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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

MARIO VILLALPANDO, on behalf of himself
and all others similarly situated;

Plaintiffs,

v.

SOUTH CORONA AUTO SPA, LP, a California
Limited Partnership; and DOES 1 through 50
inclusive,

Defendants.

Case No.: CVRI2200998
Hon. Harold Hopp
Dept.: 1

CLASS ACTION

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

Date: August 26, 2025
Time: 8:30 a.m.
Dept.: 1

RESERVATION NO.: 338832885951

Action filed: March 10, 2022

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Named Plaintiff and proposed Class Representative, Mario Villalpando (“Plaintiff”), seeks preliminary approval of a class action and PAGA settlement achieved on behalf of a Class of all current and former employees of Defendant South Corona Auto Spa, LP (“Defendant” or “South Corona”), employed by Defendant in California as hourly, non-exempt employees at any time between March 10, 2018 and through ninety (90) days after the date of the fully executed Agreement or ninety (90) days after the date of Preliminary Approval, whichever comes first. South Corona’s records indicate that there are approximately 194 Class Members.

After engaging in substantial independent investigation, a full-day mediation that failed to result in a settlement, and later arms-length negotiations after formal discovery, and a pending motion to compel arbitration, the parties agreed to a non-reversionary gross settlement amount of \$250,000.00, exclusive of employer-side payroll taxes. The settlement is strongly supported by experienced counsel, who carefully considered the strength of the claims and Defendant’s potential defenses and financial condition, as well as the expense, complexity, risks, and likely duration of continued litigation.

Subject to Court-approval, and after deductions for a payment to the Labor Workforce and Development Agency (“LWDA”) and Aggrieved Employees, pursuant to the Private Attorneys General Act of 2004 (“PAGA”), settlement administration expenses, class representative service payment to Plaintiff, and attorneys’ fees and costs to Class Counsel, the remaining amount will be distributed to Class Members who do not opt-out of the Settlement as follows:

Gross Settlement Amount	\$250,000
LWDA PAGA Payment	\$6,000
Individual PAGA Payments	\$2,000
Administrator Expenses Payment	Up to \$10,000
Class Representative Payment	Up to \$10,000
Class Counsel’s Fees	Up to \$83,333.33
Class Counsel’s Expenses	Up to \$13,000
Net Settlement Amount	\$125,666.67

1 Through this motion, Plaintiff respectfully requests that the Court enter an order: (1)
2 provisionally certifying the proposed Class under Code of Civil Procedure section 382 and California
3 Rule of Court 3.769(c) for settlement purposes only; (2) preliminarily approving the Settlement; (3)
4 approving as to form the Notice of Class Action Settlement and ordering that the Notice of Class
5 Action Settlement be distributed to all Class Members; (4) appointing Plaintiff Mario Villalpando as
6 the Class Representative; (5) appointing ILYM Group, Inc., as the Administrator; (6) appointing
7 Salusky Law Group as Class Counsel; (7) determining whether a valid fee sharing agreement exists
8 between Salusky Law Group, Jose Garay, APLC, and the Law Offices of Arnulfo F. Gutierrez; and (8)
9 setting a hearing on the issues of final approval of the proposed Settlement; and approval of the Class
10 Representative Service Payment, Class Counsel's Fees and Expenses, PAGA Penalties, and
11 Administration Expenses Payment.

12 II. PROCEDURAL AND FACTUAL BACKGROUND

13 A. Plaintiffs' Claims and Relevant Background

14 From sometime in 2017, through August of 2021, Plaintiff was employed by Defendant as a
15 detailer. (Declaration of Anna R. Salusky ["Salusky Decl.,"] ¶ 7.) Plaintiff's responsibilities included
16 detailing the interior and exterior of vehicles, including shampooing carpets and upholstery, cleaning
17 seatbelts, removing odors from vomit and other bodily fluids out of the interior of cars, cleaning water
18 spots, and waxing the exterior of vehicles. (*Ibid.*) At all times during the Class Period, Plaintiff was
19 classified as a nonexempt employee and paid on a bi-weekly basis. (Salusky Decl., ¶ 7.)

20 Plaintiff contends that over the course of his employment, Defendant failed to pay him and
21 other nonexempt employees all wages owed to them, including minimum wage and overtime wages,
22 failed to provide uninterrupted, duty-free meal and rest periods, failed to provide accurate wage
23 statements, failed to pay all wages owed upon separation of employment, failed to reimburse for
24 necessary business expenses, failed to pay all wages at separation of employment, and is also liable for
25 civil penalties for its Labor Code violations. (Salusky Decl., ¶ 8.)

26 On or about November 26, 2021, Salusky Law Group, sent notice to the LWDA on Plaintiff's
27 behalf, notifying them of numerous Labor Code violations and alerting them of Plaintiff's intent to file
28 a complaint and seek civil penalties under the PAGA. (Salusky Decl., ¶ 12.) On March 10, 2022,
Plaintiff filed a class action complaint in the Superior Court of California, County of Riverside, against

1 Defendant (the “Action”). (*Ibid.*) The suit asserted claims for failure to provide compliant meal and rest
2 periods, failure to pay minimum and overtime wages, failure to reimburse necessary business
3 expenditures, failure to issue accurate wage statements, failure to pay wages at separation of
4 employment, unfair business practices, and civil penalties under the PAGA. (*Ibid.*) On May 31, 2022,
5 Defendant filed an answer. (Salusky Decl., ¶ 13.)

6 **B. Investigation And Evaluation of The Claims**

7 Salusky Law Group conducted an investigation of the facts and circumstances underlying Mr.
8 Villalpando’s potential claims. (Salusky Decl., ¶ 14.) Considering what appeared to be a common
9 course of conduct affecting nonexempt employees, Salusky Law Group determined that Mr.
10 Villalpando’s claims were well-situated for adjudication on a class basis. (*Ibid.*) A notice was sent to
11 the LWDA and Defendant, and a civil complaint was filed on Plaintiff’s behalf. (Salusky Decl., ¶¶ 12.)
12 Anna R. Salusky reviewed Defendant’s answer, including the asserted defenses and applicable law. The
13 parties attempted early mediation, and Ms. Salusky was able to review Defendant’s written policies as
14 well as a sampling of time and compensation records for putative class members at that time. (Salusky
15 Decl., ¶ 15.) Defendant also took Plaintiff’s deposition ahead of the mediation. Salusky Law Group’s
16 expert evaluated the sampling of time records Defendant produced. The expert’s analysis indicated that
17 in approximately 78% of the shifts, employees were clocking into work approximately 40 minutes after
18 8:00 a.m. (*Ibid.*)

19 The parties were unable to reach an agreement at mediation. As a result, formal discovery,
20 including depositions, followed, and documents produced for mediation were identified in responses to
21 discovery. (Salusky Decl., ¶ 16.)

