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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE**

EULALIA TRINIDAD, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

vs.

GROUNDWORK COFFEE LLC, an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Lead Case No.: 19STCV09758

Honorable Stuart M. Rice
Department SSC-1

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Declaration of Proposed Class Counsel
(Yasmin Hosseini); Declaration of
Proposed Class Representatives (Eulalia
Trinidad and Marko Asaulyuk); and
[Proposed] Order filed concurrently
herewith]

Date: October 30, 2023
Time: 10:30 a.m.
Department: SSC-1

Complaint Filed: March 22, 2019
Trial Date: None Set

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

PLEASE TAKE NOTICE that on October 30, 2023 at 10:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Stuart M. Rice in Department SSC1 of the Superior Court of California for the County of Los Angeles, located at Spring Street Courthouse, 312 North Spring Street, Los Angeles, California 90012, Plaintiffs Eulalia Trinidad and Marko Asauljuk (together, “Plaintiffs” or “Class Representatives”) will, and hereby do, move for an order:

- Granting leave to file the [Proposed] First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq. (“First Amended Complaint” or “Operative Complaint”) which is attached “**EXHIBIT B**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement.
- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Class Action and PAGA Settlement Agreement and Class Notice (“Settlement,” “Agreement,” or Settlement Agreement) attached as “**EXHIBIT 1**” to the Declaration of Yasmin Hosseini, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Class Counsel Fees and Class Counsel Litigation Expenses Payment to Class Counsel, Class Representative Service Payments to Plaintiffs, and Administration Costs to the Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Eulalia Trinidad and Marko Asauljuk as Class Representatives;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;

- Approving the proposed Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members and Aggrieved Employees;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving ILYM Group, Inc. as the Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Class Counsel Fees and Class Counsel Litigation Expenses Payment to Class Counsel, Class Representative Service Payments to Plaintiffs, and Administration Costs to the Administrator.

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Yasmin Hosseini) and Proposed Class Representatives (Eulalia Trinidad and Marko Asaulyuk) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: October 17, 2023

LAWYERS for JUSTICE, PC

By:



Yasmin Hosseini
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Eulalia Trinidad and Marko Asauljuk (together, “Plaintiffs” or “Class Representatives”) seek preliminary approval of the Class Action and PAGA Settlement Agreement and Class Notice (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of other members of the general public similarly situated, and other aggrieved employees, on the one hand, and Defendants Groundwork Coffee LLC, Groundwork Coffee Holdings, LLC, Groundwork Coffee Roasters, LLC, Edward Cola, and Steven Levan (together, “Defendants”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendants (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of Five Hundred Thousand Dollars (\$500,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Participating Class Members which will be distributed from the Net Settlement Amount²; (2) Class Representative Service Payments of Seven Thousand Five Hundred Dollars (\$7,500.00) each to Plaintiffs Eulalia Trinidad and Marko Asauljuk (\$15,000.00)³; (3) the Class Counsel Fees and Class Counsel Litigation Expenses Payment to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or \$175,000.00, and reimbursement of reasonable litigation costs and expenses not to exceed Twenty-Five Thousand Dollars (\$25,000.00)⁴; (4) the Administration Costs to the Administrator in the amount not to exceed Fifteen Thousand Dollars (\$15,000.00);⁵ and (5) the amount of Fifty Thousand Dollars (\$50,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA Penalties”), of which seventy-five percent (75%) or \$37,500.00 will be distributed to the Labor and Workforce Development Agency (“LWDA Payment”) and

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Yasmin Hosseini (“Hosseini Decl.”), § 1.21.

² *Id.*, § 1.23.

³ *Id.*, § 3.2.1.

⁴ *Id.*, § 3.2.2.

