HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Andrew J. Rowbotham (SBN 301367)
arowbotham@haineslawgroup.com
Susan J. Perez (SBN 329044)
sperez@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355
Attorneys for Plaintiffs

[Additional counsel listed on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

JOSHUA D. HODGES, as an individual and on behalf of all others similarly situated, Plaintiff, vs. CALIFORNIA TRUCK CENTERS, LLC, a California Limited Liability Company; DELTA TRUCK CENTER, a California Company; and DOES 1-50, inclusive, Defendants.	CASE NO. STK-CV-UOE-2022-0000168 [*Assigned to Hon. George J. Abdallah, Dept. 10A*] **PLAINTIFFS' NOTICE OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: May 6, 2025 Time: 9:00 AM Dept.: 10A Action Filed: January 10, 2022 Trial Date: None Set

BOKHOUR LAW GROUP, P.C.
Mehrdad Bokhour, Esq., CA Bar No. 285256
mehrdad@bokhourlaw.com
Anwar D. Burton, Esq., CA Bar No. 253504
anwar@bokhourlaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

FALAKASSA LAW, P.C.
Joshua S. Falakassa, CA Bar No. 295045
josh@falakassalaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (818) 456-6168; Fax: (888) 505-0868

OTKUPMAN LAW FIRM, A LAW CORPORATION
Roman Otkupman, CSBN 249423
Roman@OLFLA.com
Nidah Farishta, CSBN 312360
Nidah@OLFLA.com
5743 Corsa Ave., Suite 123
Westlake Village, CA 91362
Telephone: (818) 293-5623
Facsimile: (888) 850-1310

Attorneys for Plaintiffs

PLEASE TAKE NOTICE that, pursuant to Rule 3.769 of the California Rules of Court, on May 6, 2025 at 9:00 a.m., or as soon thereafter as the matter may be heard, in Department 10A of the San Joaquin County Superior Court, located at 180 E. Weber Avenue, Stockton, California 95202, Plaintiffs Joshua D. Hodges and Daniel Vogel ("Plaintiffs"), individually and on behalf of a class of similarly situated individuals, will and hereby do move this Court for an order:

1. Preliminarily approving the Stipulation of Settlement ("Settlement Agreement") entered into between Plaintiffs and Defendants California Truck Centers, LLC and Delta Truck Center ("Defendants");
2. Conditionally certifying for settlement purposes only, pursuant to California Code of Civil Procedure § 382, the following Settlement Class:

   > All current and former non-exempt employees who worked for Defendants in California between January 10, 2018 and January 18, 2025 (the "Class Period");

3. Appointing Plaintiffs Joshua D. Hodges and Daniel Vogel as the Class Representatives for the Settlement Class;
4. Appointing Paul K. Haines, Fletcher W. Schmidt, and Andrew J. Rowbotham of Haines Law Group, APC; Mehrdad Bokhour of Bokhour Law Group, P.C.; Joshua S. Falakassa of Falakassa Law, P.C.; and Roman Otkupman of Otkupman Law Firm as Class Counsel;
5. Scheduling a final approval hearing to determine whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate, and to consider whether to award: (a) Class Representative Enhancement Payments, (b) settlement administration costs, (c) payment to the Labor and Workforce Development Agency for its share of civil penalties under the Private Attorneys General Act, and (d) Class Counsel's attorneys' fees and costs;
6. Appointing ILYM Group, Inc. as the Settlement Administrator to administer the settlement in accordance with the terms of the Settlement Agreement; and
7. Approving the form and content of the Notice of Class and PAGA Action Settlement ("Notice Packet"), and entering an order directing that the Notice Packet be disseminated to the Settlement Class members.

This motion is based on this notice of motion, the attached memorandum of points and authorities, the declarations of Paul K. Haines, Fletcher W. Schmidt, Andrew J. Rowbotham, Mehrdad Bokhour, Joshua S. Falakassa, Roman Otkupman, Joshua D. Hodges, Daniel Vogel, and Anthony Rogers of ILYM Group, Inc., the exhibits attached thereto, the pleadings and other papers filed in this action, and any oral or documentary evidence or argument that may be presented at the hearing.

Dated: April 10, 2025

Respectfully Submitted,
HAINES LAW GROUP, APC

By: ______________________
Andrew J. Rowbotham
Attorneys for Plaintiffs

TABLE OF CONTENTS

TABLES OF AUTHORITIES

Federal Cases

State Cases

Other Sources

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Joshua D. Hodges and Daniel Vogel, individually and on behalf of the proposed Settlement Class, respectfully request that the Court preliminarily approve the Stipulation of Settlement ("Settlement" or "Settlement Agreement") entered into with Defendants California Truck Centers, LLC and Delta Truck Center (collectively, "Defendants").[1]

The proposed non-reversionary $3,665,904.98 class action settlement covers all current and former non-exempt employees who worked for Defendants in California from January 10, 2018, to January 18, 2025 (the "Class Period"). Based on data provided by Defendants, there are approximately 1,415 Settlement Class Members. After deductions for the Class Representative Enhancement Payments, settlement administration costs, the Private Attorneys General Act ("PAGA") payment to the Labor & Workforce Development Agency ("LWDA"), and attorneys' fees and costs, the estimated Net Settlement Amount ("NSA") will be no less than $1,795,081.67.

Settlement Class Members will receive average Individual Settlement Payments of approximately $1,268.61, with estimated payments ranging from $9.64 (for a member who worked one workweek) to $3,526.44 (for a member who worked every workweek during the Class Period). Additionally, $25,000.00 will be paid to current and former non-exempt employees who worked for Defendants in California between January 5, 2021, and January 18, 2025 (the "PAGA Period") (collectively the "PAGA Aggrieved Employees") for the release of PAGA claims.