22 Plaintiff’s discovery included: Form Interrogatories (General and Employment Law); Special
23 Interrogatories; Requests for Admission; and Requests for Production of Documents. Among other
24 information, Plaintiff requested the identification and number of persons who worked for Defendant
25 during the class period; identification of locations operated by Defendant; the manner in which
26 Defendant recorded putative class members’ hours worked, and meal and rest periods, during the class
27 period; Defendant’s policies for payment of overtime and reimbursement for laundering of uniforms;
28 Plaintiff’s personnel file and time and compensation records; employment manuals and policies; and a
sampling of class members’ time and compensation records. (Salusky Decl., ¶ 17.)

1 The information gathered from these various sources allowed Plaintiff's counsel to analyze and
2 calculate Defendant's potential liability for the claims in the Action. (Salusky Decl., ¶ 22.) It is
3 Plaintiff's counsel's belief that the information Defendant produced, including discovery responses, the
4 sampling of putative Class Members' time and compensation records, deposition testimony, Plaintiff's
5 purported arbitration agreement and the declaration regarding Defendant's policy regarding arbitration
6 agreements, were sufficient for the Parties to make an informed decision about an appropriate range of
7 settlement value and fair resolution of this Action. (*Ibid.*)

8 C. Settlement

9 Defendant's disclosure of Plaintiff's purported arbitration agreement, and a company policy
10 regarding arbitration, introduced significant risk to the maintenance of class claims. However, the
11 possibility of defending multiple arbitrations presented new risks and potential expenses for Defendant.
12 With the possibility of having to pay for multiple arbitrations, Defendant reconsidered its stance.
13 Through their respective counsel, the parties engaged in good-faith, non-collusive negotiations at arms-
14 length negotiations which resulted in an agreement to settle the Action. Considering the risks and
15 expenses associated with further litigation, and the strengths and weaknesses of the case, Plaintiff's
16 counsel believes that the Settlement is fair, adequate, and reasonable, and in the best interests of the
17 Class. (Salusky Decl., ¶ 23.)

18 III. THE TERMS OF THE PROPOSED SETTLEMENT

19 Subject to Court approval, and pursuant to Code of Civil Procedure section 382 and California
20 Rules of Court, rule 3.769 et seq., the parties have agreed to settle the claims in the operative complaint
21 upon the terms and conditions and for the consideration set forth in the Settlement Agreement, a copy
22 of which will be attached as Exhibit 1 to the Declaration of Anna R. Salusky. **The Settlement is non-**
23 **reversionary and does not require the submission of a claim form.** The following is a summary of
24 the principal terms of the Settlement Agreement:

25 A. Class Definition

26 The Class is defined as all persons employed by Defendant in California as hourly non-exempt
27 employees during the Class Period. (Settlement Agreement, § 1.5.) The Class Period is defined as the
28 period from March 10, 2018, through ninety (90) days from the date of the fully executed Agreement or

1 ninety (90) days after the date of Preliminary Approval, whichever comes first. (*Id.*, § 1.12.)

2 Defendant's records indicate that there are approximately 194 Class Members. (*Id.*, §§ 4.1,8.)

3 The Settlement Agreement defines Aggrieved Employees as all persons employed by Defendant
4 in California as an hourly non-exempt employee at any time during the PAGA Period. (*Id.*, § 1.4.). The
5 PAGA Period is defined as the period from March 10, 2021, through ninety (90) days after the date of
6 the fully executed Agreement, or 90 days after the date of Preliminary Approval, whichever comes
7 first. (*Id.*, § 1.31.) As set forth below, any Class Member who opts out of the Settlement will
8 nonetheless remain eligible for an Individual PAGA Payment and will be bound by the Release by
9 Aggrieved Employees. (*Id.*, § 5.3.)

10 **B. The Gross Settlement Amount and Allocation of Settlement Funds**

11 The non-reversionary Gross Settlement Amount is the \$250,000 that Defendant has agreed to
12 pay to settle the claims asserted in the operative complaint. (*Id.*, §§ 1.22, 3.1.) In addition to payments to
13 Participating Class Members for their portion of the Net Settlement Amount (*Id.*, § 3.2.5), the Gross
14 Settlement Amount includes: (1) Class Counsel's Fees of up to \$83,333.33; (2) Class Counsel's
15 Expenses of up to \$13,000; (3) Administrator's Expenses Payment of up to \$10,000; (4) Class
16 Representative Service Payment to Plaintiff of up to \$10,000; (5) LWDA PAGA Payment in the
17 amount of \$6,000 to the LWDA; and (6) Individual PAGA Payments to Aggrieved Employees, totaling
18 \$2,000. (*Id.*, §§ 3.2.1-3.2.4.) In addition, Defendant will separately pay the applicable employer-side
19 payroll taxes owed on the wage portions of the Individual Class Payments. (*Id.*, § 3.1.)

20 **C. Net Funds Available to Class Members**

21 After all Court-approved deductions from the Gross Settlement Amount, Class Counsel
22 estimates that at least \$125,666.67 (the "Net Settlement Amount") will be distributed to Participating
23 Class Members. (Salusky Decl., ¶ 29.) The Net Settlement Amount will be distributed on a pro rata
24 basis based on the number of Workweeks a Participating Class Member worked during the Class
25 Period. (Settlement Agreement, §§ 3.2.5.) Class Counsel estimates that the average payment for
26 Participating Class Members will be approximately \$647.77. (Salusky Decl., ¶ 29.)

27 Individual Class Payments will be calculated by dividing the Net Settlement Amount by the
28 total number of Workweeks worked by all Participating Class Members during the Class Period and
multiplying the result by each Participating Class Member's Workweeks. (Settlement Agreement, §

3.2.5.) Defendant confirmed 194 Class Members and 7,672 Workweeks as of October 1, 2024. Based on these figures, and assuming full participation, each workweek is valued at about \$16.38 for purposes of the Settlement. The distribution is equitable, as Individual Class Payments are in proportion to the number of Workweeks each Participating Class Member worked during the Class Period. For example, assuming full participation, a Participating Class Member who worked only one Workweek during the Class Period will receive an Individual Class Payment of about \$16.38, while a Participating Class Member who worked the entire Class Period to date (about 380 weeks) will receive an Individual Class Payment of about \$6,224.40. (Salusky Decl., ¶ 29.)