⁵ *Id.*, § 3.2.3.

twenty-five percent (25%) or \$12,500.00 will be distributed to Aggrieved Employees on a *pro rata* basis, based on PAGA Pay Periods during the PAGA Period.⁶

Plaintiffs also seek to provisionally certify the following Class for settlement purposes only, which Defendants do not oppose:

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

Class Members who do not submit a valid and timely Request for Exclusion from the Class Settlement (“Participating Class Member”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) on a *pro rata* basis based on the number of weeks each Class Member worked for Defendants as an hourly-paid or non-exempt employee within California during the Class Period (“Workweeks”).⁸ All current and former hourly-paid or non-exempt employees of Defendants in California employed during the PAGA Period (“Aggrieved Employees”), will receive a share of the 25% of the PAGA Penalties (“Individual PAGA Payment”) on a *pro rata* basis based on the number of weeks each Aggrieved Employee worked for Defendants as an hourly-paid or non-exempt employee within California during the PAGA Period (“PAGA Pay Period”).⁹

The Settlement resolves the Released Class Claims of Plaintiffs and Participating Class Members, and the Released PAGA Claims of Plaintiffs, Aggrieved Employees, and of the State of California, against the Released Parties.¹⁰

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant operates several cafes and two roasteries, where it roasts coffee sourced from various coffee farms around the world. In addition to retailing its coffee products in its own cafes, Groundwork supplies its coffees to restaurants, hotels, cafes, and grocery stores in a

⁶ Settlement Agreement, § 3.2.4.

⁷ *Id.*, §1.5. “Class Period” means the period from March 22, 2015 to the date 60,000 Workweeks is reached (as determined by the Administrator). *See id.*, §1.12.

⁸ *Id.*, §§ 1.23, 1.36 and 1.44.

⁹ *Id.*, §§ 1.4, 1.23 and 1.30. “PAGA Period” means the period from November 3, 2020 to May 16, 2023. *See id.*, § 1.31.

¹⁰ *See id.* at § 1.39, for the full scope of the “Released Class Claims,” *id.* at § 1.40, for the full scope of the “Released PAGA Claims,” and *id.* at § 1.41. for the definition of the “Released Parties.”

growing number of states across the country. Plaintiffs Eulalia Trinidad and Marko Asauluk are former employees of Defendants.

On March 22, 2019, Plaintiff Trinidad filed a Class Action Complaint for Damages, in the Los Angeles County Superior Court (“Court”) (“*Trinidad* Action”).

On May 3, 2019, Defendant Groundwork Coffee LLC filed an Answer to Plaintiff Trinidad’s Complaint.

On November 12, 2021, Plaintiff Asauluk submitted notice to the California Labor & Workforce Development Agency (“LWDA”) and Defendant of his intent to pursue civil penalties under the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq. (“*Asauluk* PAGA Notice”).

On January 7, 2022, Plaintiff Asauluk filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq., in the Los Angeles County Superior Court (“Court”) (“*Asauluk* Action”).

On February 2, 2022, Defendants filed an Answer to Plaintiff Marko Asauluk’s Complaint.

Plaintiffs’ core allegation is that Defendants have violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs, the Class Members, and the Aggrieved Employees of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiffs contend that they, and the Class Members and Aggrieved Employees, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys’ fees.

Defendants have denied, and continues to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Action, and further denies that the Action is appropriate for class treatment or representative adjudication for any purpose other than settlement.

The Parties have actively litigated the Action since it was commenced on March 22, 2019. On November 2, 2020 the Parties participated in a formal, full-day mediation conducted by Hon. Michael Latin (Ret.), a well-regarded mediator experienced in mediating complex labor and employment matters, and a second all-day mediation presided over by Honorable Michael Latin (Ret.) on October 26, 2021. Although the parties did not reach a resolution during the mediations, the Parties engaged in extensive settlement negotiations, which led to this Agreement to settle the Litigation.

III. REQUEST FOR LEAVE TO FILE AMENDED COMPLAINT

To effectuate the terms of the Settlement Agreement and intent of the Parties, the Parties agree that leave should be granted for Plaintiff Trinidad to file an amended complaint in the Trinidad Action to allege a violation of the California Private Attorneys General Act (“PAGA”) as to Plaintiff Asauluk. Thereafter, Plaintiffs agree to dismiss the Asauluk Action without prejudice. Further, the Parties agree that all material allegations in the First Amended Complaint shall be deemed denied by Defendants without the necessity of Defendants filing an Answer to the First Amended Complaint or any other pleading in the *Trinidad* Action or *Asauluk* PAGA Action. As such, Plaintiffs respectfully request leave to file the First Amended Complaint, attached “**EXHIBIT B**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement, so that the operative complaint in this action formally asserts the causes of action and allegations that have been investigated, litigated, mediated, and ultimately settled, by the Parties, and so that the terms of the Settlement may be effectuated.

