

DANIEL AZIZI, ESQ., SBN 268995
daniel@downtownlalaw.com
LILIUOKALANI MARTIN, ESQ. SBN
292778
lili@downtownlalaw.com
MICHAEL JUAREZ-MUNOZ, ESQ. SBN
341142
michael@downtownlalaw.com
DOWNTOWN LA LAW GROUP, LLP
910 South Broadway
Los Angeles, California 90004
Tel: (213) 389-3765
Fax: (877) 389 - 2775

Attorney for Plaintiff David Gonzalez,
Individually and on behalf of all others
similarly situated and aggrieved.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

DAVID GONZALEZ, an individual,
Plaintiff,

v.

SYSCO LOS ANGELES, INC., a
Delaware corporation; and DOES 1
through 20, inclusive,

Defendants.

Case No. 22STCV03775

Assigned to Hon. Judge Carolyn B.
Kuhl, Dept. 12, for all purposes.

**PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

[Declaration of Proposed Class Representative
(David Gonzalez); Declaration of Liliuokalani
Martin, Esq.; and [Proposed] Order filed
concurrently herewith]

Judge: Hon. Carolyn B. Kuhl
Date: June 18, 2024
Time: 10:30 am
Dept.: 12

State Complaint Filed: January 31,
2022
Trial Date: None Set

TO THE HONORABLE COURT, ALL PARTIES AND THEIR ATTORNEYS

1 **OF RECORD:**

2 NOTICE IS HEREBY GIVEN that on June 18, 2024, at 10:30 am, or as soon
3 thereafter as the matter may be heard in Department 31 of the Los Angeles County
4 Superior Court, Spring Street Courthouse, located at 312 N. Spring St., Los Angeles,
5 CA 90012, before the Honorable Yolanda Orozco, Plaintiff David Gonzalez, as an
6 individual and on behalf of all others similarly situated, will and hereby does move
7 this Court for entry of an proposed Order granting preliminary approval of class
8 action settlement pursuant to Code of Civil Procedure Sec. 382, filed herewith:

- 9 1. Preliminarily certifying the proposed Settlement Class for purposes of
10 settlement;
- 11 2. Preliminarily appointing David Gonzalez as the Class Representative for
12 settlement purposes;
- 13 3. Preliminarily appointing Liliuokalani Martin, and Michael Juarez-Munoz
14 of Downtown L.A. Law Group, as Class Counsel for settlement purposes;
- 15 4. Preliminary approving the class action settlement based upon the terms set
16 forth in the Class and PAGA Representative Action Settlement Agreement
17 (the “Settlement” or “Settlement Agreement”);
- 18 5. Appointing ILYM as the third-party settlement administrator for mailing
19 notices and otherwise administering the Settlement;
- 20 6. Approving the proposed Class Notice, and directing that it be disseminated
21 to the proposed Settlement Class as provided in the Settlement; and
- 22 7. Scheduling a final fairness hearing to consider final approval of the
23 Settlement, entry of a proposed final judgment, Plaintiff’s Motion for
24 Reasonable Attorneys’ Fees and Costs, and the Class Representative’s
25 Service Award.

26 This Motion is based on this Notice of Motion, the attached Memorandum of
27 Points and Authorities, the declaration of Liliuokalani Martin and exhibits attached
28 thereto, the declaration of Plaintiff, and the exhibits attached thereto, the pleadings

1 and other papers filed in this action, and on any further oral or documentary evidence
2 or argument presented at the time of hearing.

3
4 Dated: May 28, 2024

DOWNTOWN LA LAW GROUP, LLP

5
6 By:



7 Daniel Azizi
8 Liliuokalani Martin
9 Michael Juarez-Munoz
10 Counsel for Plaintiff
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	<u>INTRODUCTION</u>	4
II.	<u>FACTUAL SUMMARY</u>	8
	A. Plaintiff’s Claims and Procedural History.....	8
III.	<u>THE SETTLEMENT MERITS PRELIMINARY APPROVAL</u>	9
	A. The Settlement Is Fair, Reasonable, and Adequate.....	9
	1. The Strength of Plaintiff’s Case.....	9
	2. Risk, Expense, and Duration of Further Litigation.....	10
	3. Risk of Maintaining Class Action Status.....	10
	4. The Amount of Settlement is Reasonable and Significant.....	10
	a. Failure to Pay All Minimum and Overtime Wages Based on Failure to Pay for Off-the-Clock Work.....	10
	b. Failure to Provide Meal Periods and Rest Breaks.....	11
	c. Failure to Reimburse Necessary Business Expenses...	12
	d. Waiting Time Penalties.....	12
	e. Failure to Provide Accurate Itemized Wage Statements.....	13
	f. PAGA Penalties.....	13
	g. Total Class-Wide Damages.....	13
	5. Discovery Completed and the Status of Proceedings.....	14
	6. The Experience and Views of Counsel.....	14
	B. The Preliminary Approval Standard Is Met.....	15
	1. The Settlement is Within the Range of Possible Approval.....	15
	2. The Settlement Resulted From Arm’s-Length Negotiations...	15
	3. The Settlement is Devoid of Obvious Deficiencies.....	16
	a. Settlement Provides Significant Monetary Recovery..	16

	b. Settlement Formula.....	17
	c. Enhancement Payment, Attorneys’ Fees, and Costs...	17
IV.	<u>PREVAILING PARTY IS ENTITLED TO RECOVER REASONABLE ATTORNEY’S FEES AND COSTS</u>	19
V.	<u>THE SETTLEMENT MERITS CERTIFICATION</u>	22
	A. Numerosity Is Satisfied.....	22
	B. Commonality Is Satisfied.....	22
	C. Typicality Is Satisfied.....	22
	D. Adequacy Is Satisfied	22
	E. Predominance Is Satisfied.....	23
VI.	<u>THE PROPOSED NOTICE PROCESS SATISFIES DUE PROCESS..</u>	24
VII.	<u>CONCLUSION</u>	25

TABLE OF AUTHORITIES

Cases

Amchem v. Windsor, 521 U.S. 591, 623 (1997).....	26, 28
Arenas v. El Torito Rests., Inc., 183 Cal. App. 4th 723, 732 (2010).....	27
Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp. (S.D.N.Y. 1979) 480 F.Supp. 1195	25
Bond v. Ferguson Ent., Inc., No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 (E.D. Cal. June 30, 2011)	18
Brinker Restaurant Corp. v. Superior Court, 53 Cal.4th 1004, 1038 (2012).....	14
Cellphone Termination Fee Cases, 186 Cal. App. 4th at 1394.....	19, 20
Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 n.11	24, 25
Cho v. Seagate Tech. Holdings, Inc., 177 Cal. App. 4th 734, 742 43 (2009).....	11
Churchill Village, L.L.C. v. General Electric, 361 F.3d 566, 575 (9th Cir. 2004)..	29
Clark v. Am. Residential Services LLC, 175 Cal. App. 4th 785, 806 (2009).....	19
Class Plaintiffs v. Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992).....	17
Davis v. Cox Commc'ns California, LLC, No. 16cv989 BAS (BLM), 2017 WL 1496407, at *1 (S.D. Cal. Apr. 26, 2017).....	23
Dunleavy v. Nadler, 213 F.3d 454 459 (9th Cir. 2000).....	16
Dunk v. Ford Motor Co. 9, 48 Cal. App. 4th 1794, 1801 (1996).....	11, 26
Eisen v. Carlisle & Jacqueline, 417 U.S. 156 (1974).....	29
Estrada v. Dr. Pepper/Seven-Up, Los Angeles County Superior Court Case No. BC262247 (May 2005)	26
Garcia, et al. v. Sysco Los Angeles, Inc., et al., Los Angeles County Superior Court, Case No. BC560274.....	23
Garner v. State Farm Mut. Auto. Ins. Co., No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010).....	21
Glass v. UBS Fin. Servs., No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52 (N.D. Cal. Jan. 26, 2007).....	20, 21