Settlement Class Members are not required to submit a claim form. All participating Settlement Class Members who do not opt out will automatically receive their payment. The Settlement provides an exceptional, fair, and reasonable recovery in exchange for a release limited to claims asserted or which could have been asserted based on the allegations in the operative complaint.

---

[1] The Settlement Agreement is attached as Exhibit A to the Declaration of Andrew J. Rowbotham ("Rowbotham Decl."), filed concurrently herewith, and the Notice of Class and PAGA Action Settlement ("Notice Packet") is attached to the Rowbotham Decl. as Exhibit B.

Given the significant legal and factual risks Plaintiffs faced, the costs of continued litigation, and the substantial benefits conferred by the Settlement, Plaintiffs respectfully request that the Court grant preliminary approval.

II. SUMMARY OF THE LITIGATION

A. Factual And Procedural Background

Defendants are commercial dealers of new and used medium and heavy-duty trucks with multiple locations across California. Rowbotham Decl., ¶ 9.Plaintiff Joshua D. Hodges worked for Defendants as a non-exempt employee from January 22, 2018, to approximately September 2021. Hodges Decl., ¶ 2. Plaintiff Daniel Vogel worked for Defendants as a non-exempt employee beginning on approximately November 27, 2015. Vogel Decl., ¶ 2. Like all Settlement Class Members, Plaintiffs were subject to Defendants' allegedly unlawful wage and hour policies and practices. *Id.*

On January 10, 2022, Plaintiff Hodges filed this class action complaint alleging that Defendants failed to pay all overtime wages, provide all lawful meal periods, authorize and permit all lawful rest periods, reimburse necessary business expenses, issue accurate itemized wage statements, timely pay all final wages, and violated California's Unfair Competition Law. Rowbotham Decl., ¶ 10.Plaintiff amended the complaint on February 2, 2022, to add causes of action for failure to pay all minimum wages and unlawful deductions, and on June 9, 2022, to add a cause of action for civil penalties under the PAGA. *Id.*

On February 14, 2023, Plaintiff Vogel filed a related class action in Alameda County Superior Court, titled *Daniel Vogel v. Golden Gate Freightliner, Inc., et al.*, Case No. 23CV027835 ("Vogel Action"), asserting substantially similar claims based on the same alleged violations. Rowbotham Decl., ¶ 11. In addition to the claims asserted by Plaintiff Hodges, Plaintiff Vogel alleged that Defendants failed to timely pay employees at least twice per month and failed to provide a safe and healthy work environment. *Id.*

On January 16, 2025, Plaintiffs filed the operative third amended class and representative action complaint, naming Vogel as an additional plaintiff and incorporating all claims and factual allegations from the Vogel Action. Rowbotham Decl., ¶ 12. On April 2, 2025, Plaintiff Vogel submitted a request for dismissal of the Vogel Action without prejudice. *Id.*

B. <u>Discovery And Mediation</u>

The Parties engaged in significant written and deposition discovery prior to resolution. Rowbotham Decl., ¶ 13. Through formal discovery, Defendants produced timekeeping and payroll records for all Settlement Class Members for the entire Class Period, along with policy documents and employee handbooks in effect during the relevant time. *Id.* The Parties also completed a *Belaire-West* privacy mailing and Plaintiffs took the deposition of Defendants' Person Most Qualified witness. *Id.* Plaintiffs retained an expert with a Ph.D. in economics to analyze Defendants' data and prepare a class-wide damages model. *Id.*

The Parties participated in an initial mediation session with Francis Ortman, Esq., an experienced wage and hour mediator, in May 2023. Rowbotham Decl., ¶ 14. During the mediation, the Parties exchanged divergent views regarding Defendants' liability, potential exposure, legal defenses, and the likelihood of class certification but were unable to resolve the case. *Id.*

Following the initial mediation, Defendants initiated a "Pick-Up-Stix" campaign, offering individual settlement payments to employees in exchange for a release of claims. Rowbotham Decl., ¶ 15. Defendants represent that approximately 581 out of 1,415 Settlement Class Members (over 41%) signed releases and accepted settlement payments totaling $415,904.98, resulting in an average payment of approximately $715 per person.[2] *Id.*

The Parties subsequently participated in a second mediation session with Mr. Ortman on September 20, 2024. Rowbotham Decl., ¶ 16. At the conclusion of the second mediation, Mr. Ortman issued a mediator's proposal, which the Parties ultimately accepted. *Id.* Over the following months, the Parties worked cooperatively to finalize the terms of the Settlement now

---

[2] Although these individuals signed releases, they will remain part of the Settlement Class and will receive settlement payments under the terms of the proposed Settlement. Rowbotham Decl. ¶ 15. In addition, Settlement Class Members who did not sign a release will be allocated an equivalent additional payment through the Settlement to account for the consideration already provided to those who signed early releases. *Id.*

submitted for preliminary approval. *Id.*

C. <u>Plaintiffs' Claims and Defendants' Defenses</u>

1. <u>Overtime Violations</u>

Plaintiffs allege that Defendants failed to compensate them and other non-exempt employees at one and one-half times their regular rate of pay for hours worked over eight in a day or forty in a week. Rowbotham Decl., ¶ 17; *see* Labor Code § 510(a); *Huntington Memorial Hospital v. Superior Court* (2005) 131 Cal.App.4th 893, 902 ("Under state and federal law, overtime compensation is based on an employee's 'regular rate.'"). Plaintiffs contend that Defendants' timekeeping system automatically shaved overtime hours worked between 8.01 and 8.12 hours and later utilized non-neutral rounding practices that resulted in systematic underpayment of wages. Rowbotham Decl., ¶ 17. Plaintiffs further allege that Defendants failed to properly include non-discretionary bonuses, shift differentials, and stipends in the regular rate of pay for overtime purposes. *Id.*