IV. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendants will pay a Gross Settlement Amount to resolve the Released Class Claims of Plaintiffs and the Class Members who have not submitted a valid and timely Request for Exclusion (i.e., Participating Class Members) and the Released

PAGA Claims of Plaintiffs and Aggrieved Employees with respect to the Released Parties.¹¹ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount of not more than thirty-five percent (35%) of the Gross Settlement Amount (e.g. \$175,000.00) and reimbursement of reasonable costs and expenses in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000.00) (collectively referred to as the "Class Counsel Fees and Class Counsel Litigation Expenses Payments"); (2) administration costs, which not to exceed Fifteen Thousand Dollars (\$15,000.00) to the Administrator ("Administration Costs"); (3) the PAGA Penalties (\$50,000.00), of which 75% will be distributed to the LWDA (i.e., \$37,500.00) ("LWDA Payment") and the remaining 25% (i.e., \$12,500.00) will be distributed to Aggrieved Employees on a *pro rata* basis; and (4) payment in the amount of up to Seven Thousand Five Hundred Dollars (\$7,500.00) each to Plaintiffs Eulalia Trinidad and Marko Asauluyuk ("Class Representative Service Payments").¹² The Parties have agreed to retain ILYM Group, Inc. ("ILYM" or "Administrator") to handle the notice and settlement administration process.

The Parties have agreed that the Administrator will determine each Participating Class Member's *pro rata* share of the available Net Settlement Amount ("Individual Settlement Share"), in accordance with the Settlement Agreement and as follows:

- a. After Preliminary Approval of the Settlement, the Administrator will divide the Net Settlement Amount by the total number of Workweeks worked by all Class Members to yield the "Estimated Workweek Value," and multiply each Class Member's individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement.¹³
- b. After Final Approval of the Settlement, the Administrator will divide the final Net Settlement Amount by the Workweeks of all Participating Class Members to yield the "Final Workweek Value," and multiply each Participating Class Member's individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.¹⁴

The Parties have agreed that the Settlement Administrator shall determine each Aggrieved Employee's *pro rata* share of the 25% share of the PAGA Penalties (i.e., Individual

¹¹ Settlement Agreement, §§ 5.2 and 5.3.

¹² *Id.*, §§ 3.2.1, 3.2.2, 3.2.3, and 3.2.4.

¹³ *Id.*, § 3.2.5.a.

¹⁴ *Id.*, § 3.2.5.b.

PAGA Payment”), in accordance with the Settlement Agreement as follows: the Administrator will divide the 25% portion of the PAGA Penalties attributed to Aggrieved Employees, i.e., \$12,500.00, by the PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period resulting in the PAGA Pay Period Value and then multiplying the PAGA Pay Period Value by the number of PAGA Pay Period worked by each individual Aggrieved Employee during the PAGA Period.¹⁵

Each Participating Class Member’s Individual Settlement Share will be allocated as follows: twenty percent (20%) as wages (the “Wages Portion”), which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as penalties, interest, and non-wage damages (the “Non-Wage Portion”), which will be reported on an IRS Form 1099.¹⁶ Participating Class Members will be issued payment of their Individual Settlement Share subject to reduction for the employee’s share of taxes and withholdings with respect to the wage portion of each Individual Settlement Share (the net payment is referred to as an “Individual Settlement Payment”).¹⁷ Any payment for an Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on an IRS Form-1099, if necessary.¹⁸ The Administrator will have the option to pay the Individual Settlement Payment and Individual PAGA Payment by way of a single check. Defendant’s will pay the employer’s share of payroll taxes with respect to the Wage Portions of Individual Settlement Shares separately and in addition to the Gross Settlement Amount.¹⁹

Each Individual Settlement Payment and Individual PAGA Payment shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided.²⁰ The Administrator will cancel all checks not cashed by the void date.²¹ For any Class Member whose Individual Settlement Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such

¹⁵ Settlement Agreement, § 3.2.6.

¹⁶ *Id.*, § 3.2.7.