1	Gribble v. Cool Transports Inc., 2008 U.S. Dist. LEXIS 115560, at *9 (C.D. Cal.	
2	Dec. 15, 2008).....	16
3	Guerrero v. United States Gypsum Co., 2022 U.S. Dist. LEXIS 233930, at *21-22	
4	(S.D. Cal. Dec. 30, 2022) (quoting Van Vranken v. Atl. Richfield Co., 901 F. Supp.	
5	294, 299 (N.D. Cal. 1995)).....	20
6	Hanlon v. Chrysler Corp., 150 F.3d 1011, 1020 (9th Cir. 1998).....	28, 29
7	Hopson v. Hanesbrands Inc., No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D.	
8	Cal. Apr. 3, 2009).....	23
9	In re Ampicillin Antitrust Litig. (D.D.C. 1981) 526 F.Supp. 494.....	25
10	In re First Capital Holdings Corp. Fin. Prods. Sec. Litig., MDL DOCKET No. 901	
11	ALL CASES, 1992 U.S. Dist. LEXIS 14337, at *2 (C.D. Cal. June 10, 1992).....	17
12	In re Nordstrom Commission Cases, 186 Cal. App. 4th 576, 579 (2010).....	23
13	In re Pac. Enter. Sec. Litig., 47 F.3d 373, 378 (9th Cir. 1995).....	16
14	In re Portal Software, Inc. Sec. Litig., 2007 U.S. Dist. LEXIS 88886, at *3 (N.D.	
15	Cal. Nov. 26, 2007).....	13
16	Jack v. Hartford Fire Ins. Co., No. 09cv1683 MMA (JMA), 2011 WL 4899942, at	
17	*6 (S.D. Cal. Oct. 13, 2011).....	21
18	Jackson v. Fastenal Company, 1:20-cv-00345- SAB (E.D. Cal. May 23, 2023)...	23
19	Ketchum v. Moses (2001) 24 Cal.4th 1122, 1132.....	25
20	Laffitte v. Robert Half Int’l, Inc. (2016) 1 Cal.5th 480, 503.....	25
21	Lealao v. Beneficial Cal., Inc. (2000) 82 Cal.App.4th 19, 41.....	25
22	Leyva v. Medline Indus., Inc., 716 F.3d 510, 515 (9th Cir. 2013).....	28
23	Louie v. Kaiser Found. Health Plan, Inc., CASE NO. 08cv0795 IEG RBB, 2008	
24	U.S. Dist. LEXIS 78314, at *18 (S.D. Cal. Oct. 6, 2008).....	21
25	Medraza v. Honda of N. Hollywood, 166 Cal. App. 4th 89, 101 (2008).....	27
26	Moore v. Fitness Int’l, LLC, No. 12cv1551 LAB (NLS), 2014 WL 12571448, at *5	
27	(S.D. Cal. Jan. 22, 2014).....	23
28	Moore v. IKEA, Los Angeles County Superior Court Case No. BC263646 (Sept.	
	2006).....	26

1	Nat'l Rural Telecomm. CCoop. V. DirecTV, Inc., 221 F.R.D. 523, 527 (C.D. Cal.	
2	2004).....	16
3	O'Connor v. Uber Techs., Inc., 201 F.Supp.3d 1110 (N.D. Cal. Aug. 18, 2016)....	22
4	Officers for Justice v. Civil Serv. Comm'n, 690 F.2d 615, 625 (9th Cir.	
5	1982).....	11, 12, 30
6	Price v. Uber Technologies, June 16, 2017, Case No. BC544512 (Los Angeles	
7	County Superior Court).....	24
8	Rodriguez v. West Publishing Corp., 563 F.3d 948, 963 (9th Cir. 2003).....	12, 13
9	Ross v. US Bank Nat'l Ass'n, No. C 07-02951 SI, 2010 WL 3833922, at *2 (N.D.	
10	Cal. Sept. 29, 2010).....	20
11	Sevidal v. Target Corp., 189 Cap.App.4th 905 (2010).....	27
12	Singer v. Becton Dickinson & Co., No. 08cv821 IEG (BLM), 2010 WL 2196104,	
13	at *2 (S.D. Cal. June 1, 2010)	23
14	Sorenson v. PetSmart, Inc., No. 2:06-CV-02674 (E.D. Cal. Dec. 17, 2008).....	18
15	Van Vranken v. Atl. Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995).....	20
16	Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 493 (E.D. Cal. 2010).....	20
17	Viceral v. Mistras Grp., Inc., No. 15-CV-02198-EMC, 2016 U.S. Dist. LEXIS	
18	140759 (N.D. Cal. Oct. 11, 2016).....	16, 23
19	Washington Mut. Bank v. Superior Court, 24 Cal. 4th 906, 913 (2001).....	27
20	Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224, 234-35 (2001).....	11
21	West v. Circle K Stores, Inc., NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist.	
22	LEXIS 76558, at *28 (E.D. Cal. Oct. 19, 2006).....	20
23	Willams v. Amazon.com Services LLC, No. 3:22-CV-01892-CV (N.D. Cal. July	
24	28,	
25	2023).....	23
26	<u>Other Authorities</u>	
27	Herbert B. Newberg & Alba Conte, Newberg on Class Actions ("Newberg") §	
28	11:25 (4th ed. 2002).....	12
	Herbert B. Newberg & Alba Conte, Newberg on Class Actions ("Newberg") §	
	14.03 (4th ed. 2002).....	25

1	Manual for Complex Litigation (3d ed. 1995) § 30.41.....	17
2	<u>Rules</u>	
3	Cal. Civ. Proc. Code § 382.....	10, 27
4	Cal. R. Ct. 3.769(a)(1)-(3).....	11
5	Cal. R. Ct. 3.769(c),(e)-(g).....	11
6	Cal. R. Ct. 3.769(d).....	10, 26
7	Cal. Civ. Proc. Code § 384, subd. (b).....	19, 26
8	Cal. R. Ct. 3.769(c)(2)-(5).....	11
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff David Gonzalez (“Plaintiff”), individually and on behalf of the proposed settlement class, requests that this Court preliminarily approve the Class and PAGA Representative Action Settlement Agreement (“Settlement”) entered into by and between Plaintiff and Defendant Sysco Los Angeles, Inc. (“Defendants”).¹

Plaintiff’s claims stem from Defendant’s alleged failure to pay minimum and overtime wages, meal and rest period violations, failure to furnish accurate wage statements, and failure to timely pay final wages. Plaintiff also claims discrimination, retaliation, failure to prevent discrimination and retaliation, failure to provide reasonable accommodation, failure to engage in good faith interactive process, and wrongful termination. Under the Settlement, Defendants have agreed to pay a non-reversionary maximum Gross Settlement Amount (“GSA”) of \$2,100,00.00 to resolve Plaintiff’s individual claims and Settlement Class members’ claims on a class and representative basis. Martin Decl. ¶ 17. After deductions for Court-approved attorneys’ fees and costs, the Class Representative Service Payment, Class Representative Individual Settlement Payment claims, and the PAGA Payment, the Net Settlement Amount shall be paid to all Participating Class Members, based on their respective number of workweeks worked during the Class Period. Settlement, ¶ 3.2.4.