Class Members will be provided with notice of the Settlement and its terms, their estimated payment, their right to opt-out or object to the Settlement, and their right to appear at the fairness hearing. (Settlement Agreement, § 1.11, Ex. A.)

D. Release

Upon Defendant fully funding the entire Gross Settlement Amount and all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff and all Participating Class Member will release all Released Parties¹ from any claims during the Class Period that were or that could have been pled in the Operative Complaint based on the facts alleged in the causes of action in the Action, including but not limited to claims under Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 516, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698-2699, 2800, 2802, the applicable Wage Orders, and Business & Professions Code section 17200, and Plaintiff's PAGA Notice (Participating Class Members' Release). Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation claims, or claims based on facts occurring outside the Class Period. (Settlement Agreement, § 5.2.) The Settlement also contains a release of PAGA claims, whereby all Aggrieved Employees are deemed to release, on behalf of themselves and their successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably

¹ The Settlement Agreement defines the Released Parties as: Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries and/or affiliates. (Settlement Agreement, § 1.41.)

could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice (Aggrieved Employees' Release). (*Id.*, 5.3.) In addition to the release given by each Participating Class Member and Aggrieved Employee, Plaintiff expressly waives the provisions, rights, and benefits, if any, of section 1542 of the Civil Code. (*Id.*, §§ 5.1.1.)

E. Class Notice and Settlement Administration

Subject to Court approval, the parties agreed to retain ILYM Group, Inc., as the Settlement Administrator ("Administrator"), a neutral entity with over 13 years of experience in the field of class action administration (<https://www.ilymgroup.com/about>). (Salusky Decl., ¶ 44.) The Settlement allocates up to \$10,000.00 for Administrator expenses. To the extent the Administrator expenses are less than, or the Court approves a payment less than, \$10,000.00, the Administrator will allocate the difference in the Net Settlement Amount, for distribution to Participating Class Members. (Salusky Decl., ¶ 43; Settlement Agreement, § 3.2.3.) The Administrator will be responsible for mailing the Class Notice to Class Members, establishing and maintaining a website to provide information of interest to Class Members, maintaining a toll-free telephone number to receive calls from Class Members, determining allocation of Workweeks and PAGA Pay Periods, maintaining the settlement funds in an appropriate account, distributing all Court-approved payments under the Settlement, and issuing a final report on the disbursement of funds. (*Id.*, § 3.2, 7.1, 7.3, 7.4.2, 7.6, 7.8.1, 7.8.6.)

Salusky Law Group obtained an estimate from ILYM Group, Inc., for the cost of administering the Settlement. The bid represents ILYM Group, Inc.'s agreement that, based on a class size of 194 members, the distributions under the terms of the Settlement, including Spanish translation of the Class Notice, the costs for administration of the terms of the Settlement will be \$6,650.00. This fixed fee is the sum of the following fees/costs: (1) Case Startup: \$325.00; (2) Project Management: \$1,960.00; (3) Notification & Mailing: \$640.00; (4) Distribution, which includes EIN, Bank Acct/QSF Setup: \$2,759.20; and (5) Case Conclusion: \$965.00. (Salusky Decl., ¶ 44.) A true and correct copy of the Estimate from ILYM Group, Inc., is attached as Exhibit 3 to the Salusky Decl. No later than fourteen (14) days after receipt of the Class Data², the Administrator will send to all Class Members identified in

² Defined in the Agreement as "Class Member identifying information in Defendant's possession including the Class Member's name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods." (Settlement Agreement, § 1.8.)

1 the Class Data, via first-class UPSP mail, the Class Notice in English and Spanish. (Salusky Dec., ¶ 47;
2 Settlement Agreement, § 7.4.2.) No later than three (3) business days after the Administrator's receipt
3 of any Class Notice returned by the USPS as undeliverable, the Administrator shall re-mail the Class
4 Notice using any forwarding address provided by the USPS. If no such address is provided by the
5 USPS, the Administrator will conduct a Class Member Address Search³ and re-mail the Class Notice to
6 the most current address obtained. (Salusky Decl., ¶ 47; Settlement Agreement, § 7.4.3.)

7 The Class Notice informs Class Members of the proposed Settlement, orients them to the nature
8 of the case, discloses the important terms of the Settlement and how the Settlement will be
9 administered, describes how Class Members may exclude themselves from the Settlement, and alerts
10 them to the effect of not opting out of the Settlement. (Salusky Decl., ¶ 50.) The first page of the Class
11 Notice will prominently estimate the dollar amounts of any Individual Class Payment and/or Individual
12 PAGA Payment payable to the Class Member and state the number of Workweeks and PAGA Pay
13 Periods (if applicable) used to calculate these amounts. (*Ibid.*) The Notice will also describe the
14 procedure for challenging these calculations. (*Ibid.*)

15 The Class Notice discloses the name and contact information of Class Counsel, the website of
16 the Administrator, the Court's address and website. (Salusky Decl., ¶ 51.) The proposed method of
17 giving the Class Notice is most likely to give actual notice to the greatest number of Class Members
18 because Class Members can be identified easily by way of Defendant's personnel records, which
19 include Class Members' full names, mailing addresses, and telephone numbers. Because these records
20 exist, I did not consider alternative methods of notice. (Salusky Decl., ¶ 48.) Class Members are
21 laborers, primarily male, a significant amount of which speak Spanish. I believe that the Class Notice,
22 as drafted, is likely to be understood by Class Members. (Salusky Decl., ¶ 49.)

23 The Class Notice will inform Class Members of their estimated Individual Class Payment, their
24 estimated Individual PAGA Payment (if applicable), and the number of Workweeks and PAGA Pay
25 Periods (if applicable) they worked during the Class Period and PAGA Period. (Settlement Agreement,
26 § 7.4.2, Ex. A.) Class Members may challenge the number of Workweeks and PAGA Pay Periods

27 ³ Defined in the Agreement as "the Administrator's investigation and search for current Class
28 Member mailing addresses using all reasonably available sources, methods and means, including, but
not limited to, the National Change of Address database, skip traces, and direct contact by the
Administrator with Class Members." (Settlement Agreement, § 1.10.)

1 allocated to them in the Class Notice by contacting the Administrator no later than 60 days after being
2 mailed the Class Notice. (*Id.*, 7.6.) Challenges will be resolved by the Administrator. (*Id.*, 7.6, 7.8.4.)
3 The Administrator's decision regarding challenge over the calculation of Workweeks and/or PAGA
4 Pay Periods shall be final and not appealable. (*Id.*) The Administrator shall promptly provide copies of
5 all challenges to the calculation of Workweeks and PAGA Pay Periods worked to Defense Counsel and
6 Class Counsel, along with the Administrator's determination of the challenges. (*Id.*, § 7.6.)