¹⁷ *Id.*, § 1.22.

¹⁸ *Ibid.*

¹⁹ *Id.*, § 3.1.

²⁰ *Id.*, § 4.3.1.

²¹ *Ibid.*

checks to the State of California’s Controller’s Office Unclaimed Property Division in the name of the Participating Class Member and/or Aggrieved Employee and in the amount of his or her respective Individual Settlement Payment and/or Individual PAGA Payment.²²

Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by mail, a no later than sixty (60) calendar days after the Administrator mails the Class Notice to Class Members and Aggrieved Employees (“Response Deadline”), a written request to be excluded from the Class Settlement (“Request for Exclusion”).²³ A Request for Exclusion must: (a) contain the case name and number of the Trinidad Action; (b) be signed by the Class Member; (c) contain the full name, address, telephone number, and the last four digits of the Social Security Number of the Class Member requesting exclusion; (d) clearly state that the Class Member does not wish to be included in the Class Settlement; (e) be returned by mail to the Administrator at the specified address, postmarked on or before the Response Deadline.²⁴ Class Members who submit a valid and timely Request for Exclusion from the Class Settlement is a Non-Participating Class Member and shall not receive Individual Settlement Payments or have the right to object to the Class Settlement.²⁵ Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.²⁶

Only Participating Class Members may object to the Class Settlement and/or this Agreement.²⁷ Participating Class Members may send written objections to the Administrator by mail.²⁸ In the alternative or in addition to his or her written objection, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing.²⁹ A Class Member’s written objection to the Class Settlement must: (a) be signed by the Class Member; (b) contain the case name and number of

²² Settlement Agreement, § 4.3.3.

²³ *Id.*, §§ 1.42, 1.43, and 7.5.1.

²⁴ *Id.*, § 7.5.1.

²⁵ *Id.*, § 7.5.4.

²⁶ *Ibid.*

²⁷ *Id.*, § 7.7.1.

²⁸ *Id.*, § 7.7.2.

²⁹ *Ibid.*

the Litigation; (c) contain the Class Member's full name, telephone number, mailing address, and last four digits of their Social Security Number; (d) clearly state the factual and legal basis for objecting to the Class Settlement; (e) indicate whether the Class Member is represented by counsel and identify said counsel with his or her full name, address, telephone number; (f) indicate whether the Class Member intends to appear at the Final Approval Hearing and seeks to be heard at the Final Approval Hearing; and (g) be returned by mail to the Administrator at the specified address, postmarked on or before the Response Deadline.³⁰

Each Class Member and Aggrieved Employee shall until the response Deadline to challenge the number of Workweeks and PAGA Pay Periods (if any) allocated to the Class Member and/or Aggrieved Employee in the Class Notice.³¹ The Class Member may challenge the allocation by communicating with the Administrator via mail.³² A dispute to the calculations of Workweeks must (a) contain the case name and number of the Litigation; (b) be signed by the Class Member and/or Aggrieved Employee; (c) contain the full name, address, telephone number, and the last four digits of the Social Security Number of the disputing Class Member and/or Aggrieved Employee; (d) clearly states that the Class Member and/or Aggrieved Employee disputes the number of Workweeks and/or PAGA Pay Periods credited to him or her and what he or she contends is the correct number to be credited to him or her; (e) includes information and/or attaches documentation demonstrating that the number of Workweeks that he or she contends should be credited to him or her are correct; and (f) is returned by mail to the Administrator at the specified address, postmarked on or before the Response Deadline.³³

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at

³⁰ Settlement Agreement, § 7.7.3.

³¹ *Id.*, § 7.6.

³² *Ibid.*

³³ *Id.*, § 7.6.

1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or reject a proposed settlement is within the court’s discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 (“In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court’s broad discretion.”). Accordingly, a court’s decision to approve a class action settlement may be reversed only upon a strong showing of “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

Courts review class action settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later detailed review after the period during which notice is distributed to class members for their comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th Ed. 2002). This procedure, which is commonly utilized by both federal and state courts, assures class members of the protection of procedural due process safeguards and enables a court to fulfill its role as the guardian of the interest of the settlement class.