This proposed settlement came to fruition only after robust legal research and analysis, extensive investigation by the parties and by Class Counsel, the exchange of extensive class-wide data and analysis of that data, arm’s-length settlement negotiations at a private mediation session presided by T. Warren Jackson, an experienced wage and hour class action mediator, as well as extensive

¹ The Settlement Agreement is attached as Exhibit I to the Declaration of Liliuokalani (“Martin Decl.”). The proposed Class Notice is attached as Exhibit A to the Settlement Agreement.

1 negotiations after the mediation, which eventually led to the settlement. Martin
2 Decl. ¶¶ 14, 18.

3 This settlement provides substantial recovery on Defendant's alleged wage
4 and hour violations. The estimated average, net individual settlement payment is
5 projected at \$2,083.45 per class member, a favorable result considering the
6 formidable defenses that Defendants mounted in this action. Martin Decl. ¶ 19.
7 Based on the litigation risks involved, Plaintiff submits the proposed Settlement is
8 well within the range of possible approval. Moreover, the Settlement is the
9 product of an informed and thoroughly vetted analysis of the claims and defenses,
10 as well as the likelihood of obtaining class certification, and arm's-length
11 settlement negotiations by experienced employment counsel.

12 Accordingly, Plaintiff respectfully requests that the Court grant preliminary
13 approval of the proposed settlement.

14 **II. FACTUAL SUMMARY**

15 **A. Plaintiff's Claims and Procedural History**

16 On approximately August 22, 2021, Defendant hired Plaintiff to work as a
17 "driver helper", to ride alongside and assist truck drivers with their responsibilities
18 necessary to carry out their daily task. On or about October 14, 2021, Plaintiff
19 alleges he was wrongfully terminated.

20 On November 24, 2021, Plaintiff submitted his PAGA notice to the Labor
21 Workforce Development Agency. Martin Decl. ¶ 11. On January 31, 2022,
22 Plaintiff filed his original Complaint in Los Angeles Superior Court. Martin Decl.
23 ¶12 The original Complaint alleged one cause of action pursuant to the Private
24 Attorneys General Act alleging claims for retaliation, failure to pay wages, failure
25 to pay minimum wages, failure to pay overtime, failure to provide meal and rest
26 periods, wrongful termination, failure to provide itemized wage and hour
27 statements, waiting time penalties, unfair competition, PAGA civil penalties, and
28 other violations under FEHA. Martin Decl. *Id.* On September 9, 2022, Defendant

1 filed their Answer to Plaintiff’s Complaint. Martin Decl. ¶ 13. On August 31,
2 2023, the Parties participated in private mediation with T. Warren Jackson an
3 experienced wage and hour class action mediator which led to the Settlement
4 Agreement to settle this Action which is now before the Court. Martin Decl. ¶ 14.
5 On April 15, 2024, Plaintiff filed a Second Amended Complaint for Damages to
6 include Class Action. Martin Decl. ¶ 14.

7 Accordingly, Plaintiff requests that the Court enter an order: (1)
8 conditionally certifying the Class under California Code of Civil Procedure section
9 382 and Cal. Rule of Court 3.769(d) for settlement purposes only and preliminarily
10 approving the Settlement pursuant to California Rule of Court 3.769(c); (2)
11 approving the Parties’ proposed Settlement Agreement; (3) approving the Parties’
12 Class Notice; (4) appointing ILYM Group, Inc. (“ILYM Group”) as the Settlement
13 Administrator; and (5) scheduling a final approval hearing for the Court to
14 consider the results of the notice plan and whether to grant final approval to the
15 Settlement Agreement.

16 **III. THE SETTLEMENT MERITS PRELIMINARY APPROVAL**

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

18 To receive judicial approval, a proposed class action settlement must be
19 “fair, reasonable, and adequate.” *See Dunk v. Ford Motor Co.* 9 (“Dunk”), 48 Cal.
20 App. 4th 1794, 1801 (1996) (setting forth the “fair, adequate, and reasonable”
21 standard) (citing *Officers for Justice*, 690 F.2d at 625); *Cho v. Seagate Tech.*
22 *Holdings, Inc.*, 177 Cal. App. 4th 734, 742 43 (2009) (a trial court must approve a
23 class action settlement agreement, but only after determining that it is ““fair,
24 adequate and reasonable,”” considering factors such as the ““risk, expense, [and]
25 complexity”” of continued litigation) (citations omitted). The Court enjoys broad
26 discretion in making its fairness determination, and should consider factors
27 including, but not limited to: [T]he strength of plaintiffs’ case, the risk, expense,
28 complexity and likely duration of further litigation, the risk of maintaining class

1 action status through trial, the amount offered in settlement, the extent of discovery
2 completed and the stage of the proceedings, the experience and views of counsel . .
3 . and the reaction of the class members to the proposed settlement. *Dunk*, 48 Cal.
4 App. 4th at 1801 (setting forth a non-exhaustive list of factors for the court’s
5 consideration at final approval).

6 A class action may not be settled without the Court’s approval. Cal. R. Ct.
7 3.769(a). The California Rules of Court set forth the procedures for court approval
8 of a class action settlement: (1) the Court preliminarily approves the settlement; (2)
9 class members receive notice as directed by the Court; and (3) the Court conducts a
10 final approval hearing to inquire into the fairness of the proposed settlement. See
11 Cal. R. Ct. 3.769(c), (e)-(g).

12 The decision to approve or reject a proposed settlement lies within the
13 Court’s sound discretion. See *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th
14 224, 234-35 (2001). Nevertheless, in considering a potential settlement for
15 approval, a court is not to turn the approval hearing “into a trial or rehearsal for
16 trial on the merits. . . . [or] to reach any ultimate conclusions on the contested
17 issues of fact and law which underlie the merits of the dispute.” *Officers for Justice*
18 *v. Civil Serv. Comm’n*, 690 F.2d 615, 625 (9th Cir. 1982).

19 In making this determination, this Court may consider the following non-
20 exhaustive list of factors: (1) the strength of the plaintiff’s case; (2) the risk,
21 expense, complexity, and likely duration of further litigation; (3) the risk of
22 maintaining class action status throughout trial; (4) the amount offered in
23 settlement; (5) the extent of discovery completed and the stage of the proceedings;
24 (6) the experience and views of counsel; and (7) the reaction of the class members
25 to the proposed settlement². See *Rodriguez v. West Publishing Corp.*, 563 F.3d
26 948, 963 (9th Cir. 2003).

27 ² The seventh factor will be discussed at the final hearing approving class and settlement once
28 notice is sent out by the administrator and the reaction of the class member representative based
on notice and response of the class.

1 At the preliminary approval stage, the Court need only determine that the
2 settlement falls within the “range of possible judicial approval,” so that notice to
3 the class and the scheduling of the fairness hearing are worthwhile. *See* Herbert B.
4 Newberg & Alba Conte, *Newberg on Class Actions* (“Newberg”) § 11:25 (4th ed.
5 2002).

6 Plaintiff addresses the relevant factors below and show that the settlement
7 falls well within the range of approval on the basis of fairness, reasonableness, and
8 adequacy.

9 **a. The Strength of Plaintiff’s Case**

10 Although he maintains that his claims are meritorious, Plaintiff
11 acknowledges there were substantial risks and uncertainty in proceeding with class
12 certification and eventual trial on the merits. Defendant presented multiple
13 defenses to Plaintiff’s claims, both on the merits and as to class certification, such
14 as always maintaining legally-compliant policies, and enforcement consistent with
15 that policy. While Plaintiff was prepared to litigate his claims through class
16 certification and ultimately through trial, success was uncertain.

