

Douglas Han (SBN 232858)
ghan@justicelawcorp.com
Shunt Tatavos-Gharajeh (SBN 272164)
statavos@justicelawcorp.com
Jason Rothman (SBN 304961)
jrothman@justicelawcorp.com
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiffs Christopher Luque and Cristanos Rascon,
on behalf of themselves and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

CHRISTOPHER LUQUE, individually, and
on behalf of other members of the general
public similarly situated;

Plaintiff,

v.

GLOVIS AMERICA, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 56-2021-00550720-CU-OE-VTA

CLASS ACTION

Assigned for All Purposes To:
Hon. Jeffrey G. Bennett
Dept.: 21

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR AN ORDER
(1) PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF CLASS ACTION
SETTLEMENT; AND (3) SETTING
HEARING FOR FINAL APPROVAL**

*[filed concurrently with Plaintiffs' Notice of
Motion and Motion; Declaration of Douglas
Han, and [Proposed] Order]*

Date: March 28, 2022
Time: 08:20 a.m.

Complaint Filed: February 11, 2021
Trial Date: None Set

TABLE OF CONTENTS

I.	INTRODUCTION	9
II.	STATUS OF THE LITIGATION.....	9
A.	Procedural History	9
B.	Investigation.....	10
C.	Settlement Efforts	12
III.	SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS	12
IV.	CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE....	15
A.	There Is A Numerous and Ascertainable Class.....	16
B.	There Is A Well-Defined Community of Interest	16
C.	The Named Plaintiffs' Claims Are Typical	17
D.	Adequacy of Class Counsel and Class Representatives.....	18
E.	Predominance and Superiority	19
V.	THE TWO-STEP APPROVAL PROCESS.....	19
VI.	THE SETTLEMENT IS FAIR AND ADEQUATE	20
A.	The Strength of Plaintiffs' Case.....	21
B.	The Risks Associated with the Merits.....	21
C.	The Risks Associated with Paystub Violations and Waiting Time Penalties.	23
D.	The Risks Associated with the PAGA Penalties.....	24
E.	The Risks Associated with the Failure to Reimburse Necessary Business Expenses Claim.....	25
F.	The Risk, Expense, Complexity and Likely Duration of Any Litigation.	25
G.	The Risk of Maintaining Class Action Status Through Trial.	25
H.	The Amount Offered in Settlement.....	26
I.	Uncashed Checks, Unpaid Reside or Other Unclaimed or	28
VII.	THE CLASS REPRESENTATIVE ENHANCEMENT IS FAIR AND REASONABLE	29
VIII.	THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS MEMBERS.....	30

1	IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT.....	31
2	X. THE STIPULATED AWARD OF ATTORNEYS' FEES AND COSTS IS	
3	REASONABLE AND SHOULD BE APPROVED.	32
4	XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY	
5	APPROVAL.....	34

TABLE OF AUTHORITIES

Cases	Page(s)
<i>In re Activision Securities Litigation</i>	
(N.D. Cal. 1989) 723 F. Supp. 1378	33
<i>Amaral v. Cintas Corp. No. 2</i>	
(2008) 163 Cal.App.4th 1157	24
<i>In re Ampicillin Antitrust Litigation</i>	
(D. D.C. 1981) 526 F.Supp. 494	33
<i>B.W.I. Custom Kitchens v. Owens-Illinois, Inc.</i>	
(1987) 191 Cal.App.3d 1341	17, 18
<i>Brinker Restaurant Corp v. Superior Court</i>	
(2012) 53 Cal.4th 1004	22, 24, 28
<i>Cartt v. Superior Court</i>	
(1975) 50 Cal.App.3d 960	31
<i>Chu v. Wells Fargo Invest. LLC</i>	
(N.D. Cal. Feb. 16, 2011) 2011 WL 672645	19
<i>Class Plaintiffs v. City Of Seattle</i>	
(1992) 955 F.2d 1268, 1276	20
<i>Classen v. Weller</i>	
(1983) 145 Cal.App.3d 27	18
<i>Culley v. Lincare Inc.</i>	
(E.D. Cal. 2017) 236 F. Supp. 3d 1184	23
<i>Daar v. Yellow Cab Company</i>	
(1967) 67 Cal.2d 695	15
<i>Daum v. Claim Jumper Restaurants</i>	
(2006) Orange County Super. Ct. Case No. 02CC10201	34
<i>Duran v. U.S. Bank Nat. Assn.,</i>	
(2014) 59 Cal.4th 1	26

Cases	Page(s)
<i>Estrada v. Dr. Pepper/Seven-Up</i>	
(May 2005) Los Angeles County Super. Ct. Case No. BC 262247	33
<i>Evans v. Coca-Cola</i>	
(Dec. 2001) Los Angeles County Super. Ct. Case No. BC 220525 (Hon. Richard C. Hubbell)	33
<i>Gould v. Alleco, Inc.</i>	
(4th Cir. 1998) 883 F.2d 281	32
<i>Gonzalez v. Downtown L.A. Motors</i>	
(2013) 215 Cal. App.4th 36	23
<i>Hammon v. Barry</i>	
(D.D.C. 1990) 752 F. Supp. 1087	20
<i>Hicks v. Toys 'R' Us - Delaware, Inc.</i>	
(C.D. Cal. Sept. 2, 2014) 2014 WL 4703915	19
<i>Iskanian v. CLS Transp. Los Angeles, LLC</i>	
(2014) 59 Cal.4th 348	25
<i>Josiah Eaton v. Adolph Coors Company</i>	
(2003) Orange County Sup. Ct. Case No. 01CC00140	33
<i>Kimbell v. Abercrombie & Fitch Stores, Inc.</i>	
(Sept. 2006) Los Angeles County Super. Ct. Case No. BC 277359	34
<i>Kirby v. Immoos Fire Prot., Inc.</i>	
(2012) 53 Cal.4th 1244	23
<i>Kullar v. Foot Locker Retail, Inc.</i>	
(2000) 168 Cal.App.4th 116	20
<i>Linder v. Thrifty Oil Co.</i>	
(2000) 23 Cal.4th 429	15, 20
<i>Ling v. P.F. Chang's China Bistro</i>	
(2016) 245 Cal.App.4th 1242	23

Cases	Page(s)
<i>Moreno v. Miller Brewing</i>	
(April 2004) Los Angeles County Super. Ct. Case No. BC 278170.....	33
<i>Mullane v. Central Hanover Bank & Trust Co.</i>	
(1950) 339 U.S. 306.....	30, 31
<i>In Re NASDAQ Market-Makers Antitrust Litigation</i>	
172 F.R.D. 119, 123 (SDNY 1997)	17
<i>Nordstrom Com'n Cases</i>	
(2010) 186 Cal.App.4th 576	19
<i>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</i>	
(1994) 27 Cal.App.4th 1085	19
<i>In re Pacific Enterprises Securities Litigation</i>	
(9th Cir. 1994) 47 F.3d 373.....	33
<i>Parker v. City of Los Angeles</i>	
(1974) 44 Cal.App.3d 556.....	33
<i>Priddy v. Edelman</i>	
(6th Cir. 1989) 883 F.2d 438.....	20
<i>Prince v. CLS Transp., Inc.</i>	
(2004) 118 Cal. App. 4th 1320	15
<i>Reyes v. Board of Supervisors of San Diego County</i>	
(1987) 196 Cal. App. 3d 1263.....	16
<i>Richmond v. Dart Industries, Inc.</i>	
(1981) 29 Cal. 3d 462	15
<i>Rodriguez v. West Publ. Corp.</i>	
(C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767	20
<i>Rosack v. Volvo of America Corp</i>	
(1982) 131 Cal.App.3d 741.....	17
///	

