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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

CHRISTIAN ROJAS CRUZ, individually, and on behalf of other members of the general public similarly situated;

Plaintiff,

vs.

SENSOR SYSTEMS INC., a California corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 21STCV25102

Honorable Yvette M. Palazuelos
Department SSC9

<u>CLASS ACTION</u>

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 and James Hawkins); Declarations of Proposed Class Representatives (Christian Rojas Cruz and Miguel Chavarin); and [Proposed] Order filed concurrently herewith]

Date:	April 5, 2023
Time:	10:00 a.m.
Department:	SSC9
Complaint Filed:	July 8, 2021
Trial Date:	None Set

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

PLEASE TAKE NOTICE that on April 5, 2023 at 10:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Yvette M. Palazuelos in Department SSC9 of the Superior Court of California for the County of Los Angeles, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff Christian Rojas Cruz and Proposed Plaintiff Miguel Chavarin (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") which is attached as "**EXHIBIT A**" 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 Stipulation of Class Action and PAGA Settlement ("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, Attorneys' Fees and Costs to Class Counsel, Enhancement Payments to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Christian Rojas Cruz and Proposed Plaintiff Miguel Chavarin as Class Representatives;
- Preliminarily appointing Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and Yasmin Hosseini of Lawyers *for* Justice, PC and James R. Hawkins and Gregory Mauro of James Hawkins APLC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement ("Class Notice"), attached as "**EXHIBIT B**" to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;

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- 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 Settlement 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 Attorneys' Fees and Costs to Class Counsel, Enhancement Payments to Plaintiffs, and Settlement Administration Costs to Settlement 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 James Hawkins) and Proposed Class Representatives (Christian Rojas Cruz and Miguel Chavarin) 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 4, 2022

LAWYERS *for* JUSTICE, PC

By: ______________________
Yasmin Hosseini
Attorney for Plaintiff Christian Rojas Cruz

Dated: 10/4/2022

JAMES HAWKINS APLC

By: ______________________
James R. Hawkins
Gregory Mauro
Attorneys for Plaintiff Miguel Chavarin

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Christian Rojas Cruz and Proposed Plaintiff Miguel Chavarin (together, "Plaintiffs" or "Class Representatives") seek preliminary approval of the Stipulation of Class Action and PAGA Settlement ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Sensor Systems Inc., ("Defendant"), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the "Parties") have agreed to settle the Lawsuit for a Total Settlement Amount of Nine Hundred Fifty Thousand Dollars ($950,000.00).[1] The Total Settlement Amount includes the following: (1) Individual Settlement Shares to Settlement Class Members which will be distributed from the Net Settlement Amount[2]; (2) the Enhancement Payments of Ten Thousand Dollars ($10,000.00) each to Plaintiffs ($20,000 total)[3]; (3) the Attorneys' Fees and Costs to Class Counsel, consisting of attorneys' fees in the amount of thirty-five percent (35%) of the Total Settlement Amount, or $332,500.00, and reimbursement of litigation costs and expenses not to exceed Thirty Three Thousand Dollars ($33,000.00)[4]; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed Ten Thousand Dollars ($10,000.00)[5]; and (5) the amount of Two Hundred Thousand Dollars ($200,000.00) allocated to penalties under the Private Attorneys General Act ("PAGA Penalty Amount"), of which seventy-five percent (75%) or One Hundred Fifty Thousand Dollars ($150,000.00) will be distributed to the Labor and Workforce Development Agency ("LWDA Payment") and 25% (i.e., $50,000.00) will be distributed to all current and former hourly-paid or non-exempt employees of Defendant in California employed between April 5, 2020 through June 20, 2022

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[1] Settlement Agreement, attached as "**EXHIBIT 1**" to Declaration of Yasmin Hosseini ("Hosseini Decl."), ¶ 9.ll.
[2] *Id.*, ¶ 9.t.
[3] *Id.*, ¶ 14.
[4] *Id.*, ¶ 13.
[5] *Id.*, ¶ 15.