17 **b. Risk, Expense, and Duration of Further Litigation**

18 Although the parties engaged in significant informal discovery,
19 investigation, and class-wide data analysis, they had not completed formal
20 discovery. Martin Decl. ¶21 Preparation for class certification and trial remained
21 for the parties, as well as the prospect of potential appeals. Martin Decl. *Id.* Thus,
22 the parties would incur considerably more attorneys’ fees and costs through trial.
23 This settlement avoids those risks and accompanying expense. *See In re Portal*
24 *Software, Inc. Sec. Litig.*, 2007 U.S. Dist. LEXIS 88886, at *3 (N.D. Cal. Nov. 26,
25 2007) (“inherent risks of proceeding to summary judgment, trial and appeal also
26 support the settlement”). Thus, this factor favors preliminary approval.

27 **c. Risk of Maintaining Class Action Status**

28 Plaintiff had not yet moved for class certification. Martin Decl. ¶ 21 Absent

1 settlement, there was a risk that there would not be a certified class at the time of
2 trial, and that the Settlement Class members would not recover anything. Martin
3 Decl. ¶21. As discussed, Defendants asserted several defenses to class certification
4 which raised substantial risks associated with certifying the class. Thus, this factor
5 also supports preliminary approval.

6 **d. The Amount of Settlement is Reasonable and Significant**

7 This proposed settlement provides substantial monetary recovery for
8 Settlement Class Members in the face of disputed claims. As detailed below,
9 Plaintiff believes this settlement represents a fair recovery of the maximum
10 possible value of the claims.

11 i. Failure to Pay All Minimum and Overtime wages Based
12 on Failure to Pay for Off-the-Clock Work

13 Plaintiff alleges that Defendants underpaid wages due to its practice of
14 requiring employees to work either off-the-clock without the minimum or overtime
15 pay applicable, or on the clock and pay only minimum wage and not overtime
16 premium pay. Martin Decl. ¶22 For example, Plaintiff and putative class members
17 were required to work excess of 40 hours a week, or in excess of 8 hours a day,
18 without the excess hours paid at the minimum wage, at the employee's hourly
19 wage, and overtime and double overtime withheld where applicable. As a result,
20 Plaintiff, who often worked in excess of 8 hours in one day, and the putative class,
21 were not compensated for the time they spent working for Defendant.

22 Plaintiff estimates a maximum exposure of \$1,828,378.20 for minimum
23 wage claims and \$4,932,675.00 for overtime claims. Martin Decl. *Id.*

24 ii. Failure to Provide Meal Periods and Rest Breaks

25 Plaintiff contends that Plaintiff and the Settlement Class members were not
26 provided meal periods as required under California law, and specifically that meal
27 periods were missed, provided late (i.e., beginning after 5 hours of work), or were
28 short. Martin Decl. ¶22. Plaintiff also contends that Defendants failed to provide

1 off-duty, uninterrupted meal periods. Defendants argued that it has always
2 maintained a legally-compliant meal period policy, that it has always provided
3 meal periods consistent with that policy, and that it is only required to “provide”
4 the opportunity to take meal periods, not “ensure” meal periods are taken. Martin
5 Decl ¶22; *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1038
6 (2012). Defendants also argued that individualized inquiries would be needed to
7 determine whether each employee missed or took a late meal period on each shift,
8 why any given meal period was taken late or missed, and whether the employee
9 validly waived the meal period, thereby making certification of this claim unlikely.
10 Martin Decl. ¶22

11 Plaintiff contends that Plaintiff and the Settlement Class members were not
12 provided with an uninterrupted rest period for every period worked of four hours.
13 Defendants argued that it has always maintained a legally-compliant rest period
14 policy, that it has always provided rest periods consistent with that policy. Martin
15 Decl. ¶22 *Id.* Defendants also argued that individualized inquiries would be needed
16 to determine whether each employee missed or took a late rest period on each shift,
17 why any given rest period was taken late or missed, thereby making certification of
18 this claim unlikely. Martin Decl. ¶22

19 Plaintiff estimates a maximum exposure of \$6,576,900.00 for these claims.
20 Martin Decl. ¶22

21 iii. Waiting Time Penalties

22 Plaintiff contends that Defendants failed to pay Plaintiff and the Settlement
23 Class Members’ accrued wages and other compensation due immediately
24 upon termination or within 72 hours of resignation. This includes, but is not
25 limited to, unpaid minimum wages, overtime compensation, meal and rest break
26 compensation, and more. Defendants argued that it has always maintained a
27 legally -compliant policy for paying employees accrued wages and other
28 compensation upon termination or within 72 hours upon resignation, as required.

1 Martin Decl. ¶22. Defendants also argued that individualized inquiries would be
2 needed to determine whether each employee was paid their wages and
3 compensation owed upon their employment termination or resignation, thereby
4 making certification of this claim unlikely. Martin Decl. ¶22

5 Plaintiff estimates a maximum exposure of \$2,376,000.00 for these claims.
6 Martin Decl. ¶22

7 iv. Failure to Provide Accurate Itemized Wage Statements

8 Plaintiff contends that Plaintiff and the Settlement Class members were not
9 Provided accurate itemized wage statements by Defendants showing total hours
10 worked, hourly wages, gross wages, deductions, premiums paid, and net wages
11 earned. Defendants argued that it has always maintained a legally-compliant
12 policy for providing employees accurate itemized wage statements and that the
13 wage statements Defendants provided to their employees complied with Labor
14 Code Sec. 226, et seq. Martin Decl. ¶22. Defendants also argued that
15 individualized inquiries would be needed to determine whether which employee's
16 wage statement is deficient and not code compliant, thereby making certification of
17 this claim unlikely. Martin Decl. ¶22

18 Plaintiff estimates a maximum exposure of \$2,234,000.00 for these claims.
19 Martin Decl. ¶22

20 v. PAGA Penalties

21 Plaintiff, as an aggrieved employee, bringing forth an action on behalf of
22 himself and other current or former employees, seek statutory penalties for
23 Defendant's violations of the California Labor Code for seven alleged labor code
24 violations from approximately October 26, 2021, to August 31, 2023.

25 Plaintiff estimates an exposure of at least \$17,094.00 for these claims.

26 Martin
27 Decl. ¶22

28 vi. Total Class-Wide Damages

1 Under these figures, Plaintiff found the total, maximum possible value of the
2 claims in this matter (excluding PAGA penalties) to be about \$18,037,953.20, if
3 Plaintiff had successfully certified each claim, overcame the issues of
4 individualized inquiry, and prevailed at trial. Martin Decl. ¶22 Thus, the
5 \$2,100,000 Gross Settlement Amount, minus Plaintiff's individual claims which
6 amount to \$140,000 of the Gross Settlement Amount, represents approximately
7 12% percent of the total maximum damages at issue in this matter, which is a
8 favorable result in light of the numerous challenges this action posed for Plaintiff,
9 outlined above. Martin Decl. ¶ 23.

10 The percentage of liability exposure recovered in this case is within the
11 range of percentages routinely approved by courts. *See, e.g., Visceral v. Mistras*
12 *Grp., Inc.*, No. 15-CV-02198-EMC, 2016 U.S. Dist. LEXIS 140759 (N.D. Cal.
13 Oct. 11, 2016) (approving wage and hour class action settlement amounting to 8.1
14 percent of potential damages); *Dunleavy v. Nadler*, 213 F.3d 454 459 (9th Cir.
15 2000) (approving settlement which represented “roughly one-sixth of the potential
16 recovery”); *Nat’l Rural Telecomm. CCoop. V. DirecTV, Inc.*, 221 F.R.D. 523, 527
17 (C.D. Cal. 2004) (“it is well-settled law that a proposed settlement may be
18 acceptable even though it amounts to only a fraction of the potential recovery that
19 might be available to the class members at trial”).

20 Given the tremendous risks involved, especially with class certification, the
21 proposed settlement is well within the range of reasonableness.