1	Cases	Page(s)
2	<i>In re School Asbestos Litigation</i>	
3	(3rd Cir. 1990) 921 F.2d 1330	32
4	<i>Soto v. Motel 6 Operating, L.P.</i>	
5	(2016) 4 Cal.App.5th 385	23
6	<i>Thurman v. Bayshore Management, Inc.</i>	
7	(2012) 203 Cal.App.5th 1112	24
8	<i>Van Vranken v. Atlantic Richfield Co.</i>	
9	(N.D. Cal. 1995) 901 F.Supp. 294	29
10	<i>Vasquez v. Superior Court</i>	
11	(1971) 4 Cal. 3d 800	15, 16
12	<i>Vincent v. Hughes Air West, Inc.</i>	
13	(9th Cir. 1977) 557 F.2d 759	32
14	<i>In re Vitamin Cases</i>	
15	(2003) 107 Cal.App.4th 820	31
16	<i>In re Wash. Pub. Power Supply Sys. Sec. Litigation</i>	
17	(9th Cir. 1994) 19 F.3d 1291	32
18	<i>Wershba v. Apple Computer, Inc.</i>	
19	(2001) 91 Cal.App.4th 224	18
20	<i>Williams v. Brinderson Constructors</i>	
21	(C.D. Cal. Feb. 6, 2017) 2017 WL 490901	19
22	Statutes	Page(s)
23	Business & Professions Code § 17200, <i>et seq.</i>	10, 22
24	Labor Code § 201	10
25	Labor Code § 202	10
26	Labor Code § 203	10, 23, 24
27	Labor Code § 226	23
28	Labor Code § 226(a)	10

1	Statutes	Page(s)
2	Labor Code § 226.7.....	9
3	Labor Code § 510.....	9, 21, 22
4	Labor Code § 1194.....	10, 22
5	Labor Code § 1197.....	10
6	Labor Code § 1198.....	9
7	Labor Code § 2698.....	10
8	Labor Code § 2699(1)(2)	19
9	Labor Code § 2699(e)(2).....	24
10	Labor Code § 2699.3.....	24
11	Labor Code § 2802.....	10, 22
12	Other Authorities	
13	<u>Judicial Council of California’s Deskbook on the Management of Complex Civil</u>	
14	<u>Litigation</u> (Matthew Bender 2003), § 3.74	31
15	<u>Manual for Complex Litigation (Second)</u> (1985)	19
16	<u>Newberg</u> , § 11.25	19
17	<u>Newberg</u> , § 12.1	29
18	<u>Newberg</u> , §§ 14-10.....	33
19	<u>Newberg</u> , §11.47	28
20	<u>Newberg</u> , §11.51	20
21	<u>Newberg</u> , at §14.03	33
22		
23		
24		
25		
26		
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the proposed Joint Stipulation of Class Action Settlement (“Stipulation”), filed
4 concurrently herewith, the class consists of all current and former hourly-paid or non-exempt
5 employees of Defendant within the State of California, who are not parties to an arbitration
6 agreement with Defendant, during the time period of February 11, 2017 through January 19, 2022
7 (“Class”). After engaging in substantial investigation and extensive negotiations with the
8 assistance of a respected third-party neutral Gail Click, the parties have agreed to settle all claims
9 alleged in the lawsuit on a class-wide non-reversionary basis for \$222,000.00, inclusive of all fees
10 and costs. All 90 Class Members shall receive a settlement share unless they opt out.

11 The proposed settlement reflected in the Stipulation is fair, reasonable, and adequate, and
12 in the best interests of the class. Consequently, Plaintiffs, Christopher Luque and Cristanos
13 Rascon (“Plaintiffs”) with the consent of Defendant GLOVIS AMERICA, INC. (“Defendant”) (Plaintiffs and Defendant are collectively referred to herein as the “Parties”), hereby moves this
14 Court for an order: (1) granting preliminary approval of the proposed class action settlement, as
15 embodied in the Joint Stipulation of Class Action Settlement (“Stipulation”) filed concurrently
16 herewith; (2) approving the Class Notice to be sent to class members, and the notification schedule
17 as set forth in the Stipulation and the Proposed Order, also filed concurrently herewith; and (3)
18 setting a hearing for final approval of the class action settlement.
19

20 **II. STATUS OF THE LITIGATION**

21 **A. Procedural History**

22 On February 11, 2021, a lawsuit was commenced against Defendant by Plaintiff
23 Christopher Luque in the Superior Court of California, County of Ventura, on behalf of himself
24 and all individuals employed by Defendant as non-exempt employees at any time within four years
25 of the filing of the Action within California. (Declaration of Douglas Han (“Han Decl.”), filed
26 concurrently herewith, ¶ 10.) This lawsuit included the following causes of action against
27 Defendant: (1) Failure to Pay Overtime Wages Under Labor Code §§ 510 & 1198, (2) Meal Period
28 Liability Under Labor Code § 226.7, (3) Rest-Break Liability Under Labor Code § 226.7, (4)

1 Failure to Pay Minimum Wages Under Labor Code §§ 1194 & 1197, (5) Waiting Time Penalties
2 Under Labor Code §§ 201-203, (6) Failure to Provide Compliant Wage Statements Under Labor
3 Code § 226(a), (7) Failure to Reimburse Expenses Under Labor Code § 2802, and (8) Violation of
4 Business & Professions Code § 17200, *et seq.* (*Id.*)

5 On November 11, 2021, Cristanos Rascon submitted a letter to the LWDA alleging the
6 same causes of action in order to pursue an action brought under the Private Attorney General Act
7 (“PAGA”). (Han Decl., ¶ 11.)

8 On November 19, 2021, the Parties participated in mediation before Gail Glick, Esq. The
9 mediation was a successful, arms-length negotiation with the Parties agreeing to settle the above-
10 entitled matter and enter into this Stipulation. (Han Decl., ¶ 12.)

11 On March 2, 2022, Plaintiff Christopher Luque filed his Stipulation regarding First
12 Amended Complaint to (i) include penalties under the Private Attorneys General Act § 2698, *et*
13 *seq.*, and (ii) add any additional named representative Plaintiff, Cristanos Rascon. (*Id.* at ¶ 13.)

14 **B. Investigation**

15 Before filing the above Action, Class Counsel investigated and researched the facts and
16 circumstances underlying the pertinent issues and the law applicable thereto. (Han Decl. at ¶ 14.)
17 This required thorough discussions and interviews between Class Counsel and Plaintiffs, as well as
18 preliminary research into the various legal issues involved in the case. (*Id.*) After conducting their
19 initial investigation, Class Counsel determined that Plaintiff Christopher Luque’s claims were well
20 suited for class action adjudication owing to what appeared to be a common course of conduct
21 affecting a similarly situated group of employees. (*Id.*)

22 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and
23 claims giving rise to the action, including:

- 24 • initiating formal discovery through Form Interrogatories, Special
25 Interrogatories, Request for Production of Documents, Request for Admissions,
- 26 • conducting informal discovery and meeting and conferring with defense
27 counsel about same. Defendant’s counsel provided Plaintiffs’ counsel the following
28 documentation informally:

- All job descriptions of Class Members during the Class Period;
 - All applicable employment handbooks from April of 2017 through November of 2021;
 - Payroll, timekeeping records, and paystubs for Plaintiffs’;
 - Redacted payroll, timekeeping records, and paystubs comprising of a random sampling of 90 employees.
 - The Parties agreed to a 25% random sampling figure for a total of 22 Class Members.
- reviewing and analyzing time and pay records as well as employment handbooks, Plaintiffs’ personnel files, relevant policies and other documentation;
 - researching the applicable law and potential defenses;
 - constructing damage models based on interpretations of California law;
 - meeting and conferring with Plaintiffs’ expert on data analysis and estimated exposure of Defendant; and
 - reviewing information provided by Defendant at the mediation.

(Han Decl. at ¶ 15.)

The Class enumerated in this action is ascertainable because the Class Members may be readily identified by reference to Defendant’s records. Defendant has agreed to share the information from these records with the Settlement Administrator, ILYM Group, in order to identify and contact the Class Members. Our investigation revealed approximately 90 Class Members and 220 PAGA Members at the time of mediation on November 19, 2021. (Han Decl. at ¶ 16.)

Defendant, for its part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. (*Id.* ¶ 17.) After Class Counsel analyzed the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. (*Id.* ¶ 17-18) Given the high level of risk present for both sides, the Parties elected to mediate Plaintiffs’ claims and explore the possibility of settlement. (*Id.*)

///

1 **C. Settlement Efforts**

2 On November 19, 2021, the Parties mediated this case with Gail Glick, a respected and
3 highly experienced mediator in wage and hour class actions. (Han Decl. ¶ 18.) During the
4 mediation, the Parties discussed all aspects of the case, including the risks of litigation and the
5 risks to both parties of proceeding with a motion for class certification as well as the law relating
6 to unpaid wages, rest breaks, the addition of meal break claims, and the non-reimbursement of
7 necessary business expenses. (*Id.*) As a result of the mediation, the parties agreed to settle the
8 lawsuit according to the terms set forth in the Stipulation. (*Id.*; See Exhibit 1 attached to Han Decl.
9 (the “Stipulation”).)