("Aggrieved Employees") on a *pro rata* basis, based on Workweeks during the PAGA Period (i.e., Individual PAGA Payment).[6]

Plaintiffs also seek to provisionally certify the following Class for settlement purposes, which Defendant does not oppose:

> All current and former hourly-paid or non-exempt employees of Defendant in California employed between July 8, 2017 through June 20, 2022 ("Class" or "Class Members").[7]

The Class is estimated to consist of approximately two hundred and forty (240) individuals.[8]

Class Members who do not submit a timely and valid request to be excluded from the Settlement ("Settlement Class Member") will receive a share of the Net Settlement Amount ("Individual Settlement Share") on a *pro rata* basis based upon number of weeks each Class Member worked for Defendant as an hourly-paid or non-exempt employee in California during the Class Period (based on information provided by Defendant by way of the Class List, by determining the number of workweeks paid and excluding those weeks during which the Company was closed in December and full workweeks on leave of absence and full workweeks on vacation neither of which were included in the calculation) ("Workweeks").[9]

Aggrieved Employees will receive a *pro rata* share of the 25% portion of the PAGA Penalty Amount ("Individual PAGA Payment") based on the Aggrieved Employees' Workweeks during the PAGA Period.[10]

The Settlement, if granted preliminary and final approval by the Court, will operate to resolve the Released Class Claims of Plaintiffs and Settlement Class Members, and the Released PAGA Claims of State of California and Aggrieved Employees against the Released Parties.[11]

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[6] Settlement Agreement, ¶¶ 9.a & 16.

[7] *Id.* , ¶ 9.f. "Class Period" is defined as the time period from July 8, 2017 through June 20, 2022. *See id.*, ¶ 9.h.

[8] Hosseini Decl., ¶ 9.

[9] Settlement Agreement, ¶ 9.mm.

[10] *Id.*, ¶ 9.r. "PAGA Period" is defined as the time period from April 5, 2020 through June 20, 2022. See *id.*, ¶ 9.z.

[11] See *id.* at ¶ 9.dd., for the full scope of the "Released Class Claims," ¶ 9.ee., for the full scope of the "Released PAGA Claims," and *id.* at ¶ 9.ff., for the definition of the "Released Parties."

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II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a global supplier of antennas for commercial, business, and military aircraft. Plaintiffs Christian Rojas Cruz and Miguel Chavarin are former employees of Defendant.

On July 8, 2021, Plaintiff Christian Rojas Cruz ("Plaintiff Cruz") filed a Class Action Complaint for Damages (the "*Cruz* Complaint") against Defendant in the Superior Court of California for the County of Los Angeles ("Court"), thereby commencing the above-captioned lawsuit ("*Cruz* Action").

On October 22, 2021, Defendant filed an Answer to Plaintiff Cruz's Class Action Complaint.

On November 18, 2021, Plaintiff Miguel Chavarin ("Plaintiff Chavarin") filed a Class Action Complaint for Damages against Defendant in the Superior Court of California for the County of Los Angeles, Case No. 21STCV42647 ("*Chavarin* Action").

On November 18, 2021, Plaintiff Chavarin also provided written notice to the Labor Workforce Development Agency ("LWDA") and Defendants, giving notice of his intent to pursue civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("PAGA"), on behalf of himself and the State of California.

On January 27, 2022, Plaintiff Chavarin filed a First Amended Class Action Complaint Pursuant to California Code of Civil Procedure § 382, adding a Private Attorneys General Act ("PAGA") cause of action (the "*Chavarin* Complaint").

On February 10, 2022, Defendant filed a Notice of Related Case and on February 17, 2022, the *Cruz* Action and the *Chavarin* Action were deemed related in Los Angeles County Superior Court, with the *Cruz* Action being the lead case (together, the *Cruz* Action and *Chavarin* Action are referred to as the "Lawsuit").

