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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 FINAL**
) **APPROVAL OF CLASS ACTION AND**
) **PAGA SETTLEMENT**
)
) Date: January 19, 2024
) Time: 9:00 a.m.
) Dept.: 28
)
) Action filed: September 22, 2021

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

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	ACTUAL SETTLEMENT VALUE	1
III.	CLASS MEMBER COMPENSATION	2
A.	<u>CLASS REPRESENTATIVE SERVICE PAYMENT</u>	2
B.	<u>CLAIMS ADMINISTRATION AND STATUS OF NOTICE PROCEDURE</u>	2
C.	<u>ATTORNEYS' FEES AND COSTS</u>	3
D.	<u>LABOR AND WORKFORCE DEVELOPMENT AGENCY</u>	3
E.	<u>UNCASHED FUNDS</u>	3
IV.	PRELIMINARY APPROVAL	4
V.	OUTSTANDING RESPONSE	4
VI.	FINAL SETTLEMENT APPROVAL IS APPROPRIATE	4
A.	<u>THE SETTLEMENT IS ENTITLED TO A PRESUMPTION OF FAIRNESS</u>	4
B.	<u>THE SETTLEMENT WAS REACHED THROUGH ARM'S LENGTH NEGOTIATIONS</u>	5
C.	<u>SUFFICIENT DISCOVERY AND INVESTIGATION HAS BEEN COMPLETED TO WARRANT SETTLEMENT</u>	5
D.	<u>CLASS COUNSEL IS EXPERIENCED AND ENDORSES THE SETTLEMENT</u> ..	6
E.	<u>NO OBJECTION AND ONLY ONE (1) OPT-OUT HAS BEEN MADE TO THE SETTLEMENT</u>	6
F.	<u>THE PAGA SETTLEMENT IS FAIR</u>	6
G.	<u>THE SETTLEMENT SHOULD RECEIVE FINAL APPROVAL</u>	9
	<u>CONCLUSION</u>	10

TABLE OF AUTHORITIES

Rules and Statutes

CCP §382..... 4

Labor Code § 2699(g) 7, 8

State Cases

Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct., 46 Cal.4th 993, 1003 (2009) 8

Carrington v. Starbucks Corp., 30 Cal. App. 5th 504 (2018) 9

Dunk v. Ford Motor Company (1996) 48 Cal.App.4th 1794, 1801 4, 5, 8, 9

Kullar v. Footlocker Retail, Inc. (1996) 168 Cal.App.4th 116, 118..... 9, 10

Malibu Outrigger Bd. of Governors v. Superior Court (1980) 103 Cal.App.3d 573, 578-579..... 4

Mallick v. Superior Court (1979) 89 Cal.App.3d 434..... 5, 8

Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224, 244-245 (2001) 9

Williams v. Superior Court, 3 Cal.5th 531, 549 (2017)..... 7

Federal Cases

Air Line Stewards, etc., Loc. 550 v. American Airlines, Inc., 455 F.2d 101, 109 (7th Cir. 1972)..... 9

Arias v. Superior Court, 46 Cal.4th 969, 980-88..... 7, 8

Boyd v. Bechtel Corp., 485 F.Supp.610, 616-17 (N.D. Cal.1979) 5, 6

Casida v. Sears Holding Corp., 2012 WL 253217, at *3 (E.D. Cal. Jan. 26, 2012) 7

Ellis v. Naval Air Rework Facility, 87 F.R.D.15, 18 (ND Cal, 1980), *affid*, 661 F.2d 939 (9th Cir. 1981)..... 5, 6

Fisher Bros. V. Cambridge-Lee Industries, Inc., 630 F.Supp.482, 488 (E.D. Pa. 1985) 6

In re Warner Communications Sec. Litig., 618 F.Supp.735, 741 (S.D.N.Y. 1985), *affd.*, 198 F.2d 35 (2d Cir. 1986) 5