7 **F. Notice Process**

8 **1. Requests for Exclusion**

9 Class Members who wish to exclude themselves from the Settlement must send the
10 Administrator, by fax or mail, a signed written Request for Exclusion not later than 60 days after the
11 Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class
12 Notice is re-mailed). (Settlement Agreement, § 7.5.1.) To be valid, a request for exclusion must be
13 timely faxed or postmarked by the Response Deadline. (*Ibid.*) Every Class Member who does not
14 submit a timely and valid Request for Exclusion will be deemed a Participating Class Member and will
15 be entitled to all benefits and bound by all terms and conditions of the Settlement. (*Id.*, § 7.5.3.) Every
16 Class Member who submits a valid and timely request for exclusion will not be bound by the
17 Participating Class Members' Release and will not receive an Individual Class Payment or have the
18 right to object to the class action components of the Settlement. (*Id.*, § 7.5.4).

19 **2. Objections**

20 Participating Class Members may object to the class action components of the Settlement. (*Id.*,
21 7.7.1.) Participating Class Members may send written objections to the Administrator, by fax or mail.
22 In the alternative, Participating Class Members may appear in Court (or retain an attorney to appear in
23 Court) to present oral objections at the Final Approval Hearing. (*Id.*, 7.7.2.)

24 A Participating Class Member who elects to send a written objection to the Administrator must
25 do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14
26 days for Class Members whose Class Notice was re-mailed). (*Ibid.*)

27 **3. Final Report and Handling of Uncashed/Cancelled Checks**

28 Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the
Administrator will provide Class Counsel and Defense Counsel with a final report detailing its

1 disbursements. (Settlement Agreement, § 7.8.6.) Any funds associated with checks that are uncashed
2 and cancelled after the void date will be sent to the California Controller’s Unclaimed Property Fund in
3 the name of the respective Participating Class Member or Aggrieved Employee, thereby leaving no
4 “unpaid residue” subject to the requirements of Code Civ. Proc., § 384, subd. (b). (*Id.*, § 4.4.3.)

5 **G. Tax Treatment of Individual Payments**

6 Under the Settlement, 20% of each Participating Class Member’s Individual Class Payment will
7 be allocated to the settlement of wage claims and will be subject to tax withholding and reported on an
8 IRS Form W-2 (“Wage Portion”). (Settlement Agreement, § 3.2.5.1.) The remaining 80% of these
9 payments will be allocated to the settlement of claims for interest and penalties, and each Participating
10 Class Member will be issued an IRS Form 1099 for such payments. (*Ibid.*) The Administrator will
11 report Individual PAGA Payments on IRS Form 1099. (*Id.*, § 3.2.4.2.) Defendant will pay all employer
12 payroll taxes owed on the Wage Portions of the Individual Class Payments. (*Id.*, § 3.1.)

13 **IV. PROVISIONAL CERTIFICATION IS APPROPRIATE**

14 Courts have generally found that class action suits are appropriate “when the question is one of
15 a common or general interest . . . or when the parties are numerous, and it is impracticable to bring
16 them all before the court.” (Code Civ. Proc. § 382; see *Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d
17 462, 469-475.) To sustain a class action, two requirements must be met: (1) there must be an
18 ascertainable class; and (2) a “well-defined community of interest in the questions of law and fact
19 involved affecting the parties to be represented.” (*Daar v. Yellow Cab. Co.* (1967) 67 Cal.2d 695, 704.)

20 To ensure efficient use of judicial resources, California policy favors the fullest and most
21 flexible use of the class action device. (*Richmond*, *supra*, at pp. 469-475.) Any doubt as to the
22 appropriateness of class treatment should be resolved in favor of certification. (*Id.*, at pp. 473-475.)

23 **A. There Is a Numerous and Ascertainable Class**

24 Numerosity is met if the proposed class is so large that joinder of all members would be
25 impracticable. (See Code Civ. Proc. § 382.) Whether a class is ascertainable is determined by
26 examining the class definition, the size of the class and the reasonable means available for identifying
27 members of the class. (See *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal.App.3d
28 1263, 1271.) Class members are “ascertainable” where they may be readily identified without

unreasonable expense or time. (*Id.* at p. 1275.)

Participating Class Members are all current and former hourly nonexempt employees of Defendant who worked for Defendant in California at any time during the Class Period and do not submit a valid and timely Request for Exclusion. (Settlement Agreement §§ 1.5, 1.35.) Defendant’s records indicate a class of approximately 194 Class Members. (*Id.*, §§ 4.1, 8.) The class is clearly ascertainable because Class Members have been identified by reference to Defendant’s payroll and personnel records. (*Ibid.*)

B. There Is a Well-Defined Community of Interest

Generally, a community of interest is established where (1) there are predominant common questions of law or fact; (2) the named plaintiff has “claims or defenses typical of the class”; and (3) can adequately represent the class. (See *Dunk v. Ford Motor. Co.* (1996) 48 Cal.App.4th 1794, 1806.)

1. Common Questions of Law and Fact Exist

Whether a class action is the appropriate mechanism will depend largely upon “whether the common questions are sufficiently pervasive to permit adjudication in a class action rather than in a multiplicity of suits.” (*Richmond*, supra, 29 Cal.3d at pp. 477-478.) In determining whether common questions of law and fact exist, courts generally look at the allegations in the complaint, as well as the declarations of class counsel. (*Id.*, at p. 478.) The primary purpose of this inquiry is to ascertain whether the proposed class is sufficiently cohesive to warrant adjudication by representation. (See, e.g., *Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 612.)

Common questions of law and fact predominate in this case. The operative complaint asserts causes of action for failure to provide compliant meal and rest periods, failure to pay minimum and overtime wages, failure to reimburse necessary business expenditures, failure to issue accurate wage statements, failure to pay wages at separation of employment, unfair business practices, and civil penalties under the Labor Code Private Attorneys General Act (“PAGA”). (Salusky Decl., ¶ 12.) At minimum, common questions of law and fact that affect the Class are whether Defendant failed to pay all minimum and overtime wages owed to Class Members; whether Defendant failed to reimburse Class Members for all necessary business expenses; Whether Defendant failed to authorize and permit Class Members to take uninterrupted, off-duty rest periods; Whether Defendant failed to provide Class

Members off-duty meal periods; whether Defendant's practices constitute unfair business practices; and whether Defendant is liable for civil penalties under the Labor Code. (*Id.*, ¶ 80.)