The Parties have agreed that Plaintiff Cruz will seek leave to file a Fist Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq*. ("First Amended Complaint" or "Operative Complaint")

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in the *Cruz* Action to add Plaintiff Chavarin and the claims in the *Chavarin* Action, so that preliminary and final approval of the Settlement may be sought in the Lawsuit.

Plaintiffs' core allegations are that Defendant has violated the California Labor Code and Industrial Welfare Commission Wage Orders, by engaging in a uniform practice and procedure, with respect to Plaintiffs, Class Members, 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 civil penalties pursuant to PAGA. Plaintiffs contend that they, and the Class Members, and the Aggrieved Employees are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

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

The Parties have actively litigated the Lawsuit since the *Cruz* Action was commenced on July 8, 2021. On January 26, 2022, the Parties participated in a formal, full-day mediation conducted by Honorable Edward A. Ferns (Ret.), a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Lawsuit in its entirety.

III. REQUEST FOR LEAVE TO FILE FIRST 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 Cruz to file an amended complaint in the *Cruz* Action in order to, *inter alia*, add Plaintiff Chavarin and the claims in the *Chavarin* Action. As

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such, Plaintiff Cruz respectfully requests leave to file the First Amended Complaint (i.e, the Operative Complaint), attached "Exhibit A" 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, Defendant will pay a Total Settlement Amount to resolve the Released Class Claims of Plaintiffs and the Class Members who do not submit a timely and valid request to be excluded from the Class Settlement (i.e., Settlement Class Member) and Released PAGA Claims of Plaintiff Chavarin and Aggrieved Employees with respect to the Released Parties.[12] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Total Settlement Amount (i.e. $332,500.00 if the Total Settlement Amount remains $950,000.00), and reimbursement of costs and expenses in an amount not to exceed Thirty Three Thousand Dollars ($33,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are currently estimated not to exceed Ten Thousand Dollars ($10,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) payment to the LWDA of its 75% share of the PAGA Penalty Amount (i.e., $150,000.00 out of $200,000.00) ("LWDA Payment") and twenty-five percent (25%), or $50,000.00, will be distributed to Aggrieved Employees on a *pro rata* basis; and (4) payments in the amount of up to Ten Thousand Dollars ($10,000.00) each to Plaintiffs Christian Rojas Cruz and Miguel Chavarin (for a combined total of $20,000) ("Enhancement Payments").[13] The Parties have agreed to retain ILYM Group, Inc., ("ILYM Group" or "Settlement Administrator") to handle the notice and settlement administration process.

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[12] Settlement Agreement, ¶ 9.ll.
[13] *Id.*, ¶¶ 13, 14, 15, 16.

The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member's 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 Settlement Administrator will divide the Net Settlement Amount by the Workweeks of 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 Settlement.[14]

b. After Final Approval of the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the "Final Workweek Value," and multiply each Settlement Class Member's individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.[15]

The Parties have agreed that the Settlement Administrator will determine each Aggrieved Employees' *pro rata* share of the PAGA Penalty Amount (i.e., Individual PAGA Payment), in accordance with the Settlement Agreement and as follows:

a. The Settlement Administrator will divide 25% of the PAGA Penalty Amount by the Workweeks of all Aggrieved Employees during the PAGA Period to yield the "PAGA Workweek Value," and multiply each Aggrieved Employee's individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment.[16]

Each Individual Settlement Share will be allocated as follows: twenty percent (20%) wages which will be reported on an IRS Form W-2; and eighty percent (80%) penalties and interest, which will be reported on an IRS Form 1099.[17] The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their Individual Settlement Payments (i.e., payment of their Individual Settlement Share net of these taxes and withholdings).[18] 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.[19] The employer's share of taxes and

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[14] Settlement Agreement, ¶ 17.a.i.
[15] *Id.*, ¶ 17.a.ii.
[16] *Id.*, ¶ 17.b.
[17] *Id.*, ¶ 28.
[18] *Ibid.*
[19] *Ibid.*

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contributions on the wages portion of Individual Settlement Shares will be paid separately and in addition to the Total Settlement Amount.[20]