Magadia v. Wal-Mart Associates, Inc. (N.D. Cal. May 31, 2019) 384 F.Supp.3d 1058, 1104..... 8

Officers for Justice v. Civil Service Com. 688 F.2d 615, 625, (9th Cir. 1982), *cert. Denied* (1983) 459 U.S. 1217 4, 5, 8

Pedroza v. PetSmart, Inc., 2013 WL 1490667, at *15 (C.D. Cal. Jan. 28, 2013) 7

Thomas v. Aetna Health of Cal., Inc., 2011 WL 2173715, at * 11 (E.D. Cal. June 2, 2011)..... 7

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 This Memorandum is submitted in support of the Plaintiff's Motion for Final Approval of
3 Class and PAGA Settlement. The proposed settlement before this Court will dispose of the action
4 as to Defendant Sunshine Retirement Living, LLC and the Released Parties (as defined in the Class
5 Action and PAGA Settlement Agreement ("Settlement Agreement")). The Court granted
6 Preliminary Approval on November 1, 2023. Pursuant to the Preliminary Approval Order, notice
7 was sent to class members on or about November 17, 2023. **(Declaration of Christine Fowler of**
8 **ILY Group, Inc.,¹)** Plaintiff comes now seeking final approval, accordingly.²

9 **I. INTRODUCTION**

10 Class Counsel and Plaintiffs have achieved a fair and just result in this litigation, embodied
11 in the Settlement Agreement. The proposed Settlement provides substantial benefits to Class
12 Members, only one (1) of whom requested exclusion from the class., as of the date of this filing.
13 The Settlement is the product of aggressive litigation of Class Counsel to obtain the best possible
14 result for the Class Members. **100% of the money will be paid out as there is no reversion to**
15 **Defendants and 100% of the class members are being paid, as only one (1) class member has**
16 **opted out. Further, there are no objections made to the settlement.** A Declaration of Christine
17 Fowler of ILYM Group, Inc. ("ILYM") will be filed in advance of the hearing. The settlement of
18 this action is fair, reasonable, and adequate and in the best interests of the Class. Accordingly, final
approval should be granted.

19 **II. ACTUAL SETTLEMENT VALUE**

20 This settlement is of **\$940,000.00** on a gross non-reversionary basis. Plaintiffs and the class
21 allege they were subject to the Defendant's corporate policies and procedures. The Settlement
22 provides monetary compensation to Class Members for alleged unpaid compensation, unpaid meal
23 and rest period premiums, failure to provide compliant meal and rest periods, noncompliant wage
24 statements, interest thereon, PAGA penalties, and waiting time penalties. Plaintiffs and the class
25 members/aggrieved employees allege they were not provided with statutorily mandated meal and

26 ¹ Given the opt out / objection deadline is January 2, 2024, Plaintiffs will file this declaration on or before January 5,
27 2024.

28 ² Plaintiffs are filing their motion for approval of attorneys' fees, costs, and class representative service award
concurrently herewith, set to be heard in conjunction with this motion.

1 rest breaks due to Defendant's failure to provide relief personnel or payment for such when
2 individuals missed a meal or rest period. Further, Defendant allegedly failed to pay all overtime
3 wages at the correct regular rate, waiting time penalties.

4 **III. CLASS MEMBER COMPENSATION**

5 Each class member will receive their settlement share. The total number of class members
6 in the original mailing of the Settlement Notice was 1,160. The average settlement share for the
7 entire class is approximately **\$831.86**. The final settlement shares per class member shall be
8 definitively calculated by the settlement administrator once this court enters an order finally
9 approving the settlement. This settlement amounts to a good wage and hour settlement. It speaks
10 volumes that there have been no objections to any term of the settlement and no requests for
11 exclusion from the class settlement.