Here, the required commonality element is satisfied because there are questions of law and fact common to Plaintiff and the Class, and those questions predominate over any such questions affecting only Plaintiff or individual Class Members. As such, the underlying claims are sufficiently cohesive to warrant adjudication by representation. (See *Clothesrigger, Inc.*, supra, 191 Cal.App.3d at p. 612.)

2. Plaintiff's Claims are Typical of Class Members' Claims

The typicality requirement for purposes of class certification focuses on the typicality of the named plaintiff's claims as they relate to the defendant's policies and practices. (See *Medraza v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 99 [typicality met where plaintiff alleged that defendant subjected her to the same unlawful conduct that other putative class members were subjected to].) Here, Plaintiff's claims are typical of the claims of the Class. Class Members are alleged to have been subject to the same policies and practices while working for Defendant, including Defendant's policies and practices for providing meal period and authorizing and permitting rest periods; Defendant's policies and practices for paying minimum and overtime wages; Defendant's policies and practices regarding the issuance of wage statements and payment of all wages owed at separation of employment; and Defendant's policies and practices for reimbursing necessary business expenses. (Salusky Decl., ¶ 80.) As such, all Class Members sustained the same or similar damages resulting from Defendant's alleged violations of California wage-and-hour laws. (*Ibid.*) Because each Class Member would be required to demonstrate the same elements to recover on claims against Defendant, Class Members' interests are sufficiently aligned with Plaintiff's so as to meet the typicality requirement. (See *Medraza*, supra, at p. 99.)

3. Plaintiff and Class Counsel Have and Will Continue to Adequately Represent the Class

A class representative is an adequate representative of the class so long as his or her interests are not antagonistic or in conflict with the objectives that he or she purports to represent. (*Richmond*, supra, at p. 470.) Additionally, Class Counsel "must be qualified, experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 875.) Here, Plaintiff meets both

requirements necessary to adequately represent the Class.

First, Plaintiff's interests are not antagonistic to the interests of the Class. As previously explained, Plaintiff alleges that Class Members were all subject to the same unlawful policies and practices by Defendant and thus suffered identical or similar harm. Consequently, Plaintiff seeks the same relief sought by every other member of the Class. (See *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 625-26 ["[A] class representative must be part of the class and possess the same interest and suffer the same injury as the class members."].) Plaintiff vigorously prosecuted this case on behalf of the other Class Members. (Salusky Decl., ¶¶ 61-63.) Plaintiff worked closely with Class Counsel to protect the best interests of the Class. His participation was essential in allowing Class Counsel to reach a proposed settlement on behalf of the Class. (*Ibid.*)

In addition, Plaintiff retained counsel with extensive experience prosecuting complex wage and hour class actions, who has worked diligently to obtain the Settlement on behalf of the Class. (Salusky Decl., ¶¶ 85-88.) Class Counsel thoroughly investigated the claims raised in this Action, Defendant's defenses and applicable law, and meticulously reviewed the information and documents produced by Defendant. (*Id.*, ¶¶ 14-22.) Thus, Class Counsel was sufficiently informed prior to engaging in settlement negotiations. (*Ibid.*) Moreover, the Settlement before the Court is the result of arm's-length, non-collusive, and informed negotiations. (*Id.*, ¶ 23.) Over the course of this litigation, Plaintiff and Class Counsel have adequately represented the interests of the Class and will continue to do so.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE

A. The Proposed Settlement Meets the Standards for Preliminary Approval

California Rules of Court, rule 3.769, requires court approval for class action settlements. "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." Courts act within their discretion in approving settlements that are fair, non-collusive, and take into account "all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions." (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179.)

The purpose of the preliminary evaluation of class action settlements is to determine only whether the proposed settlement is within the range of reasonableness and, therefore, whether notice to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple Computer*.

1 *Inc.* (2001) 91 Cal.App.4th 224, 234-235; Newberg on Class Actions (4th Ed.) § 11:25.) Courts have
2 broad powers to determine whether a proposed settlement is fair under the circumstances of the case.
3 (*Wershba*, supra, 91 Cal.App.4th at 234-235; *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434,
4 438.) In determining whether a settlement meets the standards for preliminary approval, courts must
5 consider several relevant factors, including “the strength of the Plaintiff’s case, the risk, expense,
6 complexity and likely duration of further litigation, the risk of maintaining class action status through
7 trial, the amount offered in settlement, the extent of discovery completed and the stage of the
8 proceedings, [and] the experience and views of counsel” (*Dunk*, supra, at p. 1801.) “The list of
9 factors is not exclusive and the court is free to engage in a balancing and weighing of the factors
10 depending on the circumstances of each case.” (*Wershba*, supra, 91 Cal.App.4th at 245.) Furthermore,
11 courts must give “proper deference to the private consensual decision of the parties” because “the
12 court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties
13 to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is
14 not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
15 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Hanlon v. Chrysler*
16 *Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

17 At the preliminary approval stage, the Court need only determine that the settlement falls within
18 the “range of possible judicial approval,” so that notice to the class and the scheduling of the fairness
19 hearing are worthwhile. (See Newberg, supra, § 11:25.) Indeed, the Court should grant preliminary
20 approval if there are no “grounds to doubt its fairness or other obvious deficiencies . . . and [the
21 settlement] appears to fall within the range of possible approval.” (Manual For Complex Litigation
22 (Third) § 30.41 (1995); see *Dunk*, supra, 48 Cal.App.4th at p. 1802.) A “presumption of fairness exists
23 where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery
24 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
25 litigation; and (4) the percentage of objectors is small.” (*Dunk*, supra, at p. 1802.) The Settlement falls
26 well within the range of possible approval and there are no grounds to doubt its fairness.

27 ///

28 ///

1 **1. The Settlement is the Result of Serious, Informed, Non-Collusive Negotiations**
2 **Aided by a Highly Experienced Mediator**

3 The proposed Settlement was reached as a result of arm's-length negotiations, following
4 significant investigation of the facts and law, and thoughtful consideration of the risks of further
5 litigation. (Salusky Decl., ¶¶ 14-23.) The settlement negotiations were adversarial and non-collusive in
6 nature. While Plaintiff believes in the merits of his case, he also recognizes the inherent risks of
7 litigation and understands the benefit of the Class receiving settlement funds immediately as opposed to
8 risking unfavorable outcomes in continued litigation, including the possibility of arbitration, all of
9 which have the potential to eliminate any relief for Class Members. (*Id.*, ¶¶ 53-59.)

