

Edwin Aiwarzian (SBN 232943)
edwin@calljustice.com
Arby Aiwarzian (SBN 269827)
arby@calljustice.com
Joanna Ghosh (SBN 272479)
joanna@calljustice.com
Yasmin Hosseini (SBN 326399)
yasmin@calljustice.com
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020 / Fax: (818) 265-1021

S. Emi Minne (SBN 253179)
emi@parkerminne.com
Jill J. Parker (SBN 274230)
jill@parkerminne.com
PARKER & MINNE, LLP
700 South Flower Street, Suite 1000
Los Angeles, California 90017
Telephone: (310) 882-6833 / Fax: (310) 889-0822

Attorneys for Plaintiff
NADIA ESTRADA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

NADIA ESTRADA, individually, and on behalf
of other members of the general public similarly
situated and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act,

Plaintiff,

vs.

BELSHIRE ENVIRONMENTAL SERVICES,
INC., a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 30-2022-01262282-CU-OE-CXC

*Assigned for all purposes to the Honorable Lon
F. Hurwitz, Dept. CX103*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: June 30, 2023

Time: 1:30 p.m.

Dept.: CX103

Complaint Filed: May 31, 2022

Trial Date: Not Set

1 **TO THE HONORABLE COURT, AND TO ALL PARTIES AND THEIR**
2 **ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that on June 30, 2023 at 1:30 p.m. or as soon thereafter as may be
4 heard in Department CX-103 of the above-entitled court, located at located at 751 West Santa Ana
5 Boulevard, Santa Ana, California 92701, pursuant to Code of Civil Procedure § 382 and California
6 Rules of Court 3.769, Plaintiff Nadia Estrada (“Plaintiff”) will, and hereby does, move the Court for
7 entry of an order granting preliminary approval of the proposed Joint Stipulation of Class Action and
8 PAGA Settlement entered between Plaintiff and Defendant Belshire Environmental Services, Inc.
9 (“Defendant”). Specifically, Plaintiff requests that the Court enter an order:

10 1. Granting preliminary approval of the Joint Stipulation of Class Action and PAGA
11 Settlement attached as Exhibit 1 to the Declaration of S. Emi Minne in Support of Motion for
12 Preliminary Approval (“Agreement” or “Settlement”);

13 2. Approving the proposed Notice of Proposed Class Action Settlement (“Class Notice”)
14 attached as Exhibit A to the Agreement, and the proposed deadlines for the Settlement administration
15 process;

16 3. Approving the opt-out and objection procedures set forth in the Agreement and Class
17 Notice;

18 4. Provisionally certifying the proposed Class for Settlement purposes;

19 5. Appointing Plaintiff as the Class Representative for the Class for Settlement purposes;

20 6. Appointing S. Emi Minne and Jill J. Parker of Parker & Minne, LLP and Edwin
21 Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers for Justice, PC as Class Counsel for
22 Settlement purposes;

23 7. Appointing ILYM Group, Inc. as the Settlement Administrator;

24 8. Directing Defendant to furnish the full name, last known mailing address, social
25 security numbers, start and end dates of active employment as a non-exempt employee of Defendant
26 Belshire Environmental Services, Inc. in the State of California, number of workweeks during the
27 Class Period, and number of workweeks during the PAGA Period for all Class Members to the
28 Administrator no later than 21 calendar days after the Court grants preliminary approval of the

1 Settlement, as well as any other information the Administrator may reasonably require to administer
2 the Settlement;

3 9. Scheduling a final approval hearing.

4 Good cause exists for the granting of this motion as the proposed Settlement is fair, adequate,
5 and reasonable. Additionally, the proposed notice process complies with California Rules of Court,
6 Rules 3.766 and 3.769, and mailing the proposed Class Notice to the Class Members' last known
7 addresses is an appropriate form of giving notice.