Defendants deny that any employees were underpaid and assert that their rounding practices were facially neutral and lawful. Rowbotham Decl., ¶ 19. Defendants further contend that the bonuses and additional compensation paid to employees were discretionary and therefore properly excluded from the regular rate of pay. *Id.* Defendants also argue that individualized inquiries would be required to determine whether any employee was underpaid, thereby defeating class certification. *Id.*

2. <u>Meal Period Violations</u>

Plaintiffs allege that Defendants failed to provide legally compliant meal periods, requiring employees to obtain supervisor approval before taking breaks and failing to relieve employees of all duty. Rowbotham Decl., ¶ 20. Plaintiffs contend that Defendants regularly failed to provide timely and uninterrupted first meal periods before the end of the fifth hour of work, failed to provide second meal periods for shifts over 10 hours, and failed to pay meal period premiums at the regular rate of pay. Rowbotham Decl., ¶ 20; *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 866 ("Section 226.7(c) and section 510(a) both use the term "regular rate," and the history of these provisions shows that "regular rate" is a term of art encompassing not only hourly wages but also nondiscretionary payments.").

Defendants assert that they maintained legally compliant policies and practices that provided all required meal periods. Rowbotham Decl., ¶ 21. Defendants further contend that any missed or late meal periods were the result of employee choice rather than any company policy or practice. *Id.* Defendants also argue that individualized inquiries would be necessary to determine whether any meal period was missed, shortened, or waived, and whether a premium payment was made, thereby precluding class certification. *Id.*

3. Rest Period Violations

Plaintiffs allege that Defendants failed to authorize and permit net 10-minute rest periods for every four hours worked or major fraction thereof. Rowbotham Decl., ¶ 22; *Augustus v. ABM Security Services, Inc*. (2016) 2 Cal.5th 257, 267 ("the DLSE described the scope of an employer's rest period obligation and, in doing so, stated, 'there must be a net 10 minutes of rest provided in each 'work period' and the rest period must be, as the language implies, duty-free.'"). Defendants' written rest period policy required employees to be at their workstations at the start and end of their rest breaks, depriving employees of a full net 10-minute break. Rowbotham Decl., ¶ 22. Plaintiffs further contend that Defendants' policy failed to authorize a second or third rest period for shifts in excess of 10.0 hours and that employees were not paid rest period premiums at the regular rate of pay. *Id.*

Defendants assert that employees were authorized and permitted to take compliant 10-minute rest periods and that employees, in fact, took such rest periods. Rowbotham Decl., ¶ 23. Defendants argue there is no common evidence of rest period violations because rest periods were not recorded in Defendants' timekeeping system. *Id.* Defendants further contend that employees were provided more than 10 minutes for rest breaks and were not required to return to their workstations within the 10-minute rest period. *Id.* Finally, Defendants argue that individualized inquiries would be necessary to determine whether any employee missed or received a deficient rest period, precluding class certification. *Id.*

4. **Failure to Reimburse Business Expenses**

Plaintiffs allege that Defendants failed to reimburse employees for necessary business expenses, including the cost of using personal cell phones for work-related purposes. Rowbotham Decl., ¶ 24; *Cochran v. Schwan's Home Service, Inc*. (2014) 228 Cal.App.4th 1137, 1144 ("If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802.") Plaintiffs also allege that Defendants improperly deducted charges such as laundry expenses, salary advances, and other job-related costs from employee wages without proper reimbursement. Rowbotham Decl., ¶ 24.

Defendants assert that they reimbursed employees for all necessary business expenses. Rowbotham Decl., ¶ 25. Defendants contend that employees were not required to use their personal cell phones for business purposes and, to the extent any employee incurred business-related expenses, Defendants were not notified of those expenses and thus were not obligated to reimburse them. *Id.*

5. **Wage Statement, Waiting Time, and PAGA Penalties**

Plaintiffs allege that as a result of Defendants' failure to pay all wages earned, including overtime, minimum wages, and meal and rest period premiums, Defendants failed to maintain accurate payroll records, issue accurate wage statements, and timely pay all final wages upon separation. Rowbotham Decl., ¶ 26. Plaintiffs also seek civil penalties under the PAGA for these alleged violations. *See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1211 (PAGA civil penalties are mandatory not discretionary.).

Defendants argue that Plaintiffs' derivative claims fail because the underlying claims are without merit. Rowbotham Decl., ¶ 30; *Price v. Starbucks Corp*. (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendants also assert that Plaintiffs cannot show "knowing and intentional" wage statement violations or "willful" failures to pay final wages, as required for penalties under Labor Code §§ 203 and 226(e). Rowbotham Decl., ¶ 30; *Naranjo v. Spectrum Security Services, Inc*. (2024) 15 Cal.5th 1056, 1065 (employer's good faith belief of compliance provides basis to not impose wage statement and waiting time penalties). Defendants further maintain that any PAGA penalties awarded should be substantially reduced in the Court's discretion. Rowbotham Decl., ¶ 30; Labor Code § 2699(e)(2); *Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504 (affirming reduction of PAGA penalties).