22 e. **Discovery Completed and the Status of Proceedings**

23 The parties engaged in significant investigation, informal class-wide
24 discovery consisting of a random sample of payroll and time records for the
25 putative class, and analysis prior to reaching the proposed settlement. Martin Decl.
26 ¶26. As noted above, Defendants provided detailed data regarding Settlement
27 Class Members' compensation, hours worked, and other relevant payroll data. It
28 was only after this exchange of comprehensive data and information that the

1 parties participated in a full-day mediation with an experienced wage and hour and
2 class action mediator, subsequent extensive discussions of post-mediation
3 negotiations, and ultimately reached the proposed settlement. Martin Decl. ¶28
4 This factor supports preliminary approval.

5 **f. The Experience and Views of Counsel**

6 “Parties represented by competent counsel are better positioned than courts
7 to produce a settlement that fairly reflects each party’s expected outcome in
8 litigation.” *In re Pac. Enter. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here,
9 Plaintiff is represented by experienced wage and hour class action counsel who
10 have significant wage and hour class action experience, and who have successfully
11 participated in class actions in the courts of California. Martin Decl. ¶¶ 5-10. This
12 factor supports preliminary approval. *See Gribble v. Cool Transports Inc.*, 2008
13 U.S. Dist. LEXIS 115560, at *9 (C.D. Cal. Dec. 15, 2008) (“Great weight is
14 accorded to the recommendation of counsel, who are most closely acquainted with
15 the facts of the underlying litigation.”)

16 **C. The Preliminary Approval Standard Is Met**

17 The Court can grant preliminary approval of the Settlement and direct that
18 notice be given if the proposed settlement: (1) falls within the range of possible
19 approval; (2) appears to be the product of serious, informed and non-collusive
20 negotiations; and (3) has no obvious deficiencies. *See Manual for Complex*
21 *Litigation* (3d ed. 1995) § 30.41. The Ninth Circuit also has a “strong judicial
22 policy that favors settlements, particularly where complex class action litigation is
23 concerned.” *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

24 **a. The Settlement is Within the Range of Possible Approval**

25 The proposed settlement reflects a substantial recovery in light of real
26 litigation risks on both merits and certification. Plaintiff submits that the proposed
27 settlement is within the range of possible approval, such that notice should be
28 provided to the Class Members so that they can consider the settlement. The Court

will have the opportunity to again assess the reasonableness of the settlement after Class Members have had the opportunity to opt-out or object.

b. The Settlement Resulted From Arm's-Length Negotiations

The Settlement is a result of extensive arm's-length negotiation by counsel and is thus entitled to an initial presumption of fairness. *In re First Capital Holdings Corp. Fin. Prods. Sec. Litig.*, MDL DOCKET No. 901 ALL CASES, 1992 U.S. Dist. LEXIS 14337, at *2 (C.D. Cal. June 10, 1992) (“[T]here is typically an initial presumption of fairness where the settlement was negotiated at arm's length.”). Plaintiff thoroughly vetted the claims at issue and conducted extensive factual investigation and legal research and analysis. Martin Decl. ¶¶ 14, 15, 18, 29. The parties reached a settlement only after mediating with experienced wage and hour and class mediator T. Warren Jackson. Martin Decl. ¶ 30. The parties then negotiated the details of the settlement for months before finalizing the Settlement. Martin Decl. ¶ 31.

c. The Settlement is Devoid of Obvious Deficiencies

i. Settlement Provides Significant Monetary Recovery

Defendants have agreed to pay a Gross Settlement Amount of \$2,100,000, which shall be distributed to Plaintiff's individual claims, and Participating Class Members on a non-reversionary basis. The principal terms of the Settlement are summarized below:

Gross Settlement Amount	\$2,100,000.00
Minus Plaintiff's Individual Claims	-\$140,000.00
Minus Court-Approved Attorneys' Fees (33.33%)	-\$653,268.00
Minus Court-Approved Costs (up to)	-\$15,000.00
Minus Court-Approved Enhancement Award	-\$5,000.00
Minus Settlement Administration Costs	-\$20,000.00
Net Settlement Amount	\$1,266,732.00

<i>Minus</i> Amount paid to LWDA:	-\$56,250.00
Total Amount Paid to Settlement Class	\$1,210,482

Thus, the Settlement requires Defendants to pay a total of at least \$1,210,482.00 to Settlement Class Members. Martin Decl. ¶33 According to Defendants, there are approximately 581 Class Members. Martin Decl. *Id.* Accordingly, the estimated average net individual settlement payment is projected at \$2,083.45. Martin Decl. *Id.* This average recovery is in line with or exceeds recoveries in other wage and hour class action settlements. *See, e.g., Sorenson v. PetSmart, Inc.*, No. 2:06-CV-02674 (E.D. Cal. Dec. 17, 2008) (average recovery of about \$60 per class member).

ii. Net Settlement Amount Distribution

The amounts for Court-approved attorneys' fees, litigation costs, incentive award, administration costs and PAGA payment will be deducted from the Gross Settlement Amount to arrive at the Net Settlement Amount ("NSA"), which will be distributed as follows.

\$75,000 of the Gross Settlement Amount has been designated the "PAGA Payment." Pursuant to Labor Code section 2699(i), 75 percent of that amount, or \$56,250.00, will be paid to the LWDA, and the remaining \$18,750.00 will be distributed *pro rata* to PAGA members who were employed by Defendants at any point from October 26, 2021, through August 31, 2023 ("PAGA Period"), based on their number of workweeks worked during that period. *See* Settlement ¶ 3.2.5.1.

The NSA will be distributed to all Settlement Class Members who do not opt-out of the Settlement (i.e. Participating Class Members), *pro rata* based on their respective number of workweeks worked in the Class Period. *See* Settlement ¶ 3.2.5.1

By taking into account the proportional number of workweeks worked by Participating Class Members and PAGA Members, the Settlement formula

1 compensates Participating Class Members based on the extent of their potential
2 injuries and their potential damages as alleged in the Complaint, and is thus fair,
3 adequate, and reasonable.

4 Participating Class Members will be bound by the Settlement's terms and
5 will release all Class Released Claims. See Settlement ¶ 9. Additionally, all PAGA
6 Members (regardless of whether they opt out of the class portion of the Settlement)
7 who worked for Defendants during the PAGA Period will release all Released
8 PAGA Claims. Settlement ¶ 10.

9 The Settlement is non-reversionary. Any portion of the requested attorneys'
10 fee award that are not approved by the Court shall become part of the Net
11 Settlement Amount. See Settlement ¶ 3.1. Any settlement amount for checks sent
12 to Class Members or Aggrieved Employees that are not cashed within 180 days of
13 date of mailing shall be paid to California Restaurant Foundation/Restaurants Care,
14 the *cy pres* beneficiary in the name of the Class Member thereby leaving no
15 "unpaid residue" subject to the requirements of California Code of Civil Procedure
16 Sec. 384, subd. (b) See Settlement ¶¶ 4.4.1 and 4.4.3

17 **iii. Enhancement Payment, Attorneys' Fees, and Costs**

18 Enhancement payments "compensate class representatives for work done on
19 behalf of the class, [and] to make up for financial or reputational risk undertaken in
20 bringing the action." *Cellphone Termination Fee Cases*, 186 Cal. App. 4th at 1394.
21 Plaintiffs "should be compensated for the expense or risk they have incurred in
22 conferring a benefit on other members of the class." *Clark v. Am. Residential*
23 *Services LLC*, 175 Cal. App. 4th 785, 806 (2009). "Factors to be considered in
24 granting a service award include: (1) the risk to the class representative in
25 commencing suit, both financial and otherwise; (2) the notoriety and personal
26 difficulties encountered by the class representative; (3) the amount of the time and
27 effort expended by the class representative; (4) the duration of the litigation and;
28 (5) the personal benefit (or lack thereof) enjoyed by the class representative as a

1 result of the litigation.” *Guerrero v. United States Gypsum Co.*, 2022 U.S. Dist.
2 LEXIS 233930, at *21-22 (S.D. Cal. Dec. 30, 2022) (quoting *Van Vranken v. Atl.*
3 *Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995)).

