and Emanuel Starr and Adam Rose of Frontier Law Center; Justin F. Marquez, Christina M. Le and Zachary D. Greenberg of Wilshire Law Firm as Class Counsel; and Lupe Morales, Erika Muniz, and Blanca Navarro as Class Representatives.
4. Conditionally approve the PAGA settlement amount of \$50,000.00, subject to obtaining Final Approval of the class action settlement.
5. Approve an order preliminarily approving the proposed settlement on a class basis,

1 direct notice to be given to the Class, and setting a hearing for final review of the
2 proposed settlement on or about 85 calendar days after the hearing on the motion for
3 preliminary approval; and

- 4 6. Approve ILYM Group, Inc. as Settlement Administrator to handle the notice
5 procedures as set forth in its proposal. (A true and correct copy of which is attached
6 as **Exhibit 2** to **Decl. Carney**).

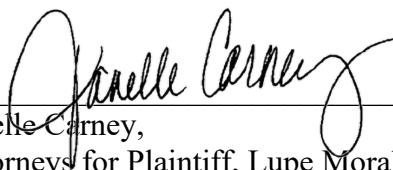
7 **CONCLUSION**

8 Accordingly, Plaintiffs respectfully request that the settlement be given preliminary
9 approval and notice be approved for mailing to the class. The proposed Notice is included with the
10 settlement documents attached to the Declaration of Janelle Carney filed concurrently herewith.

11 Dated: September 13, 2023

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER
WILSHIRE LAW FIRM

12
13
14 By:


15 Janelle Carney,
16 Attorneys for Plaintiff, Lupe Morales, Erika Muniz and
17 Blanca Navarro
18
19
20
21
22
23
24
25
26
27
28