12 **A. CLASS REPRESENTATIVE SERVICE PAYMENT**

13 A class representative enhancement payment of \$10,000 to each of the class representatives,
14 Lupe Morales, Erika Muniz, and Blanca Navarro, has been preliminarily approved. The service
15 payments take into consideration the time, effort and risks incurred by the Plaintiffs in coming
16 forward to litigate this matter on behalf of all class members. Plaintiffs, by bringing this action,
17 have assumed considerable reputational risk. Plaintiffs have litigated this case for over two (2)
18 years. The class representatives have also signed a general release for any and all claims, known or
19 unknown, against Defendant and cannot pursue any other potential claims as detailed in Plaintiffs'
20 Declarations filed on September 13, 2023. There have been no objections to the service payment
21 request. See also, Plaintiffs' concurrently filed Motion for Attorneys' Fees, Costs, and Class
Representative Enhancements.

22 **B. CLAIMS ADMINISTRATION AND STATUS OF NOTICE**
23 **PROCEDURE**

24 Notice was sent to every class member via first-class mail by the Settlement Administrator
25 on November 17, 2023. Each Class Member's name, last known mailing address, social security
26 number, and number of workweeks during the applicable Class Period was provided by Defendant
27 to ILYM through a review of Defendant's time and pay records. ILYM performed further searches

1 on returned mail in an effort to locate each and every class member. ILYM followed up with
2 additional mailings after updating address as a result of returned mail.

3 **C. ATTORNEYS' FEES AND COSTS**

4 Plaintiff is requesting attorneys' fees in the reasonable sum of approximately 33.33% of the
5 fund, for a total fee of \$313,333.33. Plaintiffs' counsel has received preliminary approval of the
6 total costs amount up to \$25,000.00, in addition to claims administration costs of \$22,000.00. (See
7 **Order dated November 1, 2023**) Currently, Class Counsel has expended not less than 450.4
8 hours in the matter as of the filing of this motion, with a combined lodestar of \$369,965.00. (**Decl.**
9 **Carney, 27**) Plaintiff's current costs total is not including the costs of administration. See
10 Plaintiffs' concurrently filed Motion for Attorneys' Fees, Costs and Class Representative Service
11 Payment, filed concurrently herewith. There have been no objections to any of these requests,
12 attesting to the reasonableness of each request. The total cost for ILYM, for the administration of
13 this Settlement, including fees incurred for completion of the administration, are detailed in the
14 estimate filed with Plaintiffs motion for preliminary approval and should not exceed \$20,031.20.

15 **D. LABOR AND WORKFORCE DEVELOPMENT AGENCY**

16 Payment in the sum of \$37,500.00 will be made to the Labor and Workforce Development
17 Agency ("LWDA") out of the \$50,000.00 allocated as the PAGA portion of the Settlement,
18 pursuant to the Settlement Agreement. The LWDA was served with Plaintiff's Preliminary
19 Approval papers on September 13, 2023, and this Court's Preliminary Approval Order on or about
20 November 3, 2023. (**Decl. Carney, Exh. 1**)

21 **E. UNCASHED FUNDS**

22 Checks issued to Participating Class Members shall remain negotiable for a period of one
23 hundred and eighty (180) days from the date of mailing. To the extent any Participating Settlement
24 Class Members fail to cash settlement checks within 180 days of issuance, any monies remaining in
25 the distribution account shall be distributed to the Controller of the State of California to be held
26 pursuant to the Unclaimed Property Law, California Civil Code Section 1500 et seq., for the
27 benefits of those Settlement Class Members who did not cash their checks until such time they
28 claim their property. The parties agree that this disposition results in no "unpaid residue" under

1 California Civil Procedure Code Section 384, as the entire Net Settlement Proceeds will be paid out
2 to Settlement Class Members, whether or not they all cash their settlement checks.

3 **IV. PRELIMINARY APPROVAL**

4 At the Preliminary Approval hearing, the court granted Preliminary Approval of this
5 settlement on November 1, 2023, conditionally certified the Class for settlement purposes only,
6 approved the Notice of Class Action Settlement and Hearing Date for Final Court Approval,
7 appointed the class representative, designated class counsel, appointed ILYM Group, Inc., as the
8 Settlement Administrator, and set timelines for the claims and settlement procedure.