8 Pursuant to California Labor Code § 2699(1)(2), a copy of the proposed Settlement, as well as
9 information regarding the preliminary approval hearing on this matter, were submitted to the
10 California Labor Workforce Development Agency via online filing at [https://www.dir.ca.gov/Private-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
11 [Attorneys-General-Act/Private-Attorneys-General-Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html) on June 1, 2023. *See* Minne Decl. ¶ 63,
12 Exh. 4.

13 The motion is based upon this notice, the attached memorandum of points and authorities;
14 the Declaration of S. Emi Minne and exhibits thereto; the Declaration of Joanna Ghosh the
15 Declaration of Nadia Estrada; the Declaration of Lisa Mullins on behalf of ILYM Group, Inc.; the
16 pleadings and other records on file with the Court in this matter; and any other further evidence or
17 argument that the Court may properly receive at or before the hearing.

18
19 Respectfully submitted,

20 Dated: June 1, 2023

PARKER & MINNE, LLP

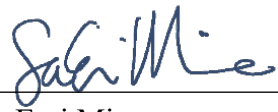
21 By: 
22 S. Emi Minne
23 Attorneys for Plaintiff
24 NADIA ESTRADA
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL AND PROCEDURAL BACKGROUND.....	1
III.	SUMMARY OF THE SETTLEMENT TERMS	4
A.	Definition of the Proposed Class and PAGA Members.....	4
B.	Gross Settlement Amount	4
C.	Release of Class and PAGA Claims.	6
IV.	THE COURT SHOULD GRANT PRELIMINARY APPROVAL.....	6
A.	Standard of Review for Preliminary Approval	6
B.	The Settlement is Entitled to a Presumption of Fairness.	7
1.	The Proposed Settlement Was Reached Through Arm’s Length Bargaining..	7
2.	Plaintiff and Her Counsel Conducted Sufficient Investigation and Discovery to Allow the Court and the Parties Act Intelligently.....	8
3.	Plaintiff’s Counsel is Experienced in Class Action Litigation.....	8
C.	The Settlement is Fair, Adequate, and Reasonable in Light of the Parties’ Respective Positions and Risks of Continued Litigation.....	9
a.	Defendant’s Maximum Potential Exposure.	9
b.	Strengths and Weaknesses of Plaintiff’s Claims and the Risks of Continued Litigation.	10
D.	The PAGA Allocation is Reasonable.....	14
V.	CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED.	15
A.	There is an Ascertainable Class.	15
B.	The Class Shares a Well-Defined Community of Interest.	16
1.	Common Issues of Law and Fact Predominate.....	16
2.	Plaintiff’s Claims are Typical of the Class.	16
3.	Plaintiff and her Counsel Will Fairly and Adequately Represent the Class. .	17
C.	A Class Action is Superior to a Multiplicity of Litigation.....	17
VI.	THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE REASONABLE.....	18
VII.	THE PROPOSED ENHANCEMENT PAYMENT IS REASONABLE.....	18
VIII.	THE PROPOSED CLASS NOTICE, AND OPT-OUT AND OBJECTION PROCEDURES SATISFY DUE PROCESS REQUIREMENTS	19
IX.	CONCLUSION	22