10 From Class Counsel’s review of the facts, strengths and weaknesses of the case, the risks
11 and delays posed by further litigation, and Class Counsel’s own prior litigation experience, Class
12 Counsel believe that the recovery for each Class Member is fair and reasonable, taking into
13 consideration the amounts received in other wage and hour class actions, the risks inherent in
14 litigation of this genre, and the reasonable tailoring of each Class Member’s claim to the
15 settlement award he or she will receive. (*Id.*) Further, based on the settlement negotiations, which
16 were hard-fought and conducted in good faith and at arm’s length between attorneys with
17 substantial experience litigating class actions and wage and hour cases, the Stipulation was the
18 product of a non-collusive settlement process in which the Parties were forced to make significant
19 compromises in the interest of reaching a full and complete settlement of the lawsuit. (*Id.*)

20 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

21 Under the terms of the proposed Stipulation, the Parties have agreed that all claims
22 brought on behalf of the class shall be fully and finally resolved for the amount of \$222,000.00
23 (“Maximum Settlement Amount”) on a non-reversionary basis to settle and release all claims
24 asserted by Plaintiffs on behalf of the proposed class. (Han Decl., ¶ 19; Exh. 1, ¶ 14.) The
25 Stipulation defines the class as all current and former hourly-paid or non-exempt employees of
26 Defendant within the State of California, who are not parties to an arbitration agreement with
27 Defendant. (Han Decl., ¶ 20; Exh. 1, ¶ 5.) Class Period” means the period from February 11, 2017
28 through January 19, 2022. (Han Decl., ¶ 20; Exh. 1, ¶ 7.)

1 The “PAGA Members” or “Settlement PAGA Members” is defined as “as “all current and
2 former hourly-paid or non-exempt employees of Defendant within the State of California.” (Han
3 Decl., ¶ 21; Exh. 1, ¶ 6.) “PAGA Period” means the period from November 11, 2020 through
4 January 19, 2022. (Han Decl., ¶ 21; Exh. 1, ¶ 8.)

5 The amount remaining in the Maximum Settlement Amount after the following
6 deductions have been made (called the “Net Settlement Amount”) shall be available for
7 distribution to Class Members who do not opt out: (*Id.* at ¶ 22.)

8 • up to one third of the Maximum Settlement Amount, in the amount of Eighty-Four
9 Thousand Dollars, Three Hundred and Sixty Dollars and Zero Cents (\$84,360.00), to Class
10 Counsel for attorneys’ fees, and not more than Twenty Thousand Dollars (\$20,000.00) in
11 reasonable litigation costs¹ (Han Decl., ¶ 22; Exh. 1, ¶ 33.);

12 • up to Twenty Thousand Dollars and Zero Cents (\$20,000.00) to the Class
13 Representatives (\$10,000.00 to Class Representative Christopher Luque and \$10,000.00 to Class
14 Representative Cristanos Rascon) (*Id.*; Exh. 1, ¶ 34.);

15 • claims administration cost (not to exceed \$9,250.00) (Han Decl., ¶ 22; Exh. 1, ¶ 35.);
16 and,

17 • \$25,000.00 PAGA Payment (\$6,250.00 to be paid to the participating Class Members
18 and \$18,750.00 to be paid to the LWDA). (Han Decl., ¶ 22; Exh. 1, ¶ 36.).

19 • Class Members’ share of any employment taxes.

20 The balance (approximately \$63,390.00) will be distributed to Class Members who do not
21 exclude themselves from settlement. (Han Decl., ¶ 23; Exh. 1, ¶ 37.) The Settlement Administrator
22 will calculate the total of Workweeks worked by each Class Member as a non-exempt employee in
23 California during the Class Period and the aggregate total number of Workweeks worked by all
24 Class Members as non-exempt employees in California during the Class Period. (Han Decl., ¶ 23;
25 Exh. 1, ¶ 37(a)-(b).) To determine each Class Member’s estimated “Individual Settlement
26 Payment,” the Settlement Administrator will use the following formula: The Net Settlement
27

28 ¹ Class Counsel’s current litigation costs are currently \$6,213.31. This amount does not include any costs associated
with the Motion for Preliminary Approval.

1 Amount will be divided by the aggregate total number of Workweeks, resulting in the Workweek
2 Value. (Han Decl., ¶ 23; Exh. 1, ¶ 37(a)-(b).) Each Class Member's "Individual Settlement
3 Payment" will be calculated by multiplying each individual Class Member's total number of
4 Workweeks by the Workweek Value. (*Id.*) If there are any valid and timely Requests for Exclusion
5 from members of the Settlement Class, the Settlement Administrator shall proportionately increase
6 the Individual Settlement Payment for each Class Member according to the number of Workweeks
7 worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net
8 Settlement Amount. (Han Decl., ¶ 23; Exh. 1, ¶ 37(c).)

9 Each PAGA Members Individualized Settlement Payment will be calculated and
10 apportioned from the PAGA Payment amount based on the number of Pay Periods a PAGA
11 Member worked during the PAGA Period as a non-exempt employee in California. (Han Decl., ¶
12 24; Exh. 1, ¶ 38(a)-(c).) The Settlement Administrator will calculate the total number of Pay
13 Periods worked by each PAGA Member as a non-exempt employee in California during the
14 PAGA Period and the aggregate total number of Pay Periods worked by all PAGA Members as
15 non-exempt employees in California during the PAGA Period ("Pay Period Value"). (*Id.*) To
16 determine each PAGA Members estimated "Individual Settlement Payment," the Settlement
17 Administrator will use the following formula: The PAGA Payment amount's portion allocated to
18 the PAGA Period will be divided by the aggregate total number of Pay Periods within the PAGA
19 Period, resulting in the Pay Period Value. Each PAGA Member's "Individual Settlement
20 Payment" will be calculated by multiplying each individual PAGA Member's total number of Pay
21 Periods by the Pay Period Value. (Han Decl., ¶ 24; Exh. 1, ¶ 38(a)-(c).) PAGA Members will not
22 be able to opt out or request exclusion from the PAGA Payment. (Han Decl., ¶ 24; Exh. 1, ¶
23 38(c).)

24 The amounts distributed to the Participating Class Members will be characterized as 20%
25 alleged wages, 30% interest, and 50% as alleged penalties. (Han Decl., ¶ 25; Exh. 1, ¶ 54.)
26 Defendant shall pay the employer's share of payroll taxes due on the portion of Settlement
27 Payments allocated to wages separately and in addition to the Maximum Settlement Amount. (Han
28 Decl., ¶ 25; Exh. 1, ¶ 14.)

1 The settlement amount was a compromise figure, factoring in the inherent risks related to
2 certification, liability and damages. (Han Decl., ¶ 26.) However, taking into account all of the
3 circumstances of the action and the defenses raised by Defendant against certification, liability and
4 damages, Class Counsel believes that the settlement is fair and reasonable. (*Id.*)

5 Attached to the Stipulation as **Exhibit A** is the Notice of Class Action Settlement (the
6 “Notice”). The Notice includes a summary of the case and settlement terms and provides Class
7 Members with instructions on how to exclude themselves and object to the settlement. The Parties
8 have approved the Notice, which is to be disseminated to Class Members consistent with the
9 manner and timing set out in the Stipulation and Proposed Order. (Han Decl., ¶¶ 27-28; Exh. A to
10 the Stipulation). The Parties request that this Court approve the Notice as well.

11 The Parties have also agreed that ILYM Group (“ILYM”) shall handle the notice and
12 claims administration (Exh. 1, ¶ 28), and the Parties respectfully request this Court to appoint
13 ILYM to handle those procedures. The procedures for mailing notice and processing exclusions
14 and objections as well as distribution of the Net Settlement Amount is detailed in the Stipulation.
15 (Han Decl., ¶ 27-28; Exh. 1, ¶¶ 42-49.)

16 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

17 Express judicial policy favors maintaining wage and hour actions as class actions. *Prince*
18 *v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.*
19 (1981)29 Cal. 3d 462. Any doubt as to the appropriateness of class treatment should be resolved in
20 favor of class certification, subject to later modification if necessary. *Richmond*, 29 Cal. 3d at 473-
21 75. The decision to certify a class is a procedural one and should be based on the allegations in the
22 operative complaint, and not in the perceived factual or legal merit of the class claims. *Linder v.*
23 *Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.