10 **2. The Extent of the Information Provided Through Discovery and the State of the**
11 **Proceedings Support the Settlement**

12 There is a presumption that a proposed settlement is fair and reasonable when there has been
13 sufficient investigation and discovery to permit counsel and the court to act intelligently, and counsel
14 are experienced in similar litigation. (*Dunk*, supra, 48 Cal.App.4th at 1802.) Here, counsel thoroughly
15 investigated and evaluated the strengths and weaknesses of this case before reaching the Settlement.
16 (Salusky Decl., ¶¶ 14-23.) As described above, the Settlement was reached only after extensive
17 investigation and research, thorough calculations and risk evaluation, substantial formal and informal
18 discovery, including Defendant's policies, a sampling of Class Members' time and compensation
19 records, and Defendant's financial records, Defendant's Person Most Qualified (PMQ) deposition,
20 Plaintiff's deposition and his manager, and questioning of putative class members. (*Ibid.*) Class
21 Counsel considered the risks of further litigation, including the challenges in obtaining and maintaining
22 class certification and succeeding at trial and the possibility that Plaintiff's claims could be compelled
23 to arbitration, and was able to ascertain a value that represented a reasonable and fair compromise of
24 the claims in the Action. (Salusky Decl., ¶¶ 40-42.) The proposed Settlement came only after the case
25 was thoroughly investigated by experienced counsel. (*Id.*, ¶¶ 14-23.) This litigation reached the stage
26 where the parties had a clear view of the strengths and weaknesses of their cases, sufficient to support
27 the Settlement. (See *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.)

28 ///

3. Class Counsel is Experienced in Similar Litigation

Throughout this litigation, the Class has been represented by well-qualified counsel who has years of experience in wage and hour class action litigation. (Salusky Decl., ¶¶ 85-88.) Class Counsel has litigated and managed numerous complex class and representative actions. (*Ibid.*) In short, Class Counsel is experienced and qualified to evaluate the class claims, to evaluate the benefits of settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses asserted. (*Ibid.*) Considering Defendant's formidable arguments against liability and the real possibility that Plaintiff is ordered to arbitrate his claims, and that the Settlement was the product of arm's-length negotiations between experienced counsel, the settlement is fair and reasonable. (Salusky Decl., ¶ 89.) Given the risks in continued litigation, and class certification proceedings, this Settlement is fair, adequate, and reasonable and in the best interests of the class.

4. The Settlement is Fair and Reasonable Based on the Strengths and Weaknesses of Plaintiffs' Case and the Risks and Costs of Further Litigation

Based on information obtained through discovery, Class Counsel was able to assess the strengths and weaknesses of the claims and the benefits of a settlement at this stage of the litigation. (Salusky Decl., ¶¶ 14-23.) As a result, Class Counsel believes that the Settlement before the Court represents a very favorable resolution for the Class. (*Id.*, ¶¶ 23-26, 40-42, 53-60.)

There are significant uncertainties associated with this case, including the possibility that Plaintiff may be compelled to arbitrate his claims on an individual basis (Salusky Decl., ¶ 30.) A settlement is not judged solely against what might have been recovered had the plaintiffs prevailed at trial, nor does the settlement have to provide 100 percent of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242; *Wershba*, *supra*, at pp. 246, 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139.) Instead, "[c]ompromise is inherent and necessary in the settlement process . . . even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." (*Wershba*, *supra*, 91, at p. 250.)

1 **5. The Proposed Settlement is a Reasonable Compromise of Claims**

2 a. The Settlement Provides Relief to Class Members in Light of the Significant
3 Risks of Further Litigation

4 To evaluate a settlement, the trial court must receive “basic information about the nature and
5 magnitude of the claims in question and the basis for concluding that the consideration being paid for
6 the release of those claims represents a reasonable compromise.” (*Kullar v. Foot Locker Retail, Inc.*
7 (2008) 168 Cal.App.4th 116, 133.) The record need not contain an explicit statement of the maximum
8 theoretical recovery, but rather evidence sufficient to allow “an understanding of the amount that is in
9 controversy and the realistic ranges of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola Bottling*
10 *Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409 [citing *Kullar*, supra, 168 Cal.App.4th at p. 120].)

11 Here, the Settlement results in a benefit for all Participating Class Members, and represents a
12 reasonable recovery for the Class, considering limited support from Class Members and the strong
13 possibility that arbitration eliminates class claims. (Salusky Decl., ¶¶ 28, 30.) In reaching this
14 Settlement, Class Counsel carefully considered the strength of the case versus the amount offered in
15 settlement; the risk, expense, and complexity and likely duration of further litigation, obtaining class
16 certification, and maintaining class certification through trial; the present state of the law as it applies to
17 wage-and-hour and PAGA actions; the burdens of proof necessary to establish liability against
18 Defendant, and the threat of arbitration. (Salusky Decl., ¶¶ 28-30, 53-60.)

19 Although Plaintiff asserts that Defendant is liable to all Class Members for their unpaid wages,
20 expenses, damages, and penalties, none of the claims are certain. (Salusky Decl., ¶ 56.) Throughout this
21 litigation, Defendant was represented experienced counsel, who mounted a strong defense against the
22 claims asserted. Defendant has denied any liability for the claims alleged, contending among other
23 things, that Plaintiff’s claims are subject to arbitration, that Defendant’s actions conformed with
24 applicable law, and that Plaintiff’s claims cannot be certified as a class because Plaintiff cannot satisfy
25 the prerequisites for class certification. (*Id.*, 58; see also Settlement Agreement, § 12.1.) Such
26 considerations pose substantial uncertainties for Plaintiff to maintain his claims, as well as establishing
27 the full amount of estimated damages for such claims at trial. (Salusky Decl., ¶¶ 23-28, 56.)