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be cancelled.[21] All funds associated with such cancelled checks will be transmitted to the the *cy pres*, Court Appointed Special Advocates of Los Angeles, in accordance with California Code of Civil Procedure section 384.[22] The Parties and their counsel have no interest or relationship, financial or otherwise, with Court Appointment Special Advocates of Los Angeles.[23] All Settlement Class Members and Aggrieved Employees shall be bound by the terms and conditions of this Settlement Agreement regardless of whether they cash or otherwise negotiate their Individual Settlement Payment check and/or Individual PAGA Payment check or not. [24]

Any Class Member wishing to be excluded from the Class Settlement must submit a written letter indicating a request to be excluded to the Settlement Administrator ("Request for Exclusion").[25] To be timely, the Class Member must mail a written Request for Exclusion to the Settlement Administrator, postmarked on or before the date that is sixty (60) calendar days from the initial mailing of the Class Notice ("Response Deadline").[26] The Request for Exclusion must: (a) contain the case name and number of the Lawsuit; (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; and (d) clearly state that the Class Member does not wish to be included in the Class Settlement.[27] Any Class Member who submits a Request for Exclusion is prohibited from making any objection to the

[20] Settlement Agreement, ¶ 28.
[21] *Id.*, ¶ 22.
[22] *Ibid.*
[23] *Ibid.*
[24] *Ibid.*
[25] *Id.*, ¶ 9.gg.
[26] *Id.*, ¶ 9.hh.
[27] *Id.*, ¶ 9.gg.

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Class Settlement.[28] Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement. [29]

To object to the Class Settlement, Class Members who have not opted out of the Class Settlement (i.e., Settlement Class Members) may submit a timely and complete written objection to the Settlement Administrator ("Notice of Objection").[30] Settlement Class Members who wish to object to the Class Settlement may submit his or her Notice of Objection on or before the Response Deadline or directly present his or her objection orally to the Court at the Final Approval Hearing.[31] The Notice of Objection must include: (a) the case name and number of the Lawsuit; (b) the objector's full name, signature, address, telephone number, and the last four digits of his or her Social Security number; (c) a written statement of all grounds for the objection accompanied by any legal support for such objection; and (d) copies of any papers, briefs, or other documents upon which the objection is based.[32]

Class Members and Aggrieved Employees will have an opportunity to dispute the number of Workweeks to which they have been credited, as reflected in their respective Class Notices.[33] In order to dispute Workweeks, Class Members and/or Aggrieved Employees must submit a written letter to the Settlement Administrator that: (a) contains the case name and number of the Lawsuit, (b) is signed by the Class Member and/or Aggrieved Employee, (c) contains 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 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

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[28] Settlement Agreement, ¶ 23.
[29] *Ibid.*
[30] *Id.*, ¶ 9.w.
[31] *Id.*, ¶ 25.
[32] *Id.*, ¶ 9.w.
[33] *Id.*, ¶ 21.

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returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.[34]

V. 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 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).

[34] Settlement Agreement, ¶ 21.

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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.

VI. <u>THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT</u>

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.

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

The Parties actively litigated the Lawsuit since the *Cruz* Action was commenced on July 8, 2021. 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 matter for class certification and trial.[35]

Prior to engaging in mediation, Class Counsel conducted significant investigation 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 Defendant.[36] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiffs and employment records, a detailed sampling of Class Members' time and pay data, new hire information checklists, Defendant's Employee Handbook, financial information (including but not limited to pay statements and earning statements) company policy acknowledgements (Employee Handbook Acknowledgement, Telecommunications Systems Policy, Dress Code Policy Receipt Acknowledgement, Anti-Drug & Alcohol Misuse Prevention Program Policy & Procedures, Personal Packages, Lockers, and Desk Inspection Consent Receipt, and Use of Gloves Policy), internal memoranda, job descriptions, Defendants' operations and employment practices, procedures, and policies (Meal Break Waiver) among other information and documents.[37] Class Counsel interviewed Plaintiffs and other Class Members to gather facts and to identify potential witnesses.[38] Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, and the production of documents and data prior to the mediation.[39] Class Counsel also drafted Plaintiffs' mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.[40]