III. THE PROPOSED SETTLEMENT

A. Essential Terms Of The Settlement

If the Court preliminarily approves the Settlement, Defendants will pay a non-reversionary Maximum Settlement Amount ("MSA") of $3,665,904.98. Settlement, ¶ 3. Settlement Class Members will automatically receive their Individual Settlement Payments unless they affirmatively opt out. *Id.*, ¶¶ 3.C, 4.

The monetary terms are as follows:

Maximum Settlement Amount	**$3,665,904.98**
Less Court-approved attorneys' fees (1/3)	$1,221,968.33
Less Court-approved litigation costs (up to)	$100,000.00
Less Pick-Up-Stix campaign consideration	$415,904.98
Less Class Representative Enhancement Payments	$20,000.00
Less settlement administration costs (up to)	$12,950.00
Less PAGA Amount	$100,000.00
Net Settlement Amount	**$1,795,081.67**

1. Reasonable Monetary Payments

After deductions, the Net Settlement Amount ("NSA") will be no less than $1,795,081.67. Settlement, ¶ 4.A. Individual Settlement Payments will be calculated based on each Settlement Class Member's proportionate number of workweeks worked during the Class Period. *Id.*, ¶ 4.B.iii. In addition, 25% of the PAGA Amount will be distributed to all PAGA Aggrieved Employees, regardless of whether they opt out of the class action, based on the number of pay periods worked during the PAGA Period. *Id.*, ¶ 4.B.ii. $600,000.00 from the NSA will be distributed equally among the 834 Settlement Class Members who did not receive a Pick-Up-Stix payment during the pendency of the lawsuit, resulting in additional compensation of approximately $715.00 per person and mirroring the average Pick-Up-Stix payment. *Id.*, ¶ 4.B.i. According to Defendants' records, there are approximately 1,415 Settlement Class Members. *Id.*, ¶ 3.F. Based on the estimated NSA, the average Individual Settlement Payment is projected to be approximately $1,268.61. Rowbotham Decl., ¶ 32.

For tax purposes, each Individual Settlement Payment will be allocated as 20% wages (subject to withholdings) and 80% interest and penalties (not subject to withholdings). Settlement, ¶ 4.D. PAGA payments will be allocated as 100% penalties. *Id.* Defendants will separately pay the employer's share of payroll taxes in addition to the MSA. *Id*., ¶ 3.E.

Settlement Class Members will have 60 calendar days from the date of mailing of the Class Notice to opt out or object to the Settlement. Settlement, ¶¶ 9.D–E. Class Members who do not opt out will be bound by the Settlement and will release all claims as detailed in the Settlement Agreement. *Id.*, ¶¶ 2.A, 9.D.

Settlement Class Members will have 180 days from issuance to cash their settlement checks. Settlement, ¶ 4.E. Any uncashed checks after 180 days will be transmitted to the State Controller's Office Unclaimed Property Fund. *Id.* This distribution method ensures that no portion of the MSA will be "unpaid…unclaimed or abandoned," and the Court may approve the proposed distribution method without running afoul of Code of Civil Procedure § 384.

2. <u>Class Representative Enhancement Payments, Attorneys' Fees, and Costs</u>

At final approval, Plaintiffs will seek Class Representative Enhancement Payments of $20,000.00 total ($10,000.00 each) for their service and general release of claims. Rowbotham Decl., ¶ 33; Settlement, ¶¶ 2.C, 3.C.4, 6. These payments recognize the substantial time and effort Plaintiffs devoted to the Action, including providing factual information, participating in discovery, preparing for and attending mediation, reviewing settlement documents, and assuming the risks associated with serving as named plaintiffs. Rowbotham Decl., ¶ 33; Hodges Decl., ¶¶ 5–6; Vogel Decl., ¶¶ 7-9.

Also at the final approval stage, Class Counsel will seek an award of attorneys' fees of up to one-third of the MSA ($1,221,968.33) and reimbursement of up to $100,000.00 in actual litigation costs. Rowbotham Decl., ¶ 34; Settlement, ¶ 3.C.5. The requested fees are justified given the complexity, risk, and contingency nature of the litigation, the results achieved for the class, and the substantial work performed. Rowbotham Decl., ¶ 34. Class Counsel's work includes pre-filing investigation, formal written and deposition discovery, extensive review and analysis of timekeeping and payroll records with the assistance of an expert, mediation preparation and participation, negotiation and drafting of settlement documents, preparation of preliminary approval papers, and anticipated work through final approval. *Id.*

Both California and federal courts approve awarding fees as a percentage of the common fund created through settlement. *See Laffitte v. Robert Half Int'l, Inc*. (2016) 1 Cal.5th 480, 506; *Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 254. Courts typically award between 20% and 50% of the common fund as fees. *See 4 Newberg on Class Actions* § 14.6 (4th ed. 2013). The requested one-third fee is reasonable in light of the results obtained, the risks assumed, and the efficiency achieved.

IV. ARGUMENT

A. Preliminary Approval Is Warranted

California Rule of Court 3.769 conditions the settlement of a class action on court approval, evaluated under the standards applicable to Federal Rule of Civil Procedure 23. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337 (court must determine settlement is "fair, reasonable, and adequate"); *Hanlon v. Chrysler Corp*. (9th Cir. 1998) 150 F.3d 1011, 1026 (Rule 23(e) requires trial court to determine whether settlement is "fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *In re Syncor ERISA Litig*. (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair and not the product of fraud or collusion. *Hanlon, supra*, 150 F.3d at 1027. A settlement negotiated at arm's length by experienced counsel is entitled to an initial presumption of fairness. *Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 130.