28 Under the terms of the Settlement, each Participating Class Member will be entitled to receive a
pro rata portion of the Net Settlement Amount available for distribution based upon his or her

1 respective number of Workweeks during the Class Period. (Settlement Agreement, §§ 3.2.5.) This
2 means that Participating Class Members who worked more Workweeks during the Class Period will
3 receive a larger portion of the Settlement. (Salusky Decl., ¶ 29.) All Participating Class Members are
4 therefore treated equitably and fairly, as distribution of the Net Settlement Amount takes into
5 consideration the length of employment for each Class Member and the respective number of Labor
6 Code violations presumably suffered during the Class Period. (*Ibid.*)

7 *b. The Amount Offered in Settlement Given the Estimated Value of the Claims*

8 *Favors Preliminary Approval of the Settlement*

9 As set forth in the accompanying Declaration of Anna R. Salusky, Class Counsel estimated
10 Defendant's maximum-possible exposure for class claims to be \$2,460,212.24. (Salusky Decl., ¶ 38.)
11 This estimate assumed that class certification would be granted, and that Plaintiff would prevail on all
12 viable class claims at trial, as well as recover the full amount of indicated damages sought, including
13 statutory penalties. (*Id.*, 27.) Accordingly, the estimated value of the class claims is premised on a
14 likely inflated "best case scenario." (*Ibid.*)

15 The lack of significant support amongst Class Members makes class certification extremely
16 challenging. More importantly, the possibility that Defendant would prevail on its petition to compel
17 arbitration of Plaintiff's claims on an individual basis is significant. (Salusky Decl., ¶ 28.) As such, for
18 purposes of settlement, Class Counsel assumes an 80 percent discount on the merits to account for the
19 possibility that Plaintiff will not prevail on all claims. (*Ibid.*) Accordingly, Class Counsel believes a
20 more realistic valuation of the claims in this case after incorporating discounts is \$492,042. (*Ibid.*)

21 While the \$250,000 Gross Settlement Amount represents a significant discount on Class
22 Counsel's estimate of the maximum potential exposure in this matter, the reduction represents a
23 reasonable compromise considering the substantial risks that Plaintiff and Class Members faced in this
24 litigation. (*Id.* ¶ 40.) As explained above, Defendant has legitimate defenses to class certification,
25 manageability, and the merits of the underlying claims. (*Id.* 25) More importantly, the possibility of
26 Plaintiff's claims being compelled into individual arbitration is significant. (*Id.* ¶ 30.)

27 In reaching the proposed Settlement, Class Counsel considered the strength of the case versus
28 the amount offered in settlement; the risk, expense, and complexity and likely duration of further
litigation, obtaining class certification, and maintaining class certification through trial; the present state

1 of the law as it applies to wage-and-hour and PAGA actions; and the burdens of proof necessary to
2 establish liability against Defendant. (*Id.*, 59.) After considering these factors, Class Counsel concluded
3 that the proposed Settlement is fair, adequate, and reasonable. (*Ibid.*) Continued litigation would be
4 costly and time consuming with no reasonable expectation of conferring any significant benefit upon
5 the Class above that which this Settlement secures for the Class. (*Id.*, ¶ 57.) In contrast, the proposed
6 Settlement will guarantee that Class Members receive timely relief and avoid the risk of an unfavorable
7 judgment or arbitration distinguishing class claims. (*Ibid.*)

8 **B. The PAGA Settlement Should be Approved**

9 Class Counsel estimates a “best case” scenario of Defendant’s exposure to civil penalties to be
10 \$1,330,297.20. (Salusky Decl., ¶ 39.) Because of the challenges in establishing the underlying claims,
11 an equivalent discount to this claim brings it down to about \$266,059. However, this must be further
12 discounted, as under Labor Code section 2699, subdivision (e)(2), courts are authorized to award lesser
13 amounts than the maximum, and they often do. Accordingly, a further discount of 50% brings the
14 realistic value to about \$133,030, of which \$33,257 would be allocated to aggrieved employees. While
15 the amounts allocated to settlement of PAGA Penalties are significantly lower than both the maximum
16 and realistic estimates here, the significant threat of arbitration justifies this variation.

17 **C. The Requested Class Representative Service Payments are Fair and Reasonable**

18 Courts routinely approve class representative payments to compensate named plaintiffs for the
19 services they provide and the risks they incur during the course of class litigation. (See *Bell v. Farmers*
20 *Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 [upholding service payments to plaintiffs for their efforts in
21 bringing a class case]; Manual for Complex Litigation (Fourth) (2004) § 21.62 n. 971 [noting that
22 service awards are warranted].) In approving such payments, California courts frequently approve
23 awards of \$10,000 or more. (*In re Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-
24 1395 [upholding \$10,000 service award to each of four class representatives]; *West v. Circle K Stores,*
25 *Inc.* (E.D. Cal. Oct. 19, 2006) 2006 U.S. Dist. LEXIS 76558, *28 [“the court finds plaintiffs’
26 enhancement payments of \$15,000 each to be reasonable”]; *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan.
27 26, 2007) 2007 U.S. Dist. LEXIS 8476, *52 [finding “requested payment of \$ 25,000 to each of the
28 named plaintiffs is appropriate” in wage and hour settlement].) The factors courts use in determining
the amount of an award include: (1) a comparison between the service awards and the range of

1 monetary recovery available to the class; (2) time and effort put into the litigation; (3) whether the
2 litigation will further the public policy underlying the statutory scheme; and (4) the risk of retaliation.
3 (*Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 608, 804.)

4 By stepping forward as class representative, Plaintiff jeopardized the availability of prospective
5 employment because his name is now associated with a lawsuit against his former employer. (Salusky
6 Decl., ¶ 63.) Plaintiff also ran the risk of being liable for Defendants’ attorneys’ fees and costs as a
7 result of the fee shifting provisions of the Labor Code. (See, e.g., Labor Code § 218.5.) Over the course
8 of this litigation, Plaintiff spent a significant amount of time responding to discovery, preparing for and
9 sitting for his deposition, and participating in mediation. (Salusky Decl., ¶ 62.) As part of the proposed
10 Settlement, Plaintiff also agrees to a waiver of rights under Civil Code section 1542. (Settlement
11 Agreement, § 5.1.1) The proposed Class Representative Service Payment in an amount not to exceed
12 \$10,000 to Plaintiff is fair and reasonable given the risks Plaintiff took, work he performed, and privacy
13 he sacrificed for the benefit of the Class. (Salusky Decl., ¶ 63.)

14 **D. The Requested Class Counsel ‘s Fees and Expenses are Fair and Reasonable**

15 The California Supreme Court has unanimously held “that when class action litigation
16 establishes a monetary fund for the benefit of the class members, and the trial court in its equitable
17 powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable
18 fee by choosing an appropriate percentage of the fund created.” (*Laffitte v. Robert Half International,*
19 *Inc.* (2016) 1 Cal.5th 480, 503.) The Court further held that although trial courts have discretion to use
20 a lodestar multiplier cross-check or to forego a lodestar multiplier cross-check if some other means to
21 evaluate the reasonableness of a requested fee percentage exists, “the percentage method is a valuable
22 tool that should not be denied our trial court.” (*Id.* at pp. 503-506.) California courts have awarded
23 common fund fees calculated using a percentage-of-fund method that is not dependent on counsel’s
24 lodestar amount. (Pearl, *California Attorney Fee Awards* (CEB 3d Ed. 2010) § 5.19 [citing *In re Sutter*
25 *Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512]; *Bell*, supra, 115 Cal.App.4th at p.
26 726; *Apple Computer, Inc. v. Superior Ct.* (2005) 126 Cal.App.4th 1253, 1270.)