24 To certify a settlement class, the Court must find the two primary requirements for
25 maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-
26 defined community of interest in the questions of law and fact involving the parties to be
27 represented. *See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab*
28 *Company* (1967)67 Cal. 2d 695, 704. These criteria are met here for the reasons set forth below.

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

2 Whether a class is ascertainable is determined by examining the class definition, the size
3 of the class and the means available for identifying class members. *See Vasquez, supra*, 4 Cal. 3d
4 at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263,
5 1271. Class members are “ascertainable” where they may be readily identified without
6 unreasonable expense or time.

7 Plaintiffs contend, and Defendant does not dispute for settlement purposes only, this
8 requirement and the requirement of numerosity is met. Class Members are all current and former
9 hourly-paid or non-exempt employees of Defendant within the State of California, who are not
10 parties to an arbitration agreement with Defendant. (Exh. 1, ¶ 5.) PAGA Member(s)” or
11 “Settlement PAGA Members” means all current and former hourly-paid or non-exempt employees
12 of Defendant within the State of California. (Exh. 1, ¶ 6.)

13 Documents and information exchanged between the Parties reflect a class of
14 approximately 90 combined Class Members and 220 PAGA Members. (Han Decl. ¶¶ 16, 78(a).)
15 Defendant has substantially complete records of each such person, including contact information
16 and social security numbers. (Han Decl. ¶ 16.)

17 Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.
18 (Han Decl. ¶ 78(a)-(b).)

19 **B. There Is a Well-Defined Community of Interest**

20 A community of interest is established by the predominance of common issues of law and
21 fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

22 [D]oes not depend upon an identical recovery, and the fact that each
23 member of the class must prove his separate claim to a portion of
24 any recovery by the class is only one factor to be considered ... The
25 mere fact that separate transactions are involved does not of itself
26 preclude a finding of the requisite community of interest so long as
27 every member of the alleged class would not be required to litigate
28 numerous and substantial questions to determine his individual right
to recover subsequent to the rendering of any class judgment which
determined in plaintiffs’ favor whatever questions were common to
the class.

Id. at 809.

1 Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that
2 common issues of fact and law predominate as to each of the claims alleged by Plaintiffs, and the
3 class is united in its proof. (Han Decl. ¶ 78(f).) Because Plaintiffs have alleged a single scheme,
4 “the relevant proof [does] not vary among class members” and “clearly presents a common
5 question fundamental to all class members.” See *In Re NASDAQ Market-Makers Antitrust*
6 *Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers Antitrust*
7 *Litigation*, (SDNY 1997) 169 F.R.D. 493, 518). California courts show “no hesitancy” in inferring
8 class-wide causation, class-wide injury, and class-wide damages when a common course of action
9 has been shown. *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350. This inference ““eliminates the
10 need for each class member to prove individually the consequences of the defendants’ actions to
11 him or her.”” *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1351 (quoting *Rosack v. Volvo of*
12 *America Corp* (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).

13 This action involves, *inter alia*, a determination about Defendant’s alleged failure to pay
14 wages and overtime, failure to provide timely meal and/or rest breaks or premium payments in lieu
15 thereof, the resulting failure to pay final wages when required, the failure to reimburse necessary
16 business expenditures, the failure to provide accurate paystubs, and largely derivative claims under
17 the Business & Professions Code and PAGA. (Han Decl. ¶ 78(f).) Plaintiffs contend these
18 practices effected Class Members and PAGA Members in the same way. Plaintiffs contend these
19 practices resulted in a failure to compensate employees at termination, and incomplete wages
20 displayed on wage statements. The outcome of litigation on this matter depends upon questions
21 that are common to class members. (Han Decl. ¶ 78(f).) While Defendant maintained otherwise,
22 these issues will not be decided on the basis of facts peculiar to each Class Member and/or PAGA
23 Member, but rather on the basis of facts common to them all. Plaintiffs contend that it is also true
24 that these issues of liability can be determined on a class-wide basis. (*Id.*)

25 **C. The Named Plaintiffs’ Claims Are Typical**

26 A class representative’s claims are typical when they arise from the same event, practice,
27 or course of conduct that gives rise to the claims of other putative class members, and if their
28 claims rest on the same legal theories. The class representative’s claims must be “typical” but not

1 necessarily identical to the claims of other class members. It is sufficient that the representative is
2 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
3 *Classen v. Weller* (1983)145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
4 (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the law in California that the class
5 representative must have identical interests with the class members.”). Thus, it is not necessary
6 that the class representative should have personally incurred all of the damages suffered by each of
7 the other class members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

8 Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that
9 Plaintiffs’ claims are typical of class members’ claims because they arose from the same factual
10 basis and are based on the same legal theories. (Han Decl. ¶ 78(c)). Plaintiffs worked as hourly
11 non-exempt-employees in California during the Class Period. (*Id.*) Accordingly, Plaintiffs are
12 members of the class. (*Id.*) The central issues of this litigation (whether Defendant failed to pay all
13 wages and subjected its employees to a detrimental rounding policy, etc.), which would arise if
14 this were individual actions of Plaintiffs applies to the other Class Members as well. As noted in
15 the operative First Amended Complaint, ¶¶ 12-42, Plaintiffs contend Defendant had an alleged
16 practice of failing to provide them all minimum wages owed, rounding time keeping in a way that
17 was detrimental to Class Members, failed to pay all premiums payments associated with late
18 and/or missed meal and rest breaks, and failed to reimburse all necessary business expenses, which
19 they also contend applied to the class. (Second Amended Complaint, ¶ 12-42; Han Decl. ¶ 78(c).)
20 The answer to these questions would determine Defendant’s liability to the putative class. (Han
21 Decl. ¶ 74c). Thus, the claims of Plaintiffs are typical of the claims of the putative class. (*Id.*)
22 Accordingly, the typicality requirement is satisfied. (*Id.*)

23 **D. Adequacy of Class Counsel and Class Representatives**

24 Class Counsel are experienced in class actions, have represented their clients zealously
25 and have no conflicts of interest. (Han Decl., ¶¶ 3-9, 78(d)). The Class Representatives interests
26 are aligned with those of the Class Members, they have suffered the same injuries as the Class
27 Members, and they have no conflicts of interest. (*Id.*) Therefore Class Counsel and the Class
28 Representatives are adequate.

1 **E. Predominance and Superiority**

2 Individual issues do not predominate over those common to the class. (Han Decl., ¶¶
3 78(f)-(g).) The class action mechanism is superior to individualized actions because class members
4 have little incentive to bring claims that are small. (*Id.*)

5 **V. THE TWO-STEP APPROVAL PROCESS**

6 Any settlement of class action litigation must be reviewed and approved by the Court.
7 This is accomplished in two steps: (1) an early (preliminary) review by the trial court, and (2) a
8 detailed review after the notice has been distributed to the class members for their comments or
9 objections. In this regard, the Manual for Complex Litigation (Second) explains:

10 A two-step process is followed when considering class
11 settlements... If the proposed settlement appears to be the product
12 of serious, informed, non-collusive negotiations, has no obvious
13 deficiencies, does not improperly grant preferential treatment to
14 class representatives or segments of the class, and falls within the
range of possible approval, then the court should direct that notice
be given to the class members of a formal fairness hearing, at which
evidence may be presented in support of and in opposition to the
settlement.

15 *Manual for Complex Litigation (Second)* (1985) at § 30.44. The preliminary approval of the class
16 action settlement by the trial court is simply a conditional finding that the settlement appears to be
17 within the range of acceptable settlements. *See, e.g., Newberg*, § 11.25; *North County Contractor's*
18 *Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-95. Thus, the
19 preliminary approval of the class action settlement by the trial court is simply a “conditional
20 finding that the settlement appears to be within the range of acceptable settlements.

21 Settlements to resolve PAGA claims also require court approval. Labor Code § 2699(1)(2).
22 There is no articulated standard for approving PAGA settlements. PAGA settlements for as little
23 as \$0 have been approved. *See Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589
24 (approving PAGA settlement and release that allocated \$0 to PAGA claim). Courts have also
25 approved settlements for \$20,000.00 or less. *See, e.g., Hicks v. Toys 'R' Us—Delaware, Inc.*, (C.D.
26 Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in \$4 million
27 settlement); *Chu v. Wells Fargo Invest.LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1
28 (approving PAGA payment of \$7,500 in \$6.9 million settlement); *Williams v. Brinderson*

1 *Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 (\$10,000 PAGA settlement in
2 \$300,000 settlement).