1. Standard for Preliminary Approval

When assessing whether preliminary approval is appropriate, the Court considers: (1) the strength of plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; and (6) the experience and views of counsel. *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801; *Wershba, supra,* 91 Cal.App.4th at 245 ("[T]he court is free to engage in a balancing and weighing of factors depending on the circumstances of each case."). As discussed below, the proposed Settlement satisfies these factors and warrants preliminary approval.

a. Strength of Plaintiffs' Case

Class Counsel carefully vetted the claims, reviewed Defendants' timekeeping and payroll data covering the entire Class Period, analyzed Defendants' policies and procedures, conducted substantial written discovery, deposed Defendants' PMQ witness, and retained an expert to create a comprehensive damages model. Rowbotham Decl., ¶ 13.

Although Plaintiffs maintain that their claims are meritorious, they recognize the substantial risks and uncertainty associated with class certification, summary judgment, and trial. As detailed in Section II.B., *supra*, Defendants presented numerous defenses on both the merits and with respect to class certification. Even if Plaintiffs prevailed at trial, there was no guarantee they would recover more than the proposed Settlement. This factor supports preliminary approval.

b. Risk, Expense, Complexity, and Duration of Further Litigation

Although the Parties engaged in substantial formal discovery and data analysis, continued litigation would have been time-consuming, expensive, and complex. Rowbotham Decl., ¶ 13. Absent settlement, the Parties would have been required to conduct additional written discovery, and take further depositions. *Id.* Significant motion practice, including a motion for class certification, summary judgment, decertification, and potentially post-trial motions, would have followed. In addition to the cost and delay, continued litigation would have imposed a significant burden on the Court's resources. Even assuming Plaintiffs prevailed at trial, Defendants likely would have appealed, further delaying resolution and payment to Settlement Class Members. This Settlement avoids the prolonged uncertainty and burden of continued litigation and provides meaningful relief to the Class now. Accordingly, this factor supports preliminary approval.

c. Risk of Maintaining Class Action Status

At the time of settlement, Plaintiffs had not filed a motion for class certification. Rowbotham Decl., ¶ 16. Although Plaintiffs believed that certification was appropriate, Defendants raised numerous defenses that could have precluded certification or narrowed the class. *Id.* Defendants argued that individualized issues, including whether employees missed meal or rest periods, whether breaks were voluntarily waived, whether business expenses were reimbursed, and whether Settlement Class Members had released their claims during the Pick-Up-Stix campaign, would predominate over common issues. *Id.* Further, Defendants' Pick-Up-Stix campaign reduced the size of the putative class, potentially undermining the numerosity requirement and affecting the scope of any certified claims. *See Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796.

Had the Court denied certification, or granted only partial certification, the value of Plaintiffs' claims would have diminished substantially. Rowbotham Decl., ¶ 16. Even if certification were granted, Defendants would likely have sought decertification at a later stage. *Id.* Thus, the risk of maintaining class status through trial supports preliminary approval.

d. <u>Amount Offered in Settlement Given the Realistic Value of Claims</u>

The proposed Settlement provides a fair and reasonable recovery for the Settlement Class in the face of vigorously disputed claims. After analyzing Defendants' produced data, Class Counsel, with the assistance of their retained expert, conducted a class-wide exposure analysis, forecasting total expected recovery across Plaintiffs' claims as follows:

<u>Unpaid Overtime Due to Time Shaving and Rounding</u>: **$174,344**

Based on a sampling of timekeeping and payroll records, Plaintiffs' expert determined that Defendants' manual overtime shaving practice, whereby shifts between 8.01 and 8.12 hours were not credited with overtime wages, affected approximately 154,821 shifts. Rowbotham Decl., ¶ 17. The average shift length during this period was 8.05 hours. *Id.* In addition, Defendants' rounding practices resulted in 84.42% of pay periods being underpaid, 10.39% being overpaid, and 5.19% breaking even, resulting in a total of 11,759 unpaid hours. *Id.* Extrapolating for the Settlement Class, and assuming all unpaid hours would be compensated at the overtime rate, Plaintiffs calculated Defendants' maximum exposure for unpaid overtime at $787,997, calculated as follows:

- *Manual Overtime Shaving*: 154,821 shifts x 0.05 average unpaid hours = 7,741 unpaid hours x $40.41 average overtime rate = $312,816

- *Rounding*: 11,759 unpaid hours x $40.41 average overtime rate = $475,181

Given Defendants' defenses that employees were fully compensated, that their rounding practices were facially neutral and lawful, and that individualized inquiries would preclude class certification, Plaintiffs applied a 41% discount for the Pick-Up-Stix releases, along with a 25% discount for the risk of non-certification, and a 50% discount for the risk of losing on the merits, resulting in a reasonable exposure estimate of $174,344. *Id.*, ¶ 17.

<u>Regular Rate Miscalculations:</u> **$63,318**

Plaintiffs' expert confirmed that Defendants failed to include the value of non-discretionary bonuses, shift differentials, and stipends in the regular rate of pay when calculating the value of overtime pay, resulting in an overtime underpayment of $286,184. Rowbotham Decl., ¶ 18. However, Defendants contend that all overtime wages were properly calculated and fully paid to Settlement Class Members throughout the Class Period. *Id.*, ¶ 19. Defendants further assert that the bonuses, shift differentials, and stipends at issue were discretionary in nature and therefore properly excluded from the regular rate of pay under both California and federal law. *Id.* Additionally, Defendants maintain that individualized inquiries into the nature and timing of any bonus payments would preclude class-wide resolution of this claim. *Id.* Plaintiffs therefore discounted this claim by 41% for the Pick-Up-Stix releases, 25% for the risk of non-certification and 50% for the risk of losing on the merits, resulting in a reasonable exposure estimate of $63,318. *Id.*, ¶ 18.