9 **V. OUTSTANDING RESPONSE**

10 There have been **no objections and only one (1) opt out** to the settlement as of the date of
11 this motion. The deadline to object or opt-out is January 2, 2024. All those that did not exclude
12 themselves, i.e., **1,159** class members, will be paid their share of the settlement. This response
13 speaks to the fairness, reasonableness, and adequacy of the Settlement.

14 **VI. FINAL SETTLEMENT APPROVAL IS APPROPRIATE**

15 Pursuant to both state and federal rules of civil procedure, "a class action shall not be
16 dismissed or compromised without the approval of the court and notice of the proposed dismissal
17 or compromise shall be given to all members of the class in such manner as the Court directs ... In
18 deciding whether to grant final approval to proposed class action settlement under *CCP* §382, the
19 Court's overriding concern is whether the proposed settlement is 'fair, adequate, and reasonable.'" *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801 (quoting *Officers for Justice v. Civil Service Com.* 688 F.2d 615, 625, (9th Cir. 1982), cert. Denied (1983) 459 U.S. 1217).

20 **A. THE SETTLEMENT IS ENTITLED TO A PRESUMPTION OF**
21 **FAIRNESS**

22 A presumption of fairness exists where: 1) The settlement is reached through arm's length
23 bargaining; 2) Investigation and discovery are sufficient to allow counsel and the Court to act
24 intelligently; 3) Counsel is experienced in similar litigation; and 4) the percentage of objectors is
25 small. *Dunk v. Ford Motor Company, supra*, 48 Cal.App.4th at 1802.
26

1 To prevent fraud, collusion or unfairness to the Class, the settlement or dismissal of a class
2 action requires Court approval. *Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103
3 Cal.App.3d 573, 578-579. The purpose of the requirement is the protection of those Class
4 Members, including the named Plaintiff, whose rights may not have been given due regard by the
5 negotiating parties. *Officers for Justice*, supra, 688 F.2d at 624. The trial court has broad powers to
6 determine whether a proposed settlement in a class action is fair. *Mallick v. Superior Court* (1979)
7 89 Cal.App.3d 434.

8 At the Final Approval Hearing, the Court should consider the relevant factors, such as the
9 strength of the plaintiffs' case, the risk, expenses, complexity and likely duration of further
10 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
11 the extent of discovery completed and the stage of the proceedings, the experience and views of
12 counsel, the presence of a governmental participant and the reaction of the Class Members to the
13 proposed settlement. *Officers for Justice*, supra, 688 F.2d at 624. "This list is not exhaustive and
14 should be tailored to each case. Due regard should be given to what is otherwise a private
15 consensual agreement between the parties." *Dunk v. Ford Motor Company*, supra, 48 Cal.App.4th
16 at 1801.

17 **B. THE SETTLEMENT WAS REACHED THROUGH ARM'S**
LENGTH NEGOTIATIONS

18 On February 27, 2023, the Parties participated in an all-day mediation presided over by
19 Hon. Daniel Buckley (Retired). Judge Buckley continued to work with the parties to settle the
20 action months after the mediation concluded, which led to the Class Action and PAGA Settlement
21 Agreement. The settlement was reached through arm's length negotiations after extensive informal
22 and formal discovery. The Parties began negotiating the specific terms of the long form settlement
23 after the mediation and were able to agree on all terms in the Class Action and PAGA Settlement
24 Agreement (a true and correct copy of which is attached to the Declaration of Janelle Carney filed
25 in support of Preliminary Approval on or about September 13, 2023, as **Exhibit 1**).