3 A review of the preliminary approval criteria demonstrates a substantial basis for granting
4 the instant Motion and proceeding to a full settlement hearing.

5 **VI. THE SETTLEMENT IS FAIR AND ADEQUATE**

6 As a matter of public policy, courts both encourage the use of the class action device and
7 favor settlement over continued litigation. *See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th
8 429, 434 (“Courts have long acknowledged the importance of class actions as a means to prevent a
9 failure of justice in our judicial system.”); *Class Plaintiffs v. City of Seattle* (1992) 955 F.2d 1268,
10 1276 (“[S]trong judicial policy . . . favors settlements, particularly where complex class action
11 litigation is concerned.”).

12 Moreover, courts presume the absence of fraud or collusion in the negotiation of a
13 settlement unless evidence to the contrary is offered. In short, there is a presumption that the
14 negotiations were conducted in good faith. *Newberg*, §11.51; *Rodriguez v. West Publ. Corp.* (C.D.
15 Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir. 1989)
16 883 F.2d 438, 447. Courts do not substitute their judgment for that of the proponents, particularly
17 when settlement has been reached by experienced counsel familiar with the litigation. *Rodriguez*,
18 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087.

19 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid out
20 several factors that should be analyzed in determining if a class action settlement should be
21 approved. These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense,
22 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
23 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage
24 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
25 participant; and (8) the reaction of the class members to the proposed settlement.

26 The Settlement here satisfies each of these factors. Class Counsel conducted extensive
27 informal discovery before entering into meaningful settlement negotiations in this matter,
28 including a detailed analysis of Defendant’s policies and a considerable sample of Defendant’s

1 time and pay records. (Han Decl., ¶¶ 14-16.) This discovery permitted Class Counsel to fairly
2 evaluate the strengths of the case and the risks associated with ongoing litigation, along with an
3 additional allegation for failure to properly record meal breaks and to pay for meal breaks taken
4 late or that were shortened. Class Counsel is very experienced in the handling of wage and hour
5 class actions and supports this Settlement. (Han Decl., ¶¶ 3-9.)

6 **A. The Strength of Plaintiffs' Case.**

7 The claims in this action include failure to provide accurate wage statements, rounding of
8 hours worked, failure to pay minimum wages and overtime, failure to provide timely meal and/or
9 rest breaks or provide one hour of premium pay in lieu thereof, failure to reimburse business
10 expenses, failure to pay final wages when due, and related claims for violations of California's
11 Business & Professions Code and for penalties under PAGA. (Han Decl., ¶¶ 10-13.)

12 Class Counsel felt confident in Plaintiffs' case and class certification given that
13 Defendant's policies were applicable to all class members and unlawful on their face. (Han Decl.,
14 ¶¶ 29-59.)

15 **B. The Risks Associated with the Merits.**

16 As with all litigation, there are risks that a party will not prevail on the merits. In this case
17 Plaintiffs allege that Defendant failed to pay Plaintiffs and Class Members minimum wages and
18 overtime wages for all hours worked as they and other Class Members had to work pre-shift and
19 post-shift hours while off the clock, be subjected to Defendant's rounding policy that was
20 detrimental to Class Members, along with Defendant's failure to properly record meal breaks.
21 (Han Decl., at ¶ 29-49.)

22 Defendant counters that the allegations regarding failure to pay wages for hours worked in
23 excess of eight hours in a day did not constitute a basis for violation of Labor Code § 510. (Han
24 Decl., at ¶ 32.) Defendant maintained that Class Members were instructed to clock in before
25 attending to any duties and to stop all work after clocking out. Defendant contends that it paid for
26 all reported hours worked, that Class Members were trained to record all hours worked, and that it
27 paid proper overtime and minimum wages to Class Members. (*Id.*) Defendant further argued that
28 to the extent time keeping records were rounded, the rounding was neutral. (*Id.*) Defendant also

1 argued that even though Labor Code sections 510 (straight time), 1194 (overtime), and 2802
2 (business expense reimbursements) were enacted in 1937 and before Port Hueneme Naval Base
3 was built, Defendant contended those claims are still barred because they conflict with federal
4 laws that already address these areas. (Han Decl., at ¶ 33.)

5 Defendant also argued that Plaintiffs and other class members were provided with the
6 opportunity to take proper meal and rest periods. (*Id.* at ¶¶ 40-41.) Defendant maintained that its
7 policies and practices allowed its employees reasonable opportunities to take duty-free rest breaks
8 under California law and that rest breaks need not be recorded, making these individualized
9 inquiries and not suitable for class treatment. (Han Decl., at ¶ 38.); *Brinker Restaurant Corp. v.*
10 *Superior Court* (2012) 53 Cal. 4th 1004, 1028-29.) Defendant contended that Plaintiffs' state law
11 claims, including rest/meal break violations, waiting time penalties, inaccurate wage statements,
12 violation of Business and Professions Code section 17200, as well as the PAGA claim, are all
13 barred by the Federal Enclave Doctrine, because both Plaintiffs worked exclusively at Defendant's
14 facility at the Port Hueneme Naval Base, which became a federal enclave at least as of May 18,
15 1942. (Han Decl., at ¶ 41.) If Defendant's contentions are proven true and prevail in trial, the
16 likely outcome of this claim would be no recovery for Class Members.

17 Plaintiffs also allege that Defendant failed to pay Plaintiffs and other Class Members
18 minimum wages and overtime for all hours worked. (*Id.* at ¶ 31.) Plaintiffs contend that they and
19 other Class Members were not paid proper overtime and minimum wages because Defendant
20 failed to pay Class Members wages for hours worked in excess of eight hours in a day due to
21 Defendant's rounding policy in addition to the worked performed while off the clock. (*Id.* at ¶31.)
22 Defendant argues that the allegations regarding failure to pay Class Members wages for hours
23 worked in excess of eight hours in a day did not constitute a basis for violation of Labor Code §
24 510. Defendant contends that Class Members were instructed to clock in before attending to any
25 duties and to stop all work after clocking out. (*Id.* at ¶ 32.) Defendant contends that they paid for
26 all reported hours worked, that Class Members were trained to record all hours worked and that
27 they paid proper overtime and minimum wages to class members. (*Id.* at ¶ 32.) Defendant further
28 argued that to the extent time keeping records were rounded, the rounding was neutral. (*Id.*)

1 Defendant contends that given its written policies and practices, any unrecorded hours were likely
2 subject to individualized inquiry and unlikely to be certified. (Han Decl., at ¶ 32) Given the
3 difficulty in certifying this claim, Class Counsel had to apply a significant discount to damages
4 based on this theory. (*Id.* at ¶ 32.)

5 **C. The Risks Associated with Paystub Violations and Waiting Time Penalties.**

6 In order to establish liability for these penalties, Plaintiffs would first have to establish
7 liability for the underlying claims.

8 Moreover, Defendant argues that meal and rest violations, even if established, could not
9 be the predicate for a Labor Code § 226 wage statement or § 203 waiting time claim. (Han Decl., ¶
10 45.) For example, the California Supreme Court has held that claims for meal and rest period
11 penalties do not constitute “action[s] brought for the nonpayment of wages” for the purpose of
12 determining statutory fees. *Kirby v. Immoos Fire Prot., Inc.* (2012) 53 Cal.4th 1244, 1259. In *Ling*
13 *v. P.F. Chang’s China Bistro* (2016) 245 Cal.App.4th 1242, the Court of Appeal noted an action
14 for unlawful meal and rest periods under the Labor Code “cannot support a section 203 penalty
15 because section 203, subdivision (b) tethers the waiting time penalty to a separate action for
16 wages.”). Authority is divided on this point. Moreover, although authority is divided, many district
17 court rulings support the conclusion that any unpaid meal and rest period premium pay cannot give
18 rise to derivative wage statement liability. *See, e.g., Culley v. Lincare Inc.* (E.D. Cal. 2017) 236
19 F.Supp.3d 1184, 1195-96; *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th 385, 392-393
20 (noting a wage statement need only document compensation *actually received* and the hours used
21 to calculate that compensation). Thus, it is unclear if the Court would have permitted untimely
22 wage penalties or wage statement violations for Defendant’s alleged failure to provide meal and
23 rest period penalties.