4 Here, the proposed \$5,000 enhancement payment to Plaintiff is reasonable.
5 The Class Representative enhancement payment is in recognition of Plaintiff’s
6 significant contributions to this case by way of providing documents and
7 information, conducting factual research, attending mediation, hours discussing the
8 merits of his case, strategizing with our office, and participating in the prosecution
9 of this litigation. Plaintiff’s requested enhancement payment is intended to
10 recognize the time and efforts that he expended for the Class, as well as the
11 substantial risks he undertook in stepping forward as a named plaintiff in a wage
12 and hour class action against a former employer.

13 The service award also falls within the range of service awards typically
14 awarded to class representatives in similar class actions. See *e.g. Cellphone*
15 *Termination Fee Cases*, 186 Cal.App.4th 1380, 1381 (Cal.App. June 28, 2010)
16 (affirming \$10,000 incentive awards to each plaintiff in class action where average
17 recovery per class member was only \$81); *Bond v. Ferguson Ent., Inc.*, No. 1:09–
18 cv–1662 OWW MJS, 2011 WL 2648879 (E.D. Cal. June 30, 2011) (approving
19 \$11,250 service award to each of the two class representatives in a meal break
20 class action; *Ross v. US Bank Nat’l Ass’n*, No. C 07-02951 SI, 2010 WL 3833922,
21 at *2 (N.D. Cal. Sept. 29, 2010) (approving \$20,000 enhancement award to Class
22 Representative in California wage-and-hour class action settlement); *Vasquez v.*
23 *Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 493 (E.D. Cal. 2010) (approving
24 service awards in the amount of \$12,000 each from a \$300,000 settlement fund in a
25 wage/hour class action); *West v. Circle K Stores, Inc.*, NO. CIV. S-04-0438 WBS
26 GGH, 2006 U.S. Dist. LEXIS 76558, at *28 (E.D. Cal. Oct. 19, 2006) (“the court
27 finds plaintiffs’ enhancement payments of \$15,000 each to be reasonable.”); *Glass*
28 *v. UBS Fin. Servs.*, No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52

(N.D. Cal. Jan. 26, 2007)(finding “requested payment of \$ 25,000 to each of the named plaintiffs is appropriate” in wage and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc.*, CASE NO. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (S.D. Cal. Oct. 6, 2008) (approving “\$25,000 incentive award for each Class Representative” in wage and hour settlement); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010) (“Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of \$20,000 or more where, as here, the class representative has demonstrated a strong commitment to the class”). Here, Plaintiff’s proposed representative service award falls below those listed above where courts found the amount, much higher than the one requested by Plaintiff, as reasonable.

IV. PAGA ALLOCATION IS REASONABLE AND SHOULD BE APPROVED

The parties’ proposed \$75,000 PAGA allocation from the \$2,100,00.00 Gross Settlement Amount is within the ballpark of reasonableness for the following reasons. First, when it comes to settlement allocation, the State of California actually does not care about receiving PAGA penalties, as it has stated in amicus briefs submitted to other courts, rather its main objective via PAGA is to obtain Labor Code compliance.

This lawsuit used PAGA penalties as a way to obtain complete relief to the Class Members for their unpaid wage and hour labor code violations, plus some sort of interest or penalty for not being compensated for hours worked, wages paid, premiums owed, and more. Therefore, the settlement breakdown proposed by Class Counsel, accomplishes the State of California’s goal without prejudicing the interests of the State in ensuring Labor Code compliance and establishing deterrence.

Numerous courts have approved relatively low PAGA allocations of

1 \$10,000 or even less in similar wage and hour class action coupled with a related
2 PAGA settlement with little fanfare. For these reasons, as explained further below,
3 the Court can and should approve the proposed PAGA allocation.

4 Large PAGA penalties need not be allocated here to the LWDA, because the
5 Labor Commissioner has specifically stated that the main purpose for assessing
6 PAGA penalties by the Labor and Workforce Development Agency is to enforce
7 California’s Labor Code, and obtain Labor Code compliance. Specifically, with
8 regard to assessing the adequacy of PAGA settlements, the LWDA has stated that
9 the sole purpose of PAGA penalties is to “promote PAGA’s compliance and
10 deterrence goals.” See the Amicus Curiae Brief Submitted by the State Labor
11 Commissioner in *Price v. Uber Technologies*, June 16, 2017, Case No. BC544512
12 (Los Angeles County Superior Court). According to the LWDA, who is the real
13 party in interest in PAGA cases, since they are essentially qui tam actions, the
14 amount of PAGA penalties obtained are largely irrelevant if Labor Code
15 compliance is obtained. *Id.* at pp. 4-6 (“The settlements adequacy, therefore, can
16 only be determined by examining whether, weight all factors . . . the proposed
17 penalty amounts effectively promote PAGA’s compliance and deterrence goals.”
18 “What matters are the unique facts of the case at hand and the extent to which the
19 proposed settlement can effectively promote the State’s goals”).

20 When evaluating the adequacy of a settlement, including its monetary
21 allocations in view of the purposes of PAGA, the court may apply a sliding scale.
22 See, *O’Connor v. Uber Techs., Inc.*, 201 F.Supp.3d 1110 (N.D. Cal. Aug. 18,
23 2016). For example, if the settlement for a class is robust, as here, the purposes of
24 PAGA may be concurrently fulfilled. *Id.* By providing fair compensation to the
25 class members as employees and substantial monetary relief, a settlement not only
26 vindicates the rights of the class members as employees but may have a deterrent
27 effect upon the defendant employer and other employers, thereby satisfying the
28 objectives of PAGA. *Id.* By providing fair compensation to the Class Members and

1 substantial monetary relief, this settlement not only vindicates the rights of the
2 Class Members, but also has a deterrent effect upon Defendant and other
3 employers, thereby satisfying the objectives of PAGA. The LWDA has also been
4 notified of the PAGA allocation. If it feels like the PAGA penalties are too low, it
5 has the ability to advise the Court of same via amicus brief, as in Uber.

6 The PAGA allocation is within the ballpark of reasonableness given the
7 nature of the PAGA claims, which has a limited 1-year statute of limitations (prior
8 to the filing of the PAGA notice) but which does continue thereafter. Therefore,
9 due to the limited period covered by the applicable statute of limitations, the
10 \$75,000 PAGA allocation—amounting to 3.57% of the Gross Settlement
11 Amount—is within the ballpark of reasonableness.