26 **C. SUFFICIENT DISCOVERY AND INVESTIGATION HAS BEEN**
27 **COMPLETED TO WARRANT SETTLEMENT**

1 The stage of the proceedings and the amount of discovery completed is an important factor
2 which the Courts consider in determining the fairness, reasonableness, and adequacy of a
3 settlement. In re *Warner Communications Sec. Litig.*, 618 F.Supp.735, 741 (S.D.N.Y. 1985), *affd.*,
4 198 F.2d 35 (2d Cir. 1986); *Ellis v. Naval Air Rework Facility*, 87 F.R.D.15, 18 (ND Cal, 1980),
5 *affid*, 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp.*, 485 F.Supp.610, 616-17 (N.D.
6 Cal.1979). Over the course of this litigation, Plaintiffs' counsel propounded meaningful discovery,
7 engaged in informal data exchange, including the Plaintiffs' and class payroll records and sampling
8 of time records, and reviewed of thousands of pages of documents, and hired an expert, as set forth
9 in the Declaration of Janelle Carney in support of preliminary approval.

10 The settlement that has been reached is the product of tremendous effort, and expense by
11 the parties and their counsel. Prior to engaging in Settlement discussions, Defendant produced data
12 through formal discovery and informally through settlement privilege based on a requested demand
13 by Plaintiffs' counsel and voluminous documents, including time records, payroll records, the
14 Plaintiffs' personnel file, and Defendant's policies and procedures, as agreed to by the parties.
15 Further, Plaintiffs hired an expert to review the records and formulate an exposure analysis. The
16 class representatives provided extensive information regarding the Defendant's business that aided
17 the parties reaching the ultimate settlement figure.

18 **D. CLASS COUNSEL IS EXPERIENCED AND ENDORSES THE**
19 **SETTLEMENT**

20 Experienced counsel operating at arm's length, have weighed all of the foregoing factors
21 and endorse the proposed settlement. As the Courts have explained, the view of the attorneys
22 actively conducting the litigation, is "entitled to significant weight." *Fisher Bros. V. Cambridge-*
23 *Lee Industries, Inc.*, 630 F.Supp.482, 488 (E.D. Pa. 1985); see also *Ellis*, *supra*, 87 F.R.D. at 18;
24 *Boyd*, *supra*, 485 F.Supp. at 616-17. Class Counsel has experience in class actions and
25 employment litigation, and specifically in wage and hour class actions. (***See Decl. Carney; Decl.***
26 ***Starr, filed September 13, 2023 and Supplemental Decl. Carney filed October 24, 2023***) Class
27 Counsel are experienced and qualified to evaluate the Class claims and viability of the defenses. *Id.*
28 The recovery for the class is substantial, given the risks inherent in litigation and the defenses

1 asserted. This settlement is fair, adequate and reasonable and in the best interests of the Class. *Id.*

2 **E. NO OBJECTION AND ONLY ONE (1) OPT-OUT HAS BEEN MADE**
3 **TO THE SETTLEMENT**

4 There has not been a single objection to the settlement. The lack of objectors and the fact
5 that there has been only one (1) opt-out is a testament to the fairness, reasonableness and adequacy
6 of the settlement.

7 **F. THE PAGA SETTLEMENT IS FAIR**

8 Plaintiffs uploaded the Settlement Agreement, the Preliminary Approval motion and
9 supporting documents, as well as the Court's Order Granting Preliminary Approval of Class Action
10 and PAGA Settlement, to the LWDA's website. The LWDA did not file an objection or
11 intervention. Plaintiffs believe the 10% allocation towards penalties is appropriate given the
12 court's inherent discretionary authorization to reduce PAGA penalties.

13 The PAGA statute allows an aggrieved employee to bring a civil action on behalf of himself
14 or herself and on behalf of other aggrieved employees to recover civil penalties which are
15 specifically established by the PAGA with respect to provisions of the Labor Code which do not
16 otherwise provide for civil penalties (*Labor Code* § 2699(g)), and also, civil penalties which,
17 outside of PAGA, only the LWDA can assess upon and collect from an employer (*Labor Code*
18 §2699(a)). Before bringing a civil action under PAGA, an employee must comply with *Labor Code*
19 §2699.3. *See Labor Code* §2699(a).