24 In addition, Plaintiffs would have to establish that Defendant’s conduct was willful to
25 recover waiting time penalties. (Labor Code § 203.) With these penalties there is always the risk
26 that the trier of fact would not have held that Defendant’s actions were done “willfully.” A good
27 faith belief in a legal defense can preclude a finding of willfulness. (*Gonzalez v. Downtown LA*
28 *Motors* (2013) 215 Cal.App.4th 36, 54; 8 C.C.R. § 13520.) As discussed above, Plaintiffs allege

1 that Defendant failed to pay for all hours worked and premiums for non-compliant meal and rest
2 breaks. (Han Decl., ¶¶ 37-43.) Plaintiffs contend Class Members are entitled to these wages and
3 premiums, which they allege were not paid at the time of their termination or resignation. If
4 Plaintiffs are successful on their claims, the penalties pursuant to Labor Code § 203 shall attach.
5 Defendant, however, contends that it provided employees with a reasonable opportunity to take
6 meal and rest periods, asked class members to confirm the accuracy of their time records, have the
7 defense of the Federal Enclave Doctrine, and had good-faith defenses under *Brinker* and its
8 progeny. As such, there was some risk associated with waiting time penalties that Class Counsel
9 had to consider. (Han Decl., ¶¶ 40-42, 45.)

10 **D. The Risks Associated with the PAGA Penalties.**

11 Labor Code § 2699.3 gives aggrieved employees the right to recover civil penalties for
12 specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount of
13 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
14 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
15 violation. Labor Code § 2699(e)(2). However, if a civil penalty is provided in a specified amount
16 by the Labor Code section relating to the underlying alleged Labor Code violation, that amount
17 shall apply. (*Id.*) The PAGA also gives the Court discretion to award any lesser amount than the
18 maximum civil penalty. (*Id.* [“...a court may award a lesser amount than the maximum civil
19 penalty amount specified by this part if, based on the facts and circumstances of the particular
20 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
21 confiscatory.”]); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112,
22 1135 [reducing PAGA award on this basis].)

23 Plaintiffs discounted potential penalties under this claim given this authority, and for other
24 reasons. The PAGA claims are premised on the same underlying wage statement and waiting time
25 claims, and thus subject to the same disputes and defenses. There is also a dispute as to whether
26 violations in later pay periods trigger the \$200 penalty under PAGA as a “subsequent violation.”
27 (*Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1203 (2008).) As such, there is a fair
28 amount of risk associated with PAGA claims. (Han Decl., ¶¶ 47-50.) The Parties also considered

1 that the purpose of PAGA is to “achieve maximum compliance with state labor laws,” and through
2 the proposed settlement, Defendant has agreed to ensure policies comply with California law.
3 *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379. This makes the
4 settlement’s contemplated PAGA payment of \$25,000.00 appropriate.

5 Based on this analysis, Class Counsel believes that this settlement is fair and reasonable
6 and in the best interest of the Class. (Han Decl., *passim*.)

7 **E. The Risks Associated with the Failure to Reimburse Necessary Business**
8 **Expenses Claim.**

9 Plaintiffs contend that Defendant required the Class Members to pay for necessary work
10 related expenses they incurred, including, but not limited to, having to purchase (i) safety goggles,
11 (ii) masks, (iii) gloves, (iv) safety vests, and (v) steel toe boots. (Han Decl., ¶ 55.) Furthermore, at
12 least half of the Class Members were using their personal cellular phones to communicate with
13 their supervisors and/or managers in order to update them on the status of the day and when
14 something broke down. (*Id.*)

15 Defendant argues that exposure to Defendant is limited and it only affected a handful of
16 employees. (Han Decl., ¶ 56.) Furthermore, Defendant argued that it’s employee handbook
17 specifically discouraged the use of cellular phones. (*Id.*) Defendant argued that Plaintiff would be
18 unable to certify the reimbursement claim on the class wide level (*Id.*)

19 **F. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

20 Given the risks outlined above, the issues in this case were complex and the risk for
21 Plaintiffs and the Class Members associated with this litigation was high. (Han Decl., ¶¶ 60-63.) A
22 class trial would have required the retention of expensive expert witnesses, the accrual of
23 extensive litigation costs, and the Parties would have had to spend a substantial amount of time.

24 Finally, given the complexity and unsettled nature of the issues, it is likely that any
25 outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in
26 further delay for the class members who have already waited years for resolution in this matter.

27 ///

28 ///

1 **G. The Risk of Maintaining Class Action Status Through Trial.**

2 In class actions, decertification is always a possibility. There is always a risk that a trial of
3 this magnitude can become unmanageable. (Han Decl., ¶¶ 56-59.) Given cases like *Duran v. U.S.*
4 *Bank Nat. Assn.*, 59 Cal. 4th 1, 34 (2014) that deal with the complexity of using statistical samples
5 in class actions, decertification is a real risk that Class Counsel must take into account.

6 **H. The Amount Offered in Settlement.**

7 There can be no doubt that this Settlement is the result of vigorous, adversarial, non-
8 collusive, and arms-length negotiations between the Parties with an experienced mediator. In order
9 to determine the approximate potential damages which would be owed to Class Members, Class
10 Counsel analyzed the time records for Plaintiffs and Defendant provided Class Counsel with
11 records for a sampling of the Class Members. By analyzing this information, Class Counsel was
12 able to estimate the maximum value of the case if Plaintiffs were to prevail at trial.

13 There are approximately 90 total Class Members. Class Counsel estimated the maximum
14 exposure on the unpaid wage claim at \$167,315.00. (*Id.* at ¶ 35.) The maximum exposure for the
15 meal period claim at \$114,001.00 and rest claim at \$228,486.00.² (*Id.* at ¶¶ 42-43.) The maximum
16 exposure for the wage statement claim is \$199,150.00. (Han Decl. at ¶ 46.) The maximum
17 exposure for the waiting time penalties claim is \$238,517.00. (*Id.* at ¶ 49.) On PAGA, Plaintiffs
18 estimated maximum exposure at \$395,500.00. (*Id.* at ¶ 54.)

19 Once Class Counsel was able to determine the maximum potential damages, it was able to
20 determine a fair and reasonable settlement for the Class. (*Id.* at ¶¶ 31-57.) Class Counsel analyzed
21 the likelihood of success on the merits. (*Id.*) It believes that the Class had a reasonable likelihood
22 of success on the core claims. (*Id.*) However, Defendant disputes this contention, denies all
23 wrongdoing in this matter, and is confident they have strong legal and factual defenses to
24 Plaintiffs' claims. Moreover, Class Counsel determined that the likelihood of success on the
25 claims for rest break violations, unpaid wages and for waiting time penalties were not as strong,
26 because of various defenses, including issues not suitable for class treatment, no detriment to the

27 _____
28 ² This rest break number assumed a 50% violation rate which grossly overstates the potential exposure as there was
no discoverable data points to show an actual violation rate without taking the depositions of numerous Class
Members.

1 class members over time, and *de minimis* defenses. Defendant may have had the opportunity to
2 establish that they had a good faith belief that they were complying with the law. (Han Decl. at ¶¶
3 31-57) After taking into account the likelihood of success on each claim and the challenges faced
4 with certifying these claims, Class Counsel determined that the settlement amount of \$222,000.00
5 was fair and reasonable. (Id. at ¶ 59.)

6 Under the Settlement, each of the approximately 90 Class Members and 200 PAGA
7 Members will receive on average \$204.48 after expenses. (Id.) Class Counsel feels that this
8 Settlement is fair, reasonable, and advantageous to the class. (Id. at ¶ 26.)

9 To summarize, the Settlement here is fair because it provides a substantial payment to
10 each Class Member for releasing his or her claims; extinguishes the risk of litigation; and provides
11 a fair and adequate distribution of the settlement proceeds whereby the funds are allocated to Class
12 Members proportionally based on their Payout Ratio.

13 As detailed at length in the accompanying Declaration of Douglas Han, the settlement is
14 the result of extensive settlement negotiations between the Parties, conducted at arm's length, and
15 informed by substantial factual and legal investigations. (Han Decl., *passim*.) Throughout this
16 case, Class Members have been represented by experienced counsel with many years of
17 experience in employment class action litigation. (Han Decl., ¶¶ 3-9.)