12 Courts have “repeatedly approve[] PAGA allocations of both smaller
13 amounts and that comprised a smaller portion of the total settlement consideration
14 in wage and hour class and PAGA settlement agreements at issue” than what has
15 been proposed here. *See e.g., Willams v. Amazon.com Services LLC*, No. 3:22-CV-
16 01892-CV (N.D. Cal. July 28, 2023) (preliminarily approving \$30,000 PAGA
17 allocation in \$925,000 settlement); *Jackson v. Fastenal Company*, 1:20-cv-00345-
18 SAB (E.D. Cal. May 23, 2023 (approving \$24,000 PAGA allocation in \$2.4
19 million settlement); *Davis v. Cox Commc’ns California, LLC*, No. 16cv989 BAS
20 (BLM), 2017 WL 1496407, at *1 (S.D. Cal. Apr. 26, 2017) (preliminarily
21 approving \$4,000 PAGA allocation in \$275,000 settlement); *Viceral v. Mistras*
22 *Group, Inc.*, 2016 U.S. Dist. LEXIS 140759, 2016 WL 5907869, * 9 (N.D. Cal.
23 Oct. 11, 2016) (approving the settlement of PAGA claims for 0.15% of their
24 maximum value where the settlement taken as a whole vindicates employee rights
25 and may have a deterrent effect on the defendant employer); *Moore v. Fitness Int’l,*
26 *LLC*, No. 12cv1551 LAB (NLS), 2014 WL 12571448, at *5 (S.D. Cal. Jan. 22,
27 2014) (approving \$2,500 PAGA allocation when attorneys’ fees award alone
28 amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA

1 (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving \$3,000
2 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*,
3 No. 08cv821 IEG (BLM), 2010 WL 2196104, at *2 (S.D. Cal. June 1, 2010)
4 (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v.*
5 *Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr.
6 3, 2009) (approving \$11,250 PAGA allocation in \$1,026,000 settlement); *In re*
7 *Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 579 (2010) (“[T]he trial
8 court did not abuse its discretion in approving a settlement which does not allocate
9 any damages to the PAGA claims.”). In a similar class and PAGA settlement
10 against Defendant, the Superior Court approved a PAGA allocation of \$3,000 from
11 a global class settlement of \$325,000. *Garcia, et al. v. Sysco Los Angeles, Inc., et*
12 *al.*, Los Angeles County Superior Court, Case No. BC560274 (Revised Order
13 Granting Final Approval of Class Action Settlement and Final Judgment dated
14 November 12, 2015).

15 Thus, the parties proposed \$75,000.00 PAGA allocation here is well within
16 the reasonable range for allocated PAGA penalties and is within the ballpark of
17 reasonableness and is fair and reasonable when the remaining settlement funds are
18 serving deterrence and other PAGA purposes with the payments to workers under
19 the proposed Class settlement.

20 **V. PREVAILING PARTY IS ENTITLED TO RECOVER**
21 **REASONABLE ATTORNEY’S FEES AND COSTS**

22 Class Counsel has been investigating and litigating this action for over a
23 year. The ongoing work has been extensive, demanding, and ultimately successful
24 in achieving a substantial settlement resolution. Martin Dec. ¶ 34-38. Class
25 Counsel reviewed numerous pages of documents and data and also interviewed and
26 obtained information from Plaintiff, researched applicable law, undertook
27 damages/valuation calculations, and met and conferred with Defendant's counsel
28 regarding the pleadings, informal discovery, and the production of documents and

1 data prior to and post mediation to come to a settlement resolution. Counsel for the
2 Parties also undertook extensive settlement discussions, which included
3 participating in a formal, full-day mediation and post settlement discussions with
4 the aid of the mediator.

5 Class Counsels are well-experienced in employment law and wage-and-hour
6 class action litigation and used that experience to obtain a great result for the Class.
7 Martin Dec. ¶¶ 5-10.

8 The Settlement establishes a Maximum Gross Settlement Amount of Two
9 Million One Hundred Thousand Dollars (\$2,100,000.00), and provides for Class
10 Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of
11 attorneys' fees in an amount not to exceed thirty three and one-third percent (33
12 1/3 %) of the Class Counsel Award (i.e., \$653,268) and an amount not to exceed
13 Fifteen Thousand Dollars (\$15,000.00) for costs and expenses. The attorneys' fees
14 provided for by the Settlement is commensurate with: (1) the risk that Class
15 Counsel took in bringing and litigating the case, (2) the extensive time, effort and
16 expense that Class Counsel has dedicated to the case, (3) the skill and
17 determination that Class Counsel has shown, (4) the results that Class Counsel has
18 achieved throughout the litigation, and (5) the value of the Settlement that Class
19 Counsel has achieved for the Class Members. The proposed Class Notice provides
20 Class Members with information about the amount allocated toward the Attorneys'
21 Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought,
22 as provided for by the Settlement. Martin Dec. ¶ 36.

23 Trial courts have "wide latitude" in assessing the value of attorneys' fees
24 and their decisions will "not be disturbed on appeal absent a manifest abuse of
25 discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it
26 is long settled that the "experienced trial judge is the best judge of the value of
27 professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal.4th
28 1122, 1132. California law provides that attorney fee awards should be equivalent

1 to fees paid in the legal marketplace to compensate for the result achieved and risk
2 incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao*,
3 *supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action
4 leads to a recovery that can be “monetized” with a reasonable degree of certainty,
5 the trial court should “ensure that the fee awarded is within the range of fees freely
6 negotiated in the legal marketplace in comparable litigation.” *Id.* at 50. In cases
7 where class members present claims against a settlement fund and the settlement
8 agreement provides that the defendant agrees to paying the attorneys a percentage
9 of the same, use of that percentage method is appropriate. *Id.* at 32.

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

19 Historically, courts have awarded fees as high as fifty percent (50%) of the
20 settlement, depending on the circumstances of the case. *Newberg*, § 14.03; see also
21 *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding
22 attorneys’ fees in the amount of 45% of the \$7.3 million settlement); *Beech*
23 *Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp.
24 1195 (awarding approximately 53% of the settlement as attorneys’ fees). California
25 courts routinely approve class action attorneys’ fee awards “averag[ing] around
26 one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66
27 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace
28 was appropriate in class actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los

1 Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour);
2 *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept.
3 2006) (wage and hour).

4 Class Counsel has borne all of the risks and costs of litigation and will not
5 receive any compensation until recovery is obtained. Martin Decl. ¶ 37.

6 Class Counsel will provide extensive evidence as to the time worked,
7 litigation efforts, and further argument at the time of filing Plaintiff's motion for
8 attorneys' fees and costs. Martin Dec. ¶ 38.

9 The Settlement is non-revisionary. Any portion of the requested attorney's
10 fees award that are not approved by the Court shall become part of the Net
11 Settlement Amount. See Settlement ¶ 3.2.2. Any settlement amount for checks
12 sent to Class Members or Aggrieved Employees that are not cashed within 180
13 days of date of mailing shall be paid to California Restaurant
14 Foundation/Restaurants Care, the *cy pres* beneficiary in the name of the Class
15 Member thereby leaving no "unpaid residue" subject to the requirements of
16 California Code of Civil Procedure Section 384, subd. (b). See Settlement ¶¶ 4.4.1
17 and 4.4.3.

18 Considering the work performed and the risks incurred, the attorneys' fees
19 provided for by the Settlement and to be requested by Class Counsel are well
20 within the range of reasonableness.

21 **VI. THE SETTLEMENT MERITS CERTIFICATION**

22 California Rule of Court 3.769(d) provides that the Court may make an order
23 approving certification of a provisional settlement class at the preliminary approval
24 stage. It is well-established that trial courts should use a "lesser standard of
25 scrutiny" for determining the propriety of certifying a settlement class, as opposed
26 to a litigation class. *Dunk*, 48 Cal. App. 4th at 1807 n.19. The reasons include that
27 no trial is anticipated in a settlement class, so the case management issues inherent
28 in determining if the class should be certified need not be confronted; and the trial

1 court's fairness review of the settlement protects the interests of the non-
2 representative class members. (*Id.*); *see also Officers for Justice*, 690 F.2d at 633
3 ("Th[e] relationship between the certification determination and the merits of the
4 case is further attenuated within the context of the settlement evaluation process . .
5 . . [C]ertification issues raised by class action litigation that is resolved short of a
6 decision on the merits must be viewed in a different light."); *Amchem Prods., Inc.*
7 *v. Windsor*, 521 U.S. 591, 620 (1987) ("Confronted with a request for settlement-
8 only class certification, a district court need not inquire whether the case, if tried,
9 would present intractable management problems . . . for the proposal is that there
10 be no trial."). As discussed below, for the purposes of this settlement only, the
11 Parties ask this Court to provisionally certify the Class, as defined above, under
12 Cal. Civ. Proc. Code § 382.