<u>Meal Period Violations</u>: **$1,970,001**

Plaintiffs' expert found that 450,424 of the 906,365 total shifts over 6.0 hours (49.7% of shifts) reflect non-compliant meal periods. Rowbotham Decl., ¶ 20. The majority of these violations (77.41% of the violations; 38.45% of all shifts) come in the form of late meal periods (commencing after the end of the fifth hour of work). *Id.* Additionally, Plaintiffs' expert noted an additional 45,342 meal period violations for shifts in excess of 10.0 hours. *Id.* Plaintiffs calculated Defendants' maximum exposure for meal period violations at $13,355,936, calculated as follows:

- *First Meals*: 450,424 shifts × $26.94 average premium = $12,134,423
- *Second Meals*: 45,342 shifts × $26.94 average premium = $1,221,513

Given the defenses asserted by Defendants regarding meal periods, including that all required meal periods were provided, that missed or late meal periods were the result of employee choice, that second meal periods were lawfully waived, and that individualized inquiries would preclude certification, Plaintiffs applied a 41% discount for the Pick-Up-Stix releases, a 50% discount for the risk of non-certification, and a 50% discount for the risk of losing on the merits. Rowbotham Decl., ¶ 20. Based on these adjustments, Plaintiffs calculated a reasonable exposure estimate of $1,970,001. *Id.*

<u>Rest Period Violations</u>: **$935,030**

Plaintiffs' expert determined that employees worked 941,230 shifts in excess of 3.5 hours. Rowbotham Decl., ¶ 22. Should Plaintiffs prevail on their argument that each of these shifts were not authorized a "net" 10 minutes of rest, Plaintiffs calculated Defendants' maximum rest period exposure at $25,356,736 (941,230 shifts x $26.94 average premium). *Id.*

Defendants contend that all required rest periods were authorized and permitted in compliance with California law and that employees regularly took their rest breaks. Rowbotham Decl., ¶ 23. Defendants further assert that employees were provided more than 10 minutes for each rest period, ensuring they received at least a net 10 minutes of duty-free time. *Id.* Defendants argue that there is no common evidence to support Plaintiffs' rest period claims because rest breaks were not recorded in the timekeeping system. *Id.* In addition, Defendants maintain that individualized inquiries into whether a rest period was taken, voluntarily skipped, or compensated by a premium payment would preclude certification of Plaintiffs' rest period claims. *Id.* Given these defenses, Plaintiffs applied a 41% discount for the Pick-Up-Stix releases, a 75% discount for the risk of non-certification, and a 75% discount for the risk of losing on the merits, resulting in a reasonable exposure estimate of $935,030. *Id.*, ¶ 22.

<u>Unreimbursed Business Expenses</u>: **$158,552**

Plaintiffs estimated the average monthly cell phone expense incurred by employees was approximately $50. Rowbotham Decl., ¶ 24. Plaintiffs therefore calculated Defendants exposure for its failure to reimburse necessary business expenditures at $2,149,862 (186,307 workweeks ÷ 4.333 weeks per month x $50). *Id.*

Defendants contend that they properly reimbursed employees for all necessary business expenses in compliance with California law. Rowbotham Decl., ¶ 25. Defendants further assert that employees were not required to use their personal cell phones for business purposes, and to the extent any business-related expenses were incurred, Defendants were not notified of such expenses and therefore had no obligation to reimburse them. *Id.* Given these defenses, Plaintiffs applied a 41% discount for the Pick-Up-Stix releases, a 50% discount for the risk of non-certification, and a 75% discount for the risk of losing on the merits, resulting in a reasonable exposure estimate of $158,552. *Id.*, ¶ 24.

Wage Statement Violations: **$330,990**

There are approximately 1,122 individuals who received 62,330 wage statements during the 1-year time period associated with wage statement violations. Rowbotham Decl., ¶ 27. Keeping in mind the $4,000.00 per employee cap on wage statement violations, Plaintiff calculated Defendants' maximum wage statement exposure at $4,488,000 (1,122 employees x $4,000 maximum penalty). *Id.*

Defendants contend that they issued legally compliant wage statements throughout the Class Period. Rowbotham Decl., ¶ 30. Defendants further argue that, even if a technical violation occurred, Plaintiffs cannot establish that any violation was "knowing and intentional" as required to recover statutory penalties under Labor Code § 226(e). *Id.* In addition, Defendants assert that Plaintiffs cannot show that Settlement Class Members suffered any injury as a result of the alleged wage statement violations. *Id.* Given these defenses, Plaintiffs applied a 41% discount for the Pick-Up-Stix releases, a 50% discount for the risk of non-certification, and a 75% discount for the risk of losing on the merits, resulting in a reasonable exposure estimate of $330,990. *Id.*, ¶ 27.

Waiting Time Penalties: **$316,402**

There are approximately 1,327 individuals who maintain standing for waiting time penalties. Assuming an average waiting time penalty of $6,466 ($26.94 x 8 hours x 30 days), Plaintiffs calculates Defendants' waiting time penalty exposure at $8,580,382 (1,327 former employees x $6,466). Rowbotham Decl., ¶ 28.

Defendants contend that all wages due at separation were timely paid to employees. Rowbotham Decl., ¶ 30. Defendants further argue that even if any wages were unpaid, any failure to pay was not "willful" as required to impose waiting time penalties under Labor Code § 203. *Id.* Defendants maintain that they acted in good faith and had a reasonable belief that all final wages were fully and properly paid, preventing the imposition of waiting time penalties. *Id.* Given these defenses, Plaintiffs applied a 41% discount for the Pick-Up-Stix releases, a 75% discount for the risk of non-certification, and a 75% discount for the risk of losing on the merits, resulting in a reasonable exposure estimate of $316,402. *Id.*, ¶ 28.