18 Class Counsel has devoted a considerable amount of time to the prosecution of this case,
19 including but not limited to, interviewing Plaintiffs at length on repeated occasions; drafting
20 pleadings; conducting informal discovery, meeting and conferring with defense counsel about
21 same; reviewing and analyzing time records and various handbooks and policies, Plaintiffs'
22 personnel file, an agreed upon sampling of data from Defendant's counsel for Class Members, and
23 other documentation; researching California law, preparing for and attending mediation;
24 extensively meeting and conferring with Plaintiffs' analytical expert; and negotiating and
25 finalizing the Stipulation and related documents. (Han Decl., ¶¶ 14-16.)

26 Among those matters considered during the course of settlement negotiations were the
27 strength of Plaintiffs' case versus the amounts offered in settlement; the risks, expenses, and length
28 of further litigation, including class certification and the appeals process; the present state of the

1 law as it applies to wage and hour class actions, particularly in light of *Brinker*; the present value
2 of a settlement versus the long wait necessitated by any potential judgment in class members'
3 favor; the burdens of proof necessary to establish liability against Defendant; and Defendant's
4 defenses to the action. (Han Decl., *passim*.)

5 These factors each indicated that the interests of class members are best served by a
6 settlement of this action in the manner and upon the terms set forth in the Stipulation. The
7 Stipulation confers a substantial benefit on the class of up to \$222,000.00, based on the (i) total
8 Workweeks worked by each Class Member as a non-exempt employee in California during the
9 Class Period and the aggregate total number of Workweeks worked by all Class Members as non-
10 exempt employees in California during the Class Period (*Id.* at ¶ 23.), and the (ii) total number of
11 Pay Periods worked by each PAGA Member as a non-exempt employee in California during the
12 PAGA Period and the aggregate total number of Pay Periods worked by all PAGA Members as
13 non-exempt employees in California during the PAGA Period. (*Id.* at ¶ 24.) In addition, Class
14 Counsel secured prospective relief for the class in that Defendant will ensure their policies comply
15 with California law.

16 Class Counsel believes that the settlement is fair and reasonable and serves the best
17 interests of the Class Members. (Han Decl. at ¶ 26.) Although the recommendations of counsel
18 proposing the class settlement are not conclusive, the Court can properly take the
19 recommendations into account, particularly if counsel has been involved in litigation for some
20 period of time, appear to be competent, and have experience with this type of litigation, and
21 significant discovery has been completed. *See Newberg*, §11.47.

22 **I. Uncashed Checks, Unpaid Reside or Other Unclaimed Funds**

23 The Parties have agreed that funds from any checks returned as undeliverable, or any
24 checks not negotiated within 180 days, shall be distributed by the Settlement Administrator to
25 the State Controller's Unclaimed Property Fund. (Han Decl., ¶¶ 76-77; Exh. 1, ¶ 52.) No later
26 than ten (10) calendar days after the expiration of the 180 day period, the Settlement
27 Administrator shall deposit the total amounts contained in the settlement checks, and all interest
28 that has accrued, to the State Controller's Unclaimed Property Fund. (*Id.*) The Settlement

1 Administrator shall provide a declaration of deposit with the State Controller's Unclaimed
2 Property Fund, which will be served on Class Counsel and Defendant's Counsel within ten (10)
3 calendar days of payment of the residual to such beneficiary. (Han Decl., ¶¶ 76-77; Exh. 1, ¶
4 52.)

5 Any costs associated with administering the remaining funds under this section (e.g., bank
6 stop-payment charges, settlement administration costs associated with any reserve amount) or
7 payments to the State Controller's Unclaimed Property Fund will be deducted before the deposit
8 into the State Controller's Unclaimed Property Fund. (*Id.*)

9 **VII. THE CLASS REPRESENTATIVES ENHANCEMENT IS FAIR AND**
10 **REASONABLE**

11 It is appropriate to provide a relatively modest additional incentive payment to the class
12 representative. *See Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901
13 F.Supp. 294.

14 Plaintiffs spent a considerable amount of time better apprising themselves of their rights,
15 deciding whether remedial action should be taken, how it should be taken, how the lawsuit would
16 impact them, and finally contacting Class Counsel who spent many hours with each of the
17 Plaintiffs discussing the case and the law. (Han Decl., ¶¶ 71-72.) In the end, Plaintiffs decided to
18 vindicate not only their own rights but also those of their co-workers by pursuing a class action
19 lawsuit. (*Id.*)

20 The courage it took to do this should not be underestimated. By suing Defendant,
21 Plaintiffs contend they increased their respective risk of retaliation by prospective employers. (*Id.*
22 ¶ 72.) Plaintiffs' lawsuit has now cost Defendant considerable resources, and Plaintiffs contends
23 such conduct will not be lost on a prospective employer who have to choose between an applicant
24 who has never sued a prior employer and one who has. (*Id.*) Plaintiffs contend this risk is
25 particularly real in the information age, where employers can, more easily than ever, perform
26 background checks of prospective employees, sometimes with the stroke of a key. (*Id.*)

27 But Plaintiffs did not allow their fear of the potential repercussions of being a class
28 representative deter them from acting for the benefit of Class Members. (*Id.* ¶ 73.) To the contrary,

1 Plaintiffs have been intimately involved in this case since they each respectively signed on as a
2 class representative. (Han Decl., ¶ 73) They have devoted a substantial amount of time to helping
3 Class Counsel effectively develop and prosecute this action at every stage of the litigation since
4 she became a named plaintiff. (*Id.*) Both before and after the filing of this lawsuit, Plaintiff
5 Christopher Luque conferred with Class Counsel on numerous occasions to discuss every aspect of
6 his case. (*Id.*) Plaintiff Cristanos Rascon, while not part of the pre-investigation phase of the
7 lawsuit, also spent considerable time with Class Counsel getting apprised of the current state of the
8 case prior to being brought on a class representative. (*Id.*) Plaintiffs have provided Class Counsel
9 with information about Defendant and about the industry generally, reviewed documents,
10 identified witnesses, consulted Class Counsel throughout the litigation, participated in the
11 mediation process, monitored the progress of the litigation with Class Counsel, and reviewed and
12 signed the settlement agreement. (*Id.*)

13 Plaintiffs have spent a significant amount of time with Class Counsel detailing their
14 knowledge of Defendant's practices. (*Id.* ¶ 74.) They have diligently, adequately, and fairly
15 represented Class Members, and have not placed their interests above any member of the putative
16 class. (Han Decl., ¶ 74) This sort of payment to a class representative has been a common feature
17 of settlements negotiated by Class Counsel and have been routinely approved by trial courts. (*Id.*)

18 Class Counsel believes that a combined service enhancement award in the amount of
19 \$20,000.00 (\$20,000.00 to Class Representative Christopher Luque and \$10,000.00 to Class
20 Representative Cristanos Rascon) to the Class Representatives is fair and reasonable. (*Id.* ¶ 75.)

21 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE** 22 **CLASS MEMBERS.**

23 Constitutional due process requires that class members be provided with notice sufficient
24 to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank &*
25 *Trust Co.* (1950) 339 U.S. 306. Proper notice must provide the class members with sufficient
26 information to make an informed decision as to whether to accept or object to the settlement. (*Id.*
27 at 314.) The notice must apprise the class members of the pendency of the action; reasonably
28 convey information regarding the settlement and the class members' rights, entitlements, and

1 obligations; and afford class members the opportunity to present their objections. (*Mullane v.*
2 *Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306.)

3 The Notice meets constitutional standards because it provides all the information a
4 reasonable person would need to make a fully informed decision about the settlement. It will
5 notify all class members of the terms of the settlement, of its effect on their rights, of their options
6 as class members (i.e., participate, object, opt out, do nothing), and of the consequences of
7 exercising those options. (Han Decl., ¶¶ 27-28, 64-66.) Moreover, the Notice will specifically
8 direct any class members who have questions or concerns to contact the settlement administrator,
9 ILYM Group, or Class Counsel. (*Id.*)

10 The standard for determining the adequacy of notice is whether the notice has “a
11 reasonable chance of reaching a substantial percentage of the class members.” *Cartt v. Superior*
12 *Court* (1975) 50 Cal.App.3d 960, 974. The Judicial Council of California’s Deskbook on the
13 Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual
14 notice by mail is preferred when possible and dissemination of combined certification/settlement
15 notice is a common and accepted practice. *In re Vitamin Cases* (2003) 107 Cal.App.4th 820, 828.