20 The settlement of a PAGA claim requires court approval. *See Labor Code* §2699(1)(2)
21 ("The superior court shall review and approve any settlement of any civil action pursuant to this
22 part"). However, "[a] PAGA claim asserted on a non-class representative basis . . . is not
23 considered a class action but a law enforcement action" and therefore one does not have to meet the
24 requirements of a class action. *Casida v. Sears Holding Corp.*, 2012 WL 253217, at *3 (E.D. Cal.
25 Jan. 26, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011 WL 2173715, at * 11 (E.D. Cal. June 2,
26 2011); *Arias v. Superior Court*, 46 Cal.4th 969, 980-88 (affirming lower court's holding that
27 "plaintiff need not satisfy class action requirements" to assert a PAGA claim); *Pedroza v.*
28 *PetSmart, Inc.*, 2013 WL 1490667, at *15 (C.D. Cal. Jan. 28, 2013). As such, a court's review of a

1 PAGA settlement involves analysis of several unique features that render the approval process
2 distinct from approval of a class action settlement. A court reviewing a PAGA settlement need only
3 “ensur[e] that a negotiated resolution is fair to those affected.” *Williams v. Superior Court*, 3 Cal.5th
4 531, 549 (2017).

5 In a PAGA case, the Court’s focus is not the monetary amount which aggrieved employees
6 or the State are to receive, but instead, whether the total settlement amount achieves the PAGA’s
7 objectives. The purpose of the PAGA is “to incentivize private parties to recover civil penalties for
8 the government that otherwise may not have been assessed and collected by overburdened state
9 enforcement agencies.” *See Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, at *4
10 (N.D. Cal. Apr. 2, 2010) (citing *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the
11 PAGA are, in part, to “be distributed to the [LWDA] for enforcement of labor laws . . . and for
12 education of employers and employees about their rights and responsibilities under this code, to be
13 continuously appropriated to supplement and not supplant the finding to the agency for those
14 purposes.” *See Labor Code* §2699(j). The recovery of penalties on behalf of the state, by way of a
15 PAGA claim, is essentially a law enforcement action. *See Amalgamated Transit Union, Local*
16 *1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009) (stating that the PAGA is mechanism for
17 “an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise
would be sought by state labor law enforcement agencies”).

18 As stated above, a representative settlement is presumed fair where: (1) the settlement is
19 reached through arm’s length bargaining, (2) investigation and discovery are sufficient to allow
20 counsel and the court to act intelligently, (3) [and] counsel is experienced in similar litigation. (*See*
21 *Dunk v. Ford Motor Company* (1996) 48 Cal. App. 4th 1794, 1802.) A court may also consider
22 factors such as the strength of the plaintiffs’ case, the risk, expense, complexity and likely duration
23 of further litigation, the risk of maintaining class action status through trial, the amount offered in
24 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
25 views of counsel, [and] the presence of a governmental participant. . . . (*See Officers of Justice v.*
26 *Civil Service Com’n of City and County of San Francisco* (9th Cir. 1995) 688 F.2d 615, 624.) “This
27 list is not exhaustive and should be tailored to each case. Due regard should be given to what is

1 otherwise a private consensual agreement between the parties.” (*Dunk, supra*, 48 Cal. App. 4th at
2 1801.) Moreover, the trial court has broad powers to determine whether a proposed [representative
3 action] settlement is fair. (See *Mallick v. Superior Court* (1979) 89 Cal. App. 3d 434.) *Moniz v.*
4 *Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021) expressly holds that the standard for reviewing
5 PAGA settlements is similar to the standard for reviewing class settlements, and therefore class
6 cases (including *Dunk* specifically) are instructive in this context.