<u>PAGA Penalties</u>: **$389,563**

Plaintiffs allege that civil penalties are recoverable for each pay period in which an underlying Labor Code violation occurred. Rowbotham Decl., ¶ 29. Based on Plaintiffs' expert's data analysis, Settlement Class Members worked a combined total of 62,330 pay periods during the PAGA Period. *Id.* Plaintiffs therefore calculated Defendants' maximum PAGA exposure at $6,233,000 (62,330 pay periods x $100 initial violation rate). *Id.*

However, Plaintiffs acknowledge that the success of the PAGA claim is entirely derivative of the success of the underlying Labor Code claims, which Defendants vigorously dispute both as to certification and the merits. Rowbotham Decl., ¶ 30; *see also Green v. Lawrence Service Co.*, 2013 WL 3907506, *5, fn. 5 (C.D. Cal. 2013) (PAGA claim's success determined by underlying claims). Further, Plaintiffs recognize that the Court retains broad discretion under Labor Code § 2699(e)(2) to reduce any PAGA penalties awarded in the interests of justice and proportionality. *See Fleming v. Covidien Inc.*, 2011 WL 7563047, *4 (C.D. Cal. 2011) (reducing PAGA penalties from $2.8 million to $500,000). Given these risks, Plaintiffs applied a 75% discount for the likelihood of not prevailing on the merits of the underlying claims, and an additional 75% discount for the probability that the Court would substantially reduce any PAGA penalty awarded, resulting in a reasonable exposure estimate of $389,563. Rowbotham Decl., ¶ 29.

Using these estimated figures, Plaintiffs project that the total potential reasonable recovery for the Settlement Class would be approximately $4,338,200. Rowbotham Decl., ¶ 31. The proposed Maximum Settlement Amount of $3,665,904.98 therefore represents approximately 84.5% of Plaintiffs' reasonably forecasted class-wide recovery, which falls well within the range of settlements routinely approved by courts as fair, reasonable, and adequate. *See, e.g., Altamirano v. Shaw Industries, Inc*., 2015 WL 4512372, *9 (N.D. Cal. 2015) (approving settlement representing 15% of estimated recovery); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement of roughly one-sixth of potential recovery); *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.").

Thus, preliminary approval is appropriate, as the proposed Settlement will provide tangible and meaningful relief to the Settlement Class without the uncertainty, delay, and substantial expense associated with further litigation.

e. <u>Experience and Views of Counsel</u>

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiffs are represented by experienced counsel with extensive backgrounds litigating wage and hour class actions on both the plaintiff and defense sides, and who have been appointed as class counsel in numerous cases involving similar claims. Rowbotham Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-12; Schmidt Decl., ¶¶ 2-9; Bokhour Decl. ¶¶ 2-7; Falakassa Decl. ¶¶ 2-8; Otkupman Decl. ¶¶ 2-8. Class Counsel conducted an extensive review and analysis of Defendants' produced timekeeping and payroll records and relied on their significant experience in comparable cases to carefully evaluate the strengths and weaknesses of Plaintiffs' claims. Rowbotham Decl., ¶ 13. Only after the completion of this work did the Parties participate in two mediation sessions and ultimately accept a mediator's proposal for a class-wide settlement. *Id.*, ¶¶ 14, 16. Accordingly, the experience and judgment of Class Counsel strongly support preliminary approval of the Settlement.

2. The Preliminary Approval Standard is Met

At this stage, the Court may grant preliminary approval of the Settlement and direct that notice be provided to the Settlement Class if the proposed Settlement: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed, and non-collusive negotiations; and (3) is free of obvious deficiencies. *See* Manual for Complex Litigation § 30.41 (3d ed. 1995); 4 Newberg on Class Actions §§ 11:24–11:25 (4th ed. 2013).

a. The Settlement is Within the Range of Possible Approval

The proposed Settlement reflects a fair and reasonable recovery for Settlement Class Members in light of the significant risks of continued litigation. The Settlement compensates employees for contested claims while only releasing claims that were asserted or could have been asserted based on the facts alleged in this litigation. Further, the average Individual Settlement Payment of approximately $1,268.61 greatly exceeds the average recoveries achieved in other wage and hour class action settlements that have been approved. Thus, the proposed Settlement clearly falls within the range of possible approval, warranting the issuance of notice to Settlement Class Members. The Court will retain the opportunity to assess the Settlement's reasonableness again at the final approval stage, after Settlement Class Members have had the opportunity to opt out or object.

b. The Settlement Resulted from Informed and Non-Collusive Negotiations

The Settlement is entitled to a presumption of fairness because it was reached following the exchange of pertinent information, including Defendants' policies, and employee timekeeping and payroll records, all of which were analyzed by Plaintiffs, Class Counsel, and a retained expert. Rowbotham Decl., ¶ 13. The Parties engaged in arm's-length negotiations, participated in two mediation sessions with Francis Ortman, Esq., an experienced wage and hour class action mediator, and ultimately accepted a mediator's proposal. *Id.*, ¶¶ 14, 16. Additional negotiations followed to finalize the terms of the long-form Settlement Agreement. *Id.* These facts establish that the Settlement is the product of serious, informed, and non-collusive negotiations, thereby supporting preliminary approval. *See Kullar, supra* 168 Cal.App.4th at 130.

c. The Settlement is Devoid of Obvious Deficiencies

The Settlement will provide tangible and meaningful monetary relief to Settlement Class Members without the delay and risks of continued litigation. In addition, the amounts proposed for Class Representative Enhancement Payments, settlement administration costs, attorneys' fees and costs, and the LWDA's share of PAGA penalties are reasonable and appropriate under the circumstances. The Settlement contains no obvious deficiencies that would preclude approval. Thus, this final factor also supports preliminary approval.