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[35] Hosseini Decl., ¶¶ 11-13.
[36] *Id.*, ¶ 12.
[37] *Ibid.*
[38] *Ibid.*
[39] *Ibid.*
[40] *Ibid.*

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The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Honorable Edward A. Ferns (Ret.), a well-respected mediator experienced in mediating complex labor and employment matters.[41] 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 matter, including but not limited to, 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 analyzed, and the possibility of appeals, among other things.[42] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[43] Arriving at a settlement that was acceptable to both Parties was not easy. Defendant 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.[44] After conducting investigations, significant informal discovery and exchange of information, extensive settlement negotiations, and with the aid of the mediator's evaluation, 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.[45]

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the cases might have concluded at certification and trial.[46] The Parties have had the opportunity to interview and obtain information from their respective witnesses.[47] Counsel for the Parties have also reviewed documents and information relating to Plaintiffs' and the Class Members' employment with Defendant and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and

[41] Hosseini Decl., ¶ 11.
[42] *Ibid.*
[43] *Ibid.*
[44] *Id.*, ¶¶ 11, 16-18.
[45] *Ibid.*
[46] *Ibid.*
[47] *Ibid.*

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rest periods, wage-and-hour law and enforcement, Plaintiffs' claims, and Defendant's defenses thereto, as well as facts discovered.[48] 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.[49]

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

The Settlement, which provides for a Total Settlement Amount of Nine Hundred Fifty Thousand Dollars ($950,000.00), represents a fair, adequate, and reasonable resolution of the matter.[50] The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of information.[51] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue.[52] Moreover, considering all of the facts and circumstances of the lawsuits, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[53]

Assuming that the Attorneys' Fees and Costs, Enhancement Payments, PAGA Penalty Amount, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Three Hundred Fifty-Four Thousand Five Hundred Thousand Dollars ($354,500.00).[54] As discussed in Part IV, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Share and each Aggrieved Employees' Individual PAGA Payment will be calculated based on his or her Workweeks.[55] There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n

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[48] Hosseini Decl., ¶¶ 11-13 & 16-18.
[49] *Id.*, ¶¶ 2-7.
[50] *Id.*, ¶¶ 11, 13, 14 & 22.
[51] *Id.*, ¶¶ 11-13.
[52] Hosseini Decl., ¶¶ 16-18.
[53] *Id*., ¶¶ 11, 13, & 22.
[54] *Id.*, ¶ 14.
[55] Settlement Agreement, ¶ 17.

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allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, Aggrieved Employees, and the State of California.[56] Although the recommendations of Class 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. <u>The Settlement Is of Significant Value.</u>

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant informal discovery and exchanged a large volume of documents, data, and information prior to mediation.[57] The discovery and information that Class Counsel obtained from Defendant, Plaintiff, and 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 Defendant's defenses thereto.[58] 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.[59]

VII. <u>CERTIFICATION OF THE CLASS IS APPROPRIATE</u>

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.[60] 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*

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[56] Hosseini Decl., ¶¶ 11 & 13.
[57] *Id.*, ¶¶ 11-13 & 18.
[58] *Id.*, ¶ 18.
[59] *Id.*, ¶¶ 11-13 & 16-18.
[60] Settlement Agreement, ¶ 36.a.

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(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 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 lawsuit involves a class of approximately two hundred forty (240) individuals.[61] 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 Defendant to the Settlement Administrator through a review of Defendant's employment records regarding hourly-paid, non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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[61] Hosseini Decl., ¶ 9.

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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 informal discovery and exchange of information in the 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.[62] Plaintiffs' claims arise from Defendant's 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 complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.[63]

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[62] Hosseini Decl., ¶ 16.
[63] *Ibid*.