Preliminary approval of a settlement does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to voice their views of the settlement or to exclude themselves from the settlement. Cal. R. Ct. 3.769(g).

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

V. **THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make this fairness determination, courts must consider several relevant factors, including “the strength of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d at 1027 (citation omitted).

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

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

The Parties actively litigated the Litigation since the Trinidad Action was commenced on March 22, 2019. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the cases for class certification and trial.³⁴

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³⁴ Hosseini Decl., ¶¶ 10-12.

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the cases, including and not limited to, the exchange, review, and analysis of a large volume of documents and data produced by Defendants.³⁵ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: employment records of Plaintiffs, a detailed sampling of Class Members' time and pay data, Defendants' Employee Handbook, earning statements, job description, company policy acknowledgements (Handbook Acknowledgement and Agreement), internal memoranda, operations and employment practices, forms, procedures, and policies (including but not limited to Code of Conduct, Audio Video Monitoring, Meal Break Waiver Choice), among other information and documents.³⁶ Class Counsel interviewed Plaintiffs and other Class Members to gather facts and to identify potential witnesses.³⁷ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.³⁸ Class Counsel also drafted pleadings and mediation brief, and prepared for and attended court proceedings, settlement negotiations, and the mediations, among other tasks.³⁹

The Parties engaged in extensive settlement negotiations and participated in two formal, full-day mediations conducted by Hon. Michael Latin (Ret.), a well-respected mediator experienced in mediating complex labor and employment matters.⁴⁰ Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the cases and various aspects of the cases, including but not limited to, Defendants' financial condition, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, and PAGA representative claims, as well as the evidence produced and

³⁵ Hosseini Decl., ¶ 11.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Id.*, ¶ 11.

³⁹ *Ibid.*

⁴⁰ *Id.*, ¶ 10.

analyzed, and the possibility of appeals.⁴¹ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴² Arriving at a settlement that was acceptable to the Parties was not easy. Defendants and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴³ After conducting investigations, significant formal and informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluations, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴⁴

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.⁴⁵ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴⁶ Counsel for the Parties have also reviewed documents and information relating to Plaintiffs' and the Class Members' and Aggrieved Employees' employment with Defendants and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiffs' claims, and Defendants' defenses thereto, as well as facts discovered.⁴⁷ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁸

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

The Settlement, which provides for a Gross Settlement Amount of Five hundred Thousand Dollars (\$500,000.00), represents a fair, adequate, and reasonable resolution of the

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Hosseini Decl., ¶¶ 10, 15-17.

⁴⁴ *Ibid.*

⁴⁵ *Id.*, ¶¶ 10, 15-17.

⁴⁶ *Ibid.*

⁴⁷ *Id.*, ¶¶ 10-12 & 15-17.

⁴⁸ *Id.*, ¶¶ 6-7.

1 matters.⁴⁹ The Settlement was calculated using the information and data uncovered during
2 litigation, case investigation, as well as the formal and informal exchange of information.⁵⁰ The
3 Settlement takes into account the potential risks and rewards inherent in any case and, in
4 particular, in the case at issue.⁵¹ Moreover, considering all of the facts and circumstances of the
5 lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵²

6 Assuming that the Class Counsel Fees and Class Counsel Litigation Expenses Payments,
7 Class Representative Service Payments, PAGA Penalties, and Administration Costs are
8 approved by the Court and paid in the full amounts provided for by the Settlement, the
9 Settlement provides for a Net Settlement Amount that is currently estimated to be Two Hundred
10 Twenty Thousand Dollars (\$220,000.00).⁵³ Additionally, the 25% of the PAGA Penalties, which
11 \$12,500.00 out of \$50,000.00, will be distributed to Aggrieved Employees. As discussed in Part
12 III, *supra*, the entire Net Settlement Sum will be fully paid out to the Participating Class
13 Members, in accordance with the Settlement Agreement. The amount of each Participating Class
14 Member's Individual Settlement Share will be calculated based on his or her Workweeks and
15 the amount of each Aggrieved Employee's Individual PAGA Payment will be based on his or
16 her PAGA Pay Periods.⁵⁴ There is no reason to doubt the fairness of the proposed plan of
17 allocation of the settlement funds for purposes of preliminary approval. Even at the final
18 approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant
19 approval], particularly if recommended by experienced and competent class counsel." *In re*
20 *American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d
21 418, 429-30.