B. The Court Should Certify the Settlement Class for Settlement Purposes

The proposed Settlement Class satisfies the requirements for provisional certification under California law because: (1) the Settlement Class is sufficiently numerous that joinder would be impracticable; (2) common questions of law and fact predominate over individual questions; (3) Plaintiffs' claims are typical of the claims of the Settlement Class Members; and (4) Plaintiffs and Class Counsel will fairly and adequately represent the interests of the Settlement Class. *See* Cal. Code Civ. Proc. § 382.

1. The Proposed Class is Ascertainable and Numerous

A class is ascertainable when members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *Sevidal v. Target Corp*. (2010) 189 Cal.App.4th 905, 919. Here, the proposed Settlement Class is defined as all current and former non-exempt employees who worked for Defendants in California at any time during the Class Period. Settlement, ¶ 1. Settlement Class Members can be readily identified through Defendants' employment and payroll records. Rowbotham Decl., ¶ 32. Defendants estimate the Settlement Class consists of approximately 1,415 individuals, rendering joinder impracticable. *Id.*; Settlement, ¶ 3.F. Accordingly, the proposed Settlement Class is both ascertainable and sufficiently numerous. *See Collins v. Rocha* (1972) 7 Cal.3d 232, 234.

2. Common Issues of Law and Fact Predominate

The focus in determining predominance is not the merits of the claims but the types of questions, common or individual, that are likely to arise. *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Plaintiffs' claims, including alleged failures to pay minimum and overtime wages, provide lawful meal and rest periods, reimburse necessary business expenses, furnish accurate wage statements, and timely pay final wages, arise from uniform policies and practices and thus present common issues appropriate for class adjudication. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1032–1034 (uniform policies alleged to violate labor laws are "eminently suited for class treatment").

3. The Claims of the Named Plaintiffs are Typical

Typicality is satisfied where the claims of the class representatives are reasonably coextensive with those of the absent class members. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc*. (1987) 191 Cal.App.3d 1341, 1347. Like other Settlement Class Members, Plaintiffs were employed by Defendants as non-exempt employees during the Class Period and were subject to the same allegedly unlawful wage and hour practices. Hodges Decl., ¶¶ 2–4; Vogel Decl., ¶¶ 2-4. Plaintiffs' claims arise from the same factual circumstances and legal theories as those of the Settlement Class and are subject to the same defenses, thus satisfying the typicality requirement.

4. Plaintiffs and Class Counsel are Adequate to Represent the Class

Adequacy is met when the named plaintiffs and their counsel have no conflicts with the class and will vigorously prosecute the action. *Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 697. Plaintiffs possess claims aligned with those of the Settlement Class and have no interests antagonistic to the Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450. Class Counsel are experienced wage and hour litigators who have been appointed class counsel in numerous similar cases. Rowbotham Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-12; Schmidt Decl., ¶¶ 2-9; Bokhour Decl. ¶¶ 2-7; Falakassa Decl. ¶¶ 2-8; Otkupman Decl. ¶¶ 2-8. Plaintiffs and Class Counsel therefore satisfy the adequacy requirement.

C. The Court Should Order Distribution Of The Proposed Class Notice

The Court should order that the proposed Class Notice be distributed in English and Spanish to Settlement Class Members by first-class mail, postage prepaid, using the last known addresses provided by Defendants. This method of notice is the "best notice practicable" because it provides individual notice to all members who can be identified through reasonable effort. *Eisen* *v. Carlisle and Jacquelin* (1974) 417 U.S. 156, 173.

The Parties propose that ILYM Group, Inc. ("ILYM"), an experienced settlement administrator, handle notice and administration. *See generally* Declaration of Anthony Rogers. Defendants will provide ILYM with the names, last known addresses, telephone numbers, social security numbers, and workweek data for Settlement Class Members within ten (10) business days of preliminary approval. Settlement, ¶ 9.A. ILYM will update addresses through the National Change of Address database and perform skip tracing as necessary. *Id.*, ¶¶ 9.B–C.

The proposed Class Notice satisfies California Rules of Court 3.766(d)–(e) because it describes the claims, Parties' contentions and defenses, Settlement terms, opt-out and objection procedures, recovery formula, estimated payments, and the binding effect of not opting out. Rowbotham Decl., Exhibit B.[3] It also advises Settlement Class Members of the Final Approval Hearing, provides Class Counsel's contact information, and informs members they may appear through counsel. *Id.*

D. <u>The Court Should Set A Final Approval Hearing</u>

Finally, the Court should set a hearing for final approval of the Settlement on a date scheduled after the deadline for Settlement Class Members to submit objections or opt-out requests. *See* Cal. Rule of Court 3.769.

V. <u>CONCLUSION</u>

Plaintiffs respectfully request that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class for settlement purposes, approve the form and method of notice, and enter the [Proposed] Order submitted concurrently herewith.

Dated: April 10, 2025

Respectfully Submitted,
HAINES LAW GROUP, APC

By: ______________________
Andrew J. Rowbotham
Attorneys for Plaintiffs

---

[3] Because the Settlement also resolves Plaintiffs' representative PAGA claims, notice of the Settlement has been submitted to the LWDA. Rowbotham Decl., ¶ 32; Exhibit C.