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Plaintiffs also contend that Defendant's payroll and recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.[64] As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.[65]

Plaintiffs maintain that the outcome of this litigation would be determined by Defendant's alleged uniform operations and employment policies and procedures that applied 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.

VIII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS' FEES AND COSTS

Class Counsel has litigated the matter for over one (1) year and was actively preparing the matter for class certification and trial.[66] 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 informal discovery. Class Counsel reviewed a large volume of documents and data[67] and also interviewed and obtained information from Plaintiffs and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.[68] Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.[69]

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[70]

The Settlement establishes a Total Settlement Amount of Nine Hundred Fifty Thousand Dollars ($950,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees

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[64] Hosseini Decl., ¶ 16.
[65] *Ibid*.
[66] *Id.*, ¶¶ 11-13.
[67] *Id.*, ¶ 12.
[68] *Ibid.*
[69] *Id.*, ¶ 11.
[70] *Id.*, ¶¶ 2-7.

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and Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Total Settlement Amount (i.e., $332,500.00) and an amount not to exceed Thirty Three Thousand Dollars ($33,000.00) for costs and expenses (collectively, "Attorneys' Fees and Costs").[71] 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 and expense that Class Counsel dedicated to the cases, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, Aggrieved Employees, and the State of California, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members and Aggrieved Employees with information about the amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.[72]

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

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[71] Settlement Agreement, ¶ 13.
[72] *Id.*, Exh. B.

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The propriety of calculating and awarding attorneys' fees as a percentage of a settlement that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte*, *supra*, 1 Cal.5th 480 at 486 & 506. The California Supreme Court has taken the position that "[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee[,]" and "[t]he 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.[73]

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 Attorneys' Fees and Costs 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.

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[73] Hosseini Decl., ¶ 19.

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IX. 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).

The proposed Class Notice[74] describes the Settlement, the deadlines and procedures to submit a Notice of Objection to the Class Settlement, Request for Exclusion from the Class Settlement, and/or disputes regarding Workweeks, and the date and time set for the Final Approval Hearing.[75]

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.[76] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[77] The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Share, and if applicable, their Individual PAGA Payment are calculated and the number of Workweeks credited to them.[78]

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."). In addition, given the large number of Spanish speaking employees

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[74] Settlement Agreement, Exh. B.
[75] *Ibid.*
[76] *Ibid.*
[77] *Ibid.*
[78] *Ibid.*

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in Defendant's workforce, the Class Notice will also be translated into Spanish. Accordingly, the Court should approve the proposed Class Notice.

X. APPOINTMENT OF ILYM GROUP, INC., AS THE SETTLEMENT ADMINISTRATOR

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

The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. mail.[79] For any Class Notice that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.[80] In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that Class Member shall be the extended by fifteen (15) calendar days from the initial mailing of the Class Notice.[81] The Settlement Administrator will receive and process Requests for Exclusion, Notices of Objection, and any disputes regarding Workweeks.[82]

The Settlement Administrator will calculate the amounts of the Individual Settlement Shares and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Shares; mail the Individual Settlement Payment checks to Settlement Class Members and the Individual PAGA Payment checks to the Aggrieved Employees; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Enhancement Payments, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.[83] The Settlement Administration Costs are currently estimated to be Ten Thousand Dollars ($10,000.00) and will be paid out of the Total Settlement Amount, subject to approval by the Court.[84]

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[79] Settlement Agreement, ¶ 20.a.
[80] *Id.*, ¶ 20.b.
[81] *Id.*, ¶ 8.hh.
[82] *Id.*, ¶¶ 21, 23, and 25.
[83] *Id.*, ¶ 15.; Hosseini Decl., ¶ 15.
[84] Hosseini Decl., ¶ 15.

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The Parties and their counsel have no interest or relationship, financial or otherwise, with the Settlement Administrator other than a professional relationship arising out of prior experiences administering settlement.[85]

Accordingly, Plaintiffs respectfully request that the Court appoint ILYM Group Inc., as the Settlement 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.