22 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
23 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, the
24 Aggrieved Employees, and the State of California.⁵⁵ Although the recommendations of Class

25 ⁴⁹ Hosseini Decl., ¶¶ 10, 12, & 20.

26 ⁵⁰ *Id.*, ¶¶ 10-12.

27 ⁵¹ *Id.*, ¶¶ 15-17.

28 ⁵² *Id.*, ¶¶ 10, 12, & 20.

⁵³ *Id.*, ¶ 13.

⁵⁴ Settlement Agreement, §§ 1.30 and 1.44.

⁵⁵ Hosseini Decl., ¶¶ 10, 12, & 20.

Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged a large volume of documents, data, and information in the course of litigation and in connection with mediation and settlement negotiations.⁵⁶ The discovery and information that Class Counsel obtained from Defendants and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendants' defenses thereto.⁵⁷ As outlined in the Declaration of Yasmin Hosseini, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁸

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only. California Code of Civil Procedure Section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. Further, Plaintiffs' claims are typical of the claims of

⁵⁶ Hosseini Decl., ¶¶ 10-12 & 17.

⁵⁷ *Id.*, ¶ 17.

⁵⁸ *Id.*, ¶¶ 10-12 & 15-17.

the Class Members, and Class Counsel will fairly and adequately protect the interests of the Class. Finally, prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the cases. The Class is amenable to class certification for settlement purposes as discussed below.

A. The Class Is Ascertainable and Sufficiently Numerous.

“Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description.” *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

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

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

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

that common behavior toward similarly situated plaintiff renders class certification appropriate.”
Id. (citing *Sav-On*, *supra*, 34 Cal.4th at 333).

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

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Operative Complaint. Based on the documents and information obtained through formal and informal discovery and exchange of information in these cases, Plaintiffs contend that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.⁵⁹ Plaintiffs’ claims arise from Defendants’ alleged uniform policy and systematic scheme, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁶⁰

Plaintiffs also contend that Defendants’ payroll and recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.⁶¹ As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendants during the time period at issue.⁶²

Plaintiffs maintain that the outcome of this litigation would be determined by Defendants’ alleged uniform operations and employment policies and procedures that applied

⁵⁹ Hosseini Decl., ¶ 15.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

across its hourly-paid or non-exempt employees who worked in California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR CLASS COUNSEL FEES PAYMENT AND CLASS COUNSEL LITIGATION EXPENSES PAYMENT

Class Counsel has litigated the matter for over four (4) years, and was actively preparing the matter for class certification and trial.⁶³ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the cases and formal and informal discovery. Class Counsel reviewed a large volume of documents and data⁶⁴ and also interviewed and obtained information from Defendants, Plaintiffs, and other sources, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendants' counsel regarding the pleadings and the production of documents and data prior to each of the mediations.⁶⁵ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁶

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁶⁷

The Settlement establishes a Gross Settlement Amount of Five Hundred Thousand Dollars (\$500,000.00), and provides for Class Counsel to apply to the Court for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, consisting of attorneys' fees in an amount up to thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$175,000.00) and an amount not to exceed Twenty-Five Thousand Dollars (\$25,000.00) for costs and expenses.⁶⁸ The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the cases, (2) the extensive time, effort

⁶³ Hosseini Decl., ¶¶ 10-12.

⁶⁴ *Id.*, ¶ 11.

⁶⁵ *Ibid.*

⁶⁶ *Id.*, ¶ 10.

⁶⁷ *Id.*, ¶¶ 6-7.

⁶⁸ Settlement Agreement, § 3.2.2.