7 Because of the discretionary nature of PAGA penalties, oftentimes the penalties are
8 discounted by approximately 75%-85% from the maximum penalty. See, e.g., *Magadia v. Wal-*
9 *Mart Associates, Inc.* (N.D. Cal. May 31, 2019) 384 F.Supp.3d 1058, 1104 (penalties on wage
10 statement claim reduced by 80%). (See also *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504
11 (2018). The court affirmed a 90% reduction from the maximum). Thus 10% of the total settlement
12 allocated to PAGA penalties is appropriate in this case.

13 **G. THE SETTLEMENT SHOULD RECEIVE FINAL APPROVAL**

14 Courts highly favor the settlement of class actions. In determining whether to finally
15 approve a class action settlement, courts look to whether a proposed settlement, taken as a whole,
16 is fair, reasonable, adequate and in the best interests of the class. See Cal. R. of Ct. 3.769(g);
17 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). Among the interrelated factors that
18 the Court should consider are: (1) the strength of plaintiffs' case; (2) the expense, complexity and
19 likely duration of further litigation; (3) the benefits conferred by the settlement; (4) the experience
20 and views of counsel; (5) the extent of discovery completed and the stage of the proceedings; and
21 (6) the reaction of the class members to the proposed settlement. *Wershba v. Apple Computer,*
22 *Inc.*, 91 Cal. App. 4th 224, 244-245 (2001); *Dunk*, 48 Cal. App. 4th at 1801. “The list of factors is
23 not exclusive, and the court is free to engage in a balancing and weighing of factors depending on
24 the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at 245. The Declaration of Janelle
25 Carney in support of preliminary approval filed on September 13, 2023, discussed the *Kullar v.*
26 *Footlocker Retail, Inc.* (1996) 168 Cal.App.4th 116, 118 and *Dunk* factors in detail at ¶ 8, pp.15-
27 21.
28

1 As courts have explained, “The proposed settlement is not to be judged against a
2 hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at
3 trial.” *Id.* at 246.

4 “Compromise is inherent and necessary in the settlement process. Thus, even if “the
5 relief afforded by the proposed settlement is substantially narrower than it would be
6 if the suits were to be successfully litigated,” this is no bar to a class settlement
7 because “the public interest may indeed be served by a voluntary settlement in which
8 each side gives ground in the interest of avoiding litigation.”

9 *Id.* at 250 (quoting *Air Line Stewards, etc., Loc. 550 v. American Airlines, Inc.*, 455 F.2d
10 101, 109 (7th Cir. 1972)). The standards for final approval are clearly met in this case.

11 In the Court’s Preliminary Approval Order, the court requests further *Kullar* analysis and
12 Plaintiffs supplement the information provided in the Declaration of Janelle Carney filed on or about
13 September 13, 2023. Plaintiffs hired Econ One to review the records and perform analysis based on
14 the allegations in this action. Defendant produced a sample of approximately 25% of the putative
15 class, including time records, meal waivers, pay records, and a sampling of paystubs. Plaintiffs
16 made the discounts as stated in the Plaintiffs’ preliminary approval papers based on the risk of the
17 Defendant’s financial health, which is still recovering from the Covid-19 pandemic, the fact that
18 there were numerous facilities that could have made class certification difficult with regard to the
19 meal and rest break claims based on how the various locations were managed, and the prospect that
20 the court could find that the class case was not manageable and deny certification.

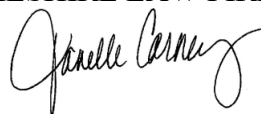
21 CONCLUSION

22 Plaintiffs respectfully request that the Court grant final approval of the class action
23 settlement and enter the order granting final approval and the proposed judgment lodged prior to
24 the hearing.

25 Dated: December 26, 2023

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

26 By:



Janelle Carney, Attorneys for Plaintiff, Lupe Morales, Erika
Muniz and Blanca Navarro