XI. 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 Defendant's records.[86]

Within twenty-one (21) calendar days of Preliminary Approval, Defendant will provide the Settlement Administrator with each Class Member's full name, last known mailing address, Social Security Number, dates worked for Defendant during the Class Period and, if applicable, during the PAGA Period, and dates of Company wide December holiday closures and full workweeks of leave absence and full workweeks of vacation neither of which were included in the calculation, and such other information and data as necessary for the Settlement Administrator to independently calculate the Workweeks (collectively, "Class List").[87]

Within fourteen (14) calendar days after receiving the Class List from Defendant, the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes, and will mail a Class Notice) to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator.[88] With respect to Class Notices that are

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[85] Settlement Agreement, ¶ 9.ii.
[86] Settlement Agreement, ¶ 20.a.
[87] *Id.*, ¶¶ 9.e. and 19.
[88] *Id.*, ¶ 20.a.

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returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.[89] Class Members will have until the applicable Response Deadline, or extended Response Deadline (if applicable), to mail a Request for Exclusion, mail a dispute regarding Workweeks, and Notices of Objection.[90]

Within thirty (30) calendar days of the Effective Date, Defendant will make a one-time deposit of the Total Settlement Amount, along with any employer-side tax obligations associated with the Total Settlement Amount, into a settlement account to be established by the Settlement Administrator.[91] Within seven (7) calendar days of the funding of Total Settlement Amount, the Settlement Administrator will issue payments due under the Settlement and approved by the Court, as follows: (a) Individual Settlement Payments to Settlement Class Members; (b) Individual PAGA Payments to Aggrieved Employees; (c) LWDA Payment to the LWDA; (d) Enhancement Payments to Plaintiffs; (e) Attorneys' Fees and Costs to Class Counsel; and (f) Settlement Administration Costs to the Settlement Administrator.[92]

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be cancelled.[93] All funds associated with such cancelled checks will be transmitted to the the *cy pres*, Court Appointed Special Advocates of Los Angeles, in accordance with California Code of Civil Procedure section 384.[94]

XII. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR ENHANCEMENT PAYMENTS

Plaintiff Christian Rojas Cruz and Proposed Miguel Chavarin respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Enhancement Payments in an amount up to Ten Thousand Dollars ($10,000.00) each to Plaintiff Christian

[89] *Id.*, ¶ 20.b.
[90] Settlement Agreement, ¶ 9.hh.
[91] *Id.*, ¶ 12.
[92] *Ibid.*
[93] *Id.*, ¶ 22.
[94] *Ibid.*

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Rojas Cruz and Proposed Miguel Chavarin (for a combined total of $20,000).[95] It is within the Court's discretion to award payment to a class representative for their efforts and work. *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 financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id*.

The Enhancement Payments are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.[96] Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would benefit the Class.[97] Accordingly, it is appropriate and just for Plaintiffs to each receive an Enhancement Payments for their services on behalf of the Class, State of California, and Aggrieved Employees, in addition to their individual settlement payments.

XIII. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers *for* Justice, PC and James Hawkins, APLC as Class Counsel; preliminary appoint and designate Plaintiff Christian Rojas Cruz and Proposed Miguel Chavarin as Class Representatives; appoint ILYM Group, Inc., as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payments, PAGA Penalty Amount, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in

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[95] *Id.*, ¶ 14.

[96] Hosseini Decl., ¶ 20; Declaration of Christian Rojas Cruz in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Cruz Decl."), ¶ 4; Declaration of Miguel Chavarin in Support of Plaintiffs' Motion for Preliminary Approval ("Chavarin Decl".), ¶ 9.

[97] Hosseini Decl., ¶ 20; Cruz Decl., ¶¶ 3-6; Chavarin Decl., ¶ 8-9.

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conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately five (5) months.

Dated: October 4, 2022

LAWYERS *for* JUSTICE, PC

By: ______________________________

Yasmin Hosseini
Attorneys for Plaintiff Christian Rojas Cruz

Dated: 10/4/2022

JAMES HAWKINS APLC

By: ______________________________

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