1 and expense that Class Counsel dedicated to the cases, (3) the skill and determination that Class
2 Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5)
3 the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the
4 other cases that Class Counsel had to turn down in order to devote its time and efforts to this
5 matter. The proposed Class Notice provides Class Members with information about the amount
6 allocated toward the Class Counsel Fees Payment and Class Counsel Litigation Expenses
7 Payment, and that an award of the Class Counsel Fees Payment and Class Counsel Litigation
8 Expenses Payment will be sought, as provided for by the Settlement.⁶⁹

9 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
10 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
11 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the “experienced
12 trial judge is the best judge of the value of professional services rendered in his court.” *Ketchum*
13 *v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should
14 be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
15 incurred. *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82
16 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can
17 be “monetized” with a reasonable degree of certainty, the trial court should “ensure that the fee
18 awarded is within the range of fees freely negotiated in the legal marketplace in comparable
19 litigation.” *Id.* at 50. In cases where class members present claims against a settlement fund and
20 the settlement agreement provides that the defendant agrees to paying the attorneys a percentage
21 of the same, use of that percentage method is appropriate. *Id.* at 32.

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

28 ⁶⁹ *Id.*, Exh. A.

percentage of fund method survives in California.” *Id.* (internal quotation marks omitted).

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

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷⁰

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

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

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

⁷⁰ Hosseini Decl., ¶ 18.

The proposed Class Notice⁷¹ describes the Settlement, the deadlines and procedures to submit an objection to the Class Settlement, mail a Request for Exclusion from the Class Settlement, and/or submit a dispute regarding Workweeks and/or PAGA Pay Periods, and the date and time set for the Final Approval Hearing.⁷²

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class members to make an informed decision about their participation.” *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷³ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁴ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Payment, and if applicable, their Individual PAGA Payment are calculated and the number of Workweeks and/or PAGA Pay Periods credited to them.⁷⁵

The proposed Class Notice satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt, supra*, 50 Cal.App.3d at 960 (“The essentials of due process of law in class suits would appear to be afforded by fair representation in the assertion of claims of class members against the opposing parties in any lawsuit, and notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

IX. APPOINTMENT OF ILYM GROUP, INC. AS THE ADMINISTRATOR

The Parties have selected ILYM Group, Inc. to administer the Settlement.

The Administrator will mail the Class Notice to all identified Class Members by First-Class U.S. mail.⁷⁶ No later than seven (7) calendar days after the Administrator’s receipt of any

⁷¹ Settlement Agreement, Exh. A.

⁷² *Ibid.*

⁷³ *Id.*, Exh. A.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Id.*, § 7.4.2.

Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class notice using any forwarding address provided by the USPS.⁷⁷ If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained.⁷⁸ The Response Deadline for individuals who have Class Notices re-mailed to them shall be extended an additional fourteen (14) calendar days after the original Response Deadline.⁷⁹ The Administrator will receive and process Requests for Exclusion, objections, and disputes regarding Workweeks and/or PAGA Pay Periods.⁸⁰

The Administrator's duties will include printing, distributing, and tracking Class Notices and other documents for this settlement, calculating and distributing payments due under the Settlement issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances, providing necessary reports and declarations, and other duties and responsibilities set forth in the Settlement.⁸¹ The Administration Costs are currently estimated not to exceed Fifteen Thousand Dollars (\$15,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸²

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendants' records.⁸³

⁷⁷ Settlement Agreement, § 4.3.2.

⁷⁸ *Ibid.*

⁷⁹ *Id.*, § 7.4.4.

⁸⁰ *Id.*, §§ 7.5, 7.6, and 7.7.

⁸¹ Hosseini Decl., ¶ 14.

⁸² Settlement Agreement, § 3.2.3.

⁸³ *Id.*, § 7.4.2.

No later than fifteen (15) calendar days after the Court grants Preliminary Approval of the Settlement Defendants will deliver information including the Class Member's full name, last-known mailing address, Social Security number, and number of Workweeks and/or PAGA Pay Periods ("Class Data").⁸⁴

No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.⁸⁵

Using best efforts to perform as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service mail.⁸⁶ No later than seven (7) calendar days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class notice using any forwarding address provided by the USPS.⁸⁷ If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained.⁸⁸ Class Members will have until the applicable Response Deadline to mail a Request for Exclusion, disputes regarding Workweeks and/or PAGA Pay Periods, and/or an objection.⁸⁹

Within thirty (30) calendar days of Final Approval, the Administrator will establish a Qualified Settlement Amount for administration of the Settlement ("Settlement Fund Account"). Defendants will deposit \$250,000.00 into the Settlement Fund Account established by the Administrator ("Payment 1").⁹⁰ Six (6) months after Payment 1, Defendant will deposit \$125,000.00, plus an amount sufficient to pay Employer Taxes into the Settlement Fund Account established by the Administrator ("Payment 2").⁹¹ Six (6) months after Payment 2,

⁸⁴ Settlement Agreement, § 1.8.