16 Here, the Notice Packet will be sent via first-class mail to each Class Member. (Han Decl.
17 ¶¶ 27, 64, Exh. 1 ¶¶ 44-46.) If any Notice Packets are returned undeliverable, the Settlement
18 Administrator will forward them to any address appearing on the returned envelope or, if there is
19 no forwarding address, perform a skip trace before mailing them to any addresses thereby
20 identified. (*Id.*) Thus, most, if not all, class members will likely receive the Notice Packet.

21 Pursuant to controlling authority, the proposed Class Notice and method of distribution
22 fully comport with due process requirements. Therefore, the Court should approve the Class
23 Notice and direct that it be distributed as proposed herein.

24 **IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT**

25 Non-settling parties and third parties periodically may attempt to object to proposed class
26 action settlements, but the right of non-settling parties to object at the final settlement approval
27 hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class
28 members have standing to object to a proposed settlement. “Beginning from the unassailable

1 premise that settlements are to be encouraged, it follows that to routinely allow non-class members
2 to inject their concerns via objection at the settlement stage would tend to frustrate this goal.”
3 *Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.

4 Since an application is being filed to obtain a good faith determination, no persons other
5 than class members have standing to object to the proposed settlement. *In re School Asbestos*
6 *Litigation* (3rd Cir. 1990) 921 F.2d 1330.

7 **X. THE STIPULATED AWARD OF ATTORNEYS’ FEES AND COSTS IS**
8 **REASONABLE AND SHOULD BE APPROVED.**

9 Under the Stipulation, subject to approval by this Court, Class Counsel will seek an award
10 of fees equal to thirty-eight percent of the of the Maximum Settlement Amount, amounting to
11 \$84,360.00, and actual litigation costs of up to \$20,000.00³. The requested fees are fair
12 compensation for a law firm involved in undertaking complex, risky, expensive, and time
13 consuming litigation solely on a contingent basis. (Han Decl. ¶¶ 22, 68-69.) Defendant will not
14 oppose Class Counsel’s fee and cost request.

15 California courts routinely look to the federal courts on class action approvals. The Ninth
16 Circuit has recognized that an appropriate method for awarding attorneys’ fees in class actions is
17 to award a percentage of the “common fund” created as a result of the settlement. *Vincent v.*
18 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. The purpose of the common
19 fund/percentage approach is to “spread litigation costs proportionally among all the beneficiaries
20 so that the active beneficiary does not bear the entire burden alone.” (*Id.*) Accordingly, courts have
21 discretion to choose either the percentage-of-the-fund method or the lodestar method. *In re Wash.*
22 *Pub. Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-96.

23 Several courts have, however, expressed frustration with the “lodestar” approach for
24 deciding fee awards, which usually involves wading through voluminous time records. Thus, the
25 percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns the
26 interests of class counsel and absent class members; (2) it encourages efficient resolution of the
27

28 ³ Class Counsel’s current litigation costs are currently \$6,213.31. This amount does not include any costs associated with the Motion for Preliminary Approval.

1 litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
2 demands on judicial resources. *In re Activision Securities Litigation*, 723 F. Supp. at 1378-79. The
3 Ninth Circuit has used the percentage of the common fund approach to determine the award of
4 attorneys' fees. *In re Pacific Enterprises Securities Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79
5 (approving attorneys' fee of 33 1/3% of settlement fund).

6 Class Counsel's application for attorneys' fees in light of the facts and circumstances
7 surrounding this case is well within the range of reasonableness. Historically, courts have awarded
8 percentage fees in the range of 20% to 50% of the common fund, depending on the circumstances
9 of the case. *Newberg*, at §14.03; *see also In re Activision Securities Litigation*, 723 F. Supp. at
10 1378. *Newberg* further notes: "[A]chievement of a substantial recovery with modest hours
11 expended should not be penalized but should be rewarded for considerations of time saved by
12 superior services performed." (*Id.* at §§ 14-10:14-11.)

13 The attorneys' fees request provided for in the Stipulation is commensurate with judicial
14 precedent. Both state and federal courts regularly approve fee awards equal to or greater than the
15 percentage requested in this case. *See, e.g., In re Pacific Enterprises Securities Litigation* (9th Cir.
16 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common fund); *In re Activision*
17 *Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (awarding plaintiffs' counsel 32.8%
18 of the common fund created to settle the litigation); *In re Ampicillin Antitrust Litigation* (D. D.C.
19 1981) 526 F.Supp. 494 (awarding 45% of \$7.3 million settlement fund); *Parker v. City of Los*
20 *Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to counsel of one-third (1/3) of
21 recovery achieved).

22 In wage and hour class actions in particular, California trial courts have customarily
23 approved attorney's fees consistent with or greater than the percentage of the common fund
24 requested in this case. *See Evans v. Coca-Cola*, Los Angeles County Super.Ct. Case No. BC
25 220525 (Hon. Richard C. Hubbell) (Dec. 2001) (approving an award of attorneys' fees of at least
26 33-1/3% of the settlement); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super.
27 Ct. Case No.BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los
28 Angeles County Super.Ct. Case No.BC 278170 (April 2004) (Hon. David M. Minning); *Josiah*

1 *Eaton v. Adolph Coors Company* (2003) Orange County Super.Ct. Case No. 01CC00140 (Hon.
2 Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County
3 Super.Ct. Case No. BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper*
4 *Restaurants*, Orange County Super.Ct. Case No. 02CC10201 (2006) (Hon. Ronald L. Bauer).

5 Here, Class Counsel has borne the entire risk and cost of litigation and will not receive
6 any compensation until recovery is obtained. (See Han Decl., ¶¶ 68-70.) The Court should also
7 consider the benefit obtained by Class Counsel on behalf of Class Members. Thus, the requested
8 award for Class Counsel is reasonable.

9 **XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY**
10 **APPROVAL**

11 The parties respectfully request this Court, as part of the preliminary approval process, to
12 grant the following relief and make the following orders:

- 13 1. Review and approve the Stipulation;
- 14 2. Review and approve the Notice, attached to the Stipulation as Exhibit A;
- 15 3. Consider and determine that the proposed class action settlement as set forth in the
16 Stipulation preliminarily appears fair, reasonable, and adequate;
- 17 4. Enter an order conditionally certifying the action as a class action for settlement
18 purposes only and preliminarily approving the proposed class action settlement and the
19 Stipulation;
- 20 5. Approve and appoint Douglas Han of JUSTICE LAW CORPORATION, to serve
21 as Class Counsel for settlement purposes;
- 22 6. Approve and appoint ILYM Group, as the claims administrator to handle the
23 notice and claims procedures as set forth in the Stipulation;
- 24 7. Approve the proposed settlement's allocation of funds to claims made under
25 PAGA;

26 ///

27 ///

28 ///

1 8. Order Defendant to disclose to ILYM Group, Inc. the names, last-known
2 addresses, telephone numbers, dates of employment, and social security numbers of class members
3 as set forth in the Stipulation;

4 9. Order that ILYM Group, Inc. mail the Notice Packet to Class Members; and

5 10. Set a date for the Final Approval Hearing.
6

7 Dated: March 1, 2022

Respectfully submitted,

8 JUSTICE LAW CORPORATION

9
10 By 
11 Douglas Han
12 Shunt Tatavos-Gharajeh
13 Jason Rothman
14 Attorneys for Plaintiffs Christopher Luque and
15 Cristanos Rascon, and all others similarly situated
16
17
18
19
20
21
22
23
24
25
26
27
28

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103. My electronic service address is jkislow@justicelawcorp.com

On March 1, 22, I served the foregoing document described as

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS'
MOTION FOR AN ORDER (1) PRELIMINARILY APPROVING THE CLASS ACTION
SETTLEMENT; (2) APPROVING NOTICE OF CLASS ACTION SETTLEMENT; AND
(3) SETTING HEARING FOR FINAL APPROVAL**

for the following case: **Luque v. Glovis America, Inc.**
LWDA/Court Case No.: **LWDA-CM-852069-21**
56-2021-00550720-CU-OE-VTA
Ventura County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 1, 2022, at Pasadena, California.


Jillian Kislow