27 Here, the Settlement provides that Class Counsel may seek Attorneys’ Fees of up to \$83,333.33
28 (one-third of the Gross Settlement Amount), in addition to reimbursement for actual litigation expenses
in an amount not to exceed \$13,000. (Settlement Agreement, § 3.2.2.) As demonstrated in the

1 Declaration of Anna R. Salusky, Class Counsel performed a significant amount of work litigating this
2 action, including preparing and filing a pre-litigation notice with the LWDA, preparing and filing the
3 complaint; reviewing and analyzing Defendant's answer, defending Plaintiff's deposition; analyzing
4 Defendant's records, including its company policies and timekeeping and payroll records for Plaintiff
5 and Class Members; propounding discovery and reviewing Defendant's discovery responses; taking
6 Defendant's PMQ deposition and the deposition of Defendant's manager; attempts to contact putative
7 class members; questioning putative class members; performing legal and factual research; preparing
8 for and participating in mediation; and negotiating a settlement of the Action. (Salusky Decl., ¶ 65.)
9 Class Counsel committed, and continues to commit, significant financial and staffing resources to this
10 case, and undertook this action on a contingency basis, thereby bearing all the costs of this complex,
11 risky, and time-consuming litigation. (*Id.*, ¶ 67.) The requested Class Counsel's Fees and Expenses
12 payments are fair and reasonable and should be preliminarily approved.

13 **E. There is a Potential Fee Sharing Agreement in this Action**

14 Under CRC rule 3.769, as interpreted in the case of *Mark v. Spencer* (2008) 166 Cal.App.4th
15 219, attorney fee sharing agreements in the context of a class action settlement must be disclosed to the
16 court reviewing the settlement. (*Mark*, supra, 166 Cal.App.4th at p. 223.) "To fulfill its role in
17 protecting absent class members, the class action court must consider the potential effect of a fee-
18 splitting agreement before approving a proposed settlement." (*Mark*, supra, Cal.App.4th at p. 227.)

19 In the concurrently filed Declaration of Anna R. Salusky, a verbal fee sharing agreement with
20 two other law firms is disclosed. (Salusky Decl., ¶¶ 72-77.) The firms are Salusky Law Group, Jose
21 Garay, APLC ("Garay Law") and the Law Offices of Arnulfo F. Gutierrez ("Gutierrez Law"). (*Id.*, ¶
22 73.) California Rule of Professional Conduct, rule 1.5.1, provides in part: "Lawyers who are not in the
23 same firm* shall not divide a fee for legal services unless: (1) the lawyers enter into a **written**
24 **agreement** to divide the fee...." ([emphasis added]). Salusky Law Group is not aware of any signed
25 fee sharing agreement between Salusky Law Group, Garay Law, and Gutierrez Law. (Salusky Decl., ¶
26 73-74.) Although Mr. Villalpando gave written consent to that fee split, the consent obtained by
27 Salusky Law Group is not contemporaneous with the oral agreement between the attorneys, and
28 Salusky Law Group is unaware of any signed fee sharing agreement by the attorneys. (Salusky Decl.,

¶¶ 73-74.) Accordingly, Salusky Law Group's position is that a valid fee sharing agreement does not exist in this case.

Jose Garay referred Mr. Villalpando to Salusky Law Group in November 2021. Salusky Law Group's understanding is that Mr. Villalpando was previously referred to Mr. Garay by attorney Arnulfo F. Gutierrez. While Mr. Garay initially agreed to represent Mr. Villalpando, Mr. Garay later decided to refer the case to Salusky Law Group. (Salusky Decl., ¶ 73.)

On March 28, 2025, Anna R. Salusky reached out to Messrs. Garay and Gutierrez via email with concerns about improper communications from these attorneys to Mr. Villalpando. Based on the responses she received from Messrs. Garay and Gutierrez, it appears that Mr. Garay is under the impression that he still represents Mr. Villalpando in this matter. Salusky Law Group expects that one or both of these attorneys may attempt to intervene in this action to make a claim for attorney's fees. Notwithstanding such claims, Salusky Law Group has worked up this case, including preparing and filing the LWDA letter, pleadings, attending status conferences, taking and defending depositions, propounding and answering discovery, attending mediation, advancing costs, negotiating a settlement and preparing this motion for preliminary approval. (Salusky Decl., ¶ 75.) Salusky Law Group respectfully asks the Court to determine whether a valid fee sharing agreement exists in this case. Salusky Law Group will be serving copies of these moving papers to Garay Law and Gutierrez Law.

VI. THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING

The final step in the settlement approval process is a final approval hearing, at which time the Court may hear all evidence and arguments necessary to conclusively evaluate the proposed Settlement. Should the Court grant Plaintiff's motion for preliminary approval, Plaintiff requests that a hearing on the issues of final approval of the Settlement, approval of the Class Representative Service Payments to Plaintiff, approval of Class Counsel's Fees and Expenses, approval of the Administration Expenses Payment, and allocation of attorney's fees be scheduled approximately 120 days after preliminary approval of the Settlement.

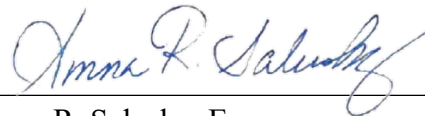
VII. CONCLUSION

Plaintiff respectfully request that this Court enter an Order: (1) provisionally certifying the proposed Class under Code of Civil Procedure section 382 and California Rule of Court 3.769(c) for settlement purposes only; (2) preliminarily approving the Settlement; (3) approving as to form the

1 Notice of Class Action Settlement and ordering that the Notice of Class Action Settlement be
2 distributed to all Class Members; (4) appointing Plaintiff Mario Villalpando as the Class
3 Representative; (5) appointing ILYM Group, Inc., as the Administrator; (6) appointing Salusky Law
4 Group as Class Counsel; (7) deciding whether a valid fee sharing agreement exists; and (8) setting this
5 matter for a hearing on the issues of final approval of the proposed Settlement, approval of the Class
6 Representative Payments, approval of Class Counsel's Fees and Expenses and any allocation of those
7 fees, and approval of the Administration Expenses Payment.

8
9 Dated: July 9, 2025

SALUSKY LAW GROUP, APC

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12 Anna R. Salusky, Esq.
13 Attorney for Plaintiff Mario Villalpando
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