⁸⁵ *Id.*, § 7.4.1.

⁸⁶ *Id.*, § 7.4.2.

⁸⁷ *Id.*, § 4.3.2.

⁸⁸ *Ibid.*

⁸⁹ *Id.*, § 1.43.

⁹⁰ *Id.*, § 4.2.1.

⁹¹ *Id.*, § 4.2.2.

Defendants will deposit \$125,000.00 into the Settlement Fund Account established by the Administrator ("Payment 3").⁹² Within fourteen (14) calendar days after Payment 2 has been deposited, the Administrator will mail checks due under the Settlement and approved by the Court, as follows: all Individual Settlement Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Costs, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments.⁹³

Each Individual Settlement Payment and Individual PAGA Payment shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided.⁹⁴ The Administrator will cancel all checks not cashed by the void date.⁹⁵ For any Class Member whose Individual Settlement Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the State of California's Controller's Office Unclaimed Property Division in the name of the Participating Class Member and/or Aggrieved Employee and in the amount of his or her respective Individual Settlement Payment and/or Individual PAGA Payment.⁹⁶

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR CLASS REPRESENTATIVE SERVICE PAYMENTS

Plaintiffs Eulalia Trinidad and Marko Asauluk respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Class Representative Service Payments in an amount up to Seven Thousand Five Hundred Dollars (\$7,500.00) each to Plaintiffs Eulalia Trinidad and Marko Asauluk.⁹⁷ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both

⁹² Settlement Agreement, § 4.2.3.

⁹³ *Id.*, § 4.3.

⁹⁴ *Id.*, § 4.3.1.

⁹⁵ *Id.*

⁹⁶ *Id.*, § 4.3.3.

⁹⁷ *Id.*, § 3.2.1.

1 financial and otherwise; (2) the notoriety and personal difficulties encountered by the class
2 representative; (3) the amount of time and effort spent by the class representative; (4) the
3 duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class
4 representative as a result of the litigation. *Id.*

5 The Class Representative Service Payments are fair and appropriate. Plaintiffs spent a
6 substantial amount of time and effort in producing relevant documents and past employment
7 records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁸
8 Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and
9 provide information that would facilitate the pursuit of class and PAGA claims.⁹⁹ Accordingly,
10 it is appropriate and just for Plaintiffs to receive Class Representative Service Payments for their
11 services on behalf of the Class, Aggrieved Employees, and the State of California, in addition
12 to their individual settlement payments.

13 **XII. CONCLUSION**

14 For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary
15 approval of the Settlement; conditionally certify the Class for settlement purposes; preliminarily
16 appoint and designate Lawyers for Justice, PC as Class Counsel; preliminarily appoint and
17 designate Plaintiffs Eulalia Trinidad and Marko Asauluk as Class Representatives; appoint
18 ILYM Group, Inc. as Administrator; preliminarily approve the allocations for Class Counsel
19 Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service
20 Payments, PAGA Penalties, and Administration Costs; approve the proposed Class Notice;
21 direct the Administrator to undertake the notice and settlement administration process in
22 conformity with the deadlines and procedures provided by the Settlement Agreement; and
23 schedule a Final Approval Hearing to take place in approximately six (6) months.

24 ///

25 ///

27 ⁹⁸ Hosseini Decl., ¶ 19; Declaration of Eulalia Trinidad in Support of Plaintiffs' Motion for Preliminary Approval
28 of Class Action Settlement ("Trinidad Decl."), ¶¶ 3-4. Declaration of Marko Asauluk in Support of Plaintiffs'
Motion for Preliminary Approval of Class Action Settlement ("Asauluk Decl."), ¶¶ 3-4.

⁹⁹ Hosseini Decl., ¶ 19; Trinidad Decl., ¶¶ 3-7; Asauluk Decl., ¶¶ 3-6.

Dated: October 17, 2023

LAWYERS for JUSTICE, PC

By:



Yasmin Hosseini
Attorneys for Plaintiffs