13 **a. Numerosity Is Satisfied**

14 Numerosity is met if a proposed class is so large that joinder of all members
15 would be impracticable. *See* Cal. Code Civ. Proc. § 382. A proposed settlement
16 class is ascertainable if the class members can be objectively *identified* and given
17 notice of the litigation without unreasonable time or expense. *See Medrazo v.*
18 *Honda of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008); *see also, Sevidal v.*
19 *Target Corp.*, 189 Cap.App.4th 905 (2010).

20 Numerosity is satisfied because, as stated, there are approximately 581 Class
21 Members. Martin Decl. ¶ 39

22 **b. Commonality Is Satisfied**

23 To justify certification, the class proponent must show that questions of law
24 or fact common to the class predominate over the questions affecting the individual
25 members. *See Arenas v. El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010)
26 (citing *Washington Mut. Bank v. Superior Court*, 24 Cal. 4th 906, 913 (2001)).

27 Commonality is satisfied because there are common questions of fact and
28 law arising from Settlement Class Members' employment with Defendants, such as

1 Defendants’ alleged failure to pay overtime or minimum wages, provide accurate
2 wage statements, or to provide compliant meal and rest periods – all of which
3 Plaintiff contends arise from a common core of facts under Defendant’s alleged
4 policies and conduct. Martin Decl. ¶ 39.

5 **c. Typicality Is Satisfied**

6 Typicality “focuses on whether there exists a relationship between the
7 plaintiff’s claims and the claims alleged on behalf of the class, i.e. the
8 representative claims are ‘typical’ if they are reasonably co-extensive with those of
9 absent class members.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir.
10 1998). Here, Plaintiff’s claims are typical of the Settlement Class. Plaintiff was
11 employed by Defendants as a non-exempt employee in California during the Class
12 Period and was subjected to Defendants’ uniform policies and practices. Martin
13 Decl. *Id.* As the proposed Settlement Class consists only of other non-exempt
14 employees like Plaintiff, and because Plaintiff’s claims stem from Defendants’
15 policies and practices that applied uniformly to the Settlement Class Members,
16 typicality is satisfied.

17 **d. Adequacy Is Satisfied**

18 Plaintiff is an adequate class representative. To satisfy this requirement,
19 Plaintiff and his counsel must not have conflicts of interest with the proposed Class
20 and must vigorously prosecute the action on behalf of the Class. *See Hanlon*,
21 *supra*, 150 F.3d at 1020. Here, there is no conflict of interest between Plaintiff and
22 the proposed Settlement Class consisting of other non-exempt employees. Martin
23 Decl. *Id.* Plaintiff contends that he is adequate to represent the class because he
24 was employed by Defendant during the Class Period, experienced the same wage
25 and hour violations, i.e. minimum wage violations, overtime violations... that
26 resulted from Defendant’s policies and practices as the rest of the class. Plaintiff
27 asserts it is unlikely any Settlement Class Member, especially current employee,
28 would have pursued these claims individually. *See Leyva v. Medline Indus., Inc.*,

1 716 F.3d 510, 515 (9th Cir. 2013) (“In light of the small size of the putative class
2 members’ potential individual monetary recovery, class certification may be the
3 only feasible means for them to adjudicate their claims. Thus, class certification is
4 also the superior method of adjudication.”). Plaintiff’s counsel also have no
5 conflicts with Settlement Class Members, and are adequate to represent the
6 Settlement Class given their skills, qualifications, and experience. Martin Decl. ¶
7 39.

8 **e. Predominance Is Satisfied**

9 Predominance tests “whether proposed classes are sufficiently cohesive to
10 warrant adjudication by [class action] representation.” *Amchem v. Windsor*, 521
11 U.S. 591, 623 (1997). Because Plaintiff seeks certification for settlement purposes
12 only, however, manageability of trial need not be considered. *Id.* at 620. As all
13 proposed Settlement Class Members were allegedly deprived of overtime wages
14 and minimum wages, suffered meal and rest period violations, and/or suffered the
15 other wage and hour violations or labor code violations described herein due to
16 Defendants’ uniform policies and practices, the proposed Settlement Class is
17 “sufficiently cohesive” since a “common nucleus of facts” and “potential legal
18 remedies” dominate. *See Hanlon, supra*, 150 F.3d at 1022. Martin Decl. ¶ 39

19 **VII. THE PROPOSED NOTICE PROCESS SATISFIES DUE PROCESS**
20 **AND THE COURT SHOULD APPOINT ILYM GROUP, INC. AS**
21 **ADMINISTRATOR**

22 Due Process requires that notice be provided to class members by the best
23 reasonable method available. *See Eisen v. Carlisle & Jacqueline*, 417 U.S. 156
24 (1974). Notice is satisfactory if it “generally describes the terms of the settlement
25 in sufficient detail to alert those with adverse viewpoints to investigate and to come
26 forward and be heard.” *See Churchill Village, L.L.C. v. General Electric*, 361 F.3d
27 566, 575 (9th Cir. 2004).

28 Here, Plaintiff proposes that the settlement be administered by ILYM Group,

1 Inc., an experienced class action settlement administrator, which will mail the
2 proposed Class Notice to the Settlement Class. Martin Decl.. ¶ 40.

3 The Parties notice plan includes using ILYM, Inc. as the administrator to
4 disseminate directly to the class members by first class mail, handling inquiries
5 from class members, and establishing and maintaining an interactive website to
6 post information of interest to Class Members including the date, time and location
7 for the Final Approval Hearing and copies of the Settlement Agreement, Motion
8 for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion
9 for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel
10 Litigation Expenses Payment and Class Representative Service Payment, the Final
11 Approval and the Judgment as well as include a frequently asked questions (FAQ)
12 section and access to claim forms, and instructions. See Martin Decl., ¶ 41.

13 The proposed Class Notice advises Class Members of the key terms of the
14 Settlement and uniform 60-day deadline to opt-out, file a dispute, or file an
15 objection, and also provides a summary of the alleged claims, explains the
16 recovery formula and expected recovery amount for each member of the
17 Settlement Class, provides contact information for Class Counsel, and notifies
18 them of the date for the final approval hearing. Settlement, at ¶¶ 7.5; 7.6; 7.7.; 9.

19 **VIII. CONCLUSION**

20 For the foregoing reasons, Plaintiff respectfully requests that the Court grant
21 preliminary approval of the Settlement; conditionally certify the Class for
22 settlement purposes; preliminarily appoint and designate Downtown LA Law
23 Group, LLP as Class Counsel; preliminarily appoint and designate Plaintiff David
24 Gonzalez as Class Representative; appoint ILYM as Claims Administrator;
25 preliminarily approve the allocations for Attorneys' Fees and Costs, Class
26 Representative Enhancement Payment, PAGA Payment, and Claims
27 Administration Cost; approve the proposed Class Notice; direct the Claims
28 Administrator to undertake the notice and settlement administration process in

1 conformity with the deadlines and procedures provided by the Settlement
2 Agreement; and schedule a Final Approval Hearing to take place in approximately
3 three months after the Preliminary Approval Order is entered.

4 Concurrently with the filing of this motion, my office uploaded the motion
5 and all exhibits to the website of the Labor Workforce Development Agency.

6
7 Dated: May 28, 2024

DOWNTOWN LA LAW GROUP, LLP

8
9 By: 

10 _____
11 Liliuokalani Martin
12 Michael Juarez-Munoz
13 Counsel for Plaintiff
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28