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal.App.4th 1135 (2000)	7
<i>Alcala v. Meyer Logistics, Inc.</i> , 2019 WL 4452961 (C.D. Cal. June 17, 2019)	14
<i>Armstrong v. Bd. of Sch. Directors of City of Milwaukee</i> , 616 F.2d 305 (7th Cir. 1980).....	7
<i>Augustus v. ABM Securities</i> , 2 Cal.5th 257 (2016)	11
<i>Avila v. Cold Spring Granite Co.</i> , 2017 U.S. Dist. LEXIS 130878 (E.D. Cal 2017)	14
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> , 191 Cal.App.3d 1341 (1987)	16
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195.....	18
<i>Bellinghausen v. Tractor Supply Co.</i> , 306 F.R.D. 245 (N.D. Cal. 2015).....	14
<i>Bowles v. Superior Court</i> , 44 Cal.2d 574 (1955).....	15
<i>Brinker Restaurants Corp. v. Sup. Ct.</i> , 53 Cal.4th 1004 (2012)	11
<i>Cartt v. Superior Court</i> , 50 Cal.App.3d 960 (1975)	19
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	18
<i>Choate v. Celite Corp.</i> , 215 Cal App. 4th 1460 (2013)	12
<i>Cotter v. Lyft, Inc.</i> , 193 F. Supp. 3d 1030 (N.D. Cal. 2016).....	13
<i>Daar v. Yellow Cab Co.</i> , 67 Cal. 2d 695 (1967)	16
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	8, 16
<i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156 (1974).....	21
<i>Estrada v. Royalty Carpet Mills, Inc.</i> , 76 Cal.App.5th 685 (2022)	12
<i>Felzen v. Andreas</i> , 134 F.3d 873 (7th Cir. 1998).....	7
<i>Fireside Bank v. Superior Court</i> , 40 Cal.4th 1069 (2007).....	15
<i>Fleming v. Covidien</i> , 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011)	13
<i>Gaudin v. Saxon Mortgage Servs., Inc.</i> , 2015 WL 7454183 (N.D. Cal. Nov. 23, 2015).....	19
<i>Glass v. UBS Financial Services, Inc.</i> , 2007 WL 221862 (N.D. Cal. 2007)	19
<i>Global Minerals & Metals Corp. v. Superior Court</i> , 113 Cal.App.4th 836 (2003).....	15
<i>Green v. Lawrence Service Co.</i> , 2013 U.S. Dist. LEXIS 109270 (C.D. Cal. 2013).....	12
<i>Hopson v. Hanesbrands, Inc.</i> , 2008 WL 3385452 (S.D. Cal. Apr. 13, 2009)	14

1	<i>In re Ampicillin Antitrust Litig.</i> , 526 F.Supp. 494 (D.D.C. 1981)	18
2	<i>In re Consumer Privacy Cases</i> , 175 Cal.App.4th 545 (2009)	18
3	<i>In re Heritage Bond Litigation</i> , 2005 WL 1594403 (C.D. Cal. 2005).....	19
4	<i>In re M.L. Stern Overtime Litig.</i> , 2009 WL 995864 (S.D. Cal. Apr. 13, 2009).....	14
5	<i>In re Microsoft I-V Cases</i> , 135 Cal.App.4th 706 (2006).....	7
6	<i>In re Online DVD Rental</i> , 779 F.3d 934 (9th Cir. 2014)	19
7	<i>Iskanian v. CLS Transp. Los Angeles, LLC</i> , 59 Cal.4th 348 (2014)	14
8	<i>Jaimez v. DAIOHS USA, Inc.</i> , 181 Cal.App.4th 1286 (2010).....	12
9	<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	9
10	<i>Lealao v. Beneficial Cal, Inc.</i> , 82 Cal.App.4th 19 (2000).....	18
11	<i>Linder v. Thrifty Oil Co.</i> , 23 Cal.4th 429 (2000)	17
12	<i>Magadia v. Wal-Mart Assocs. et al.</i> , 384 F. Supp. 3d 1058 (N.D. Cal. 2019)	13
13	<i>McGee v. Bank of America</i> , 60 Cal.App.3d 442 (1976)	17
14	<i>Miller v. CEVA Logistics USA, Inc.</i> , 2015 WL 4730176 (E.D. Cal. Aug. 10, 2015)	19
15	<i>Miller v. Woods</i> , 148 Cal.App.3d 862 (1983)	15
16	<i>Mullane v. Central Hanover Bank & Trust Co.</i> , 339 U.S. 306 (1950)	21
17	<i>Munoz v. BCI Coca-Cola Bottling Co.</i> , 186 Cal.App.4th 399 (2010)	18
18	<i>Nordstrom Comm. Cases</i> , 186 Cal.App.4th 576 (2010)	14
19	<i>Price v. Starbucks Corp.</i> , 192 Cal.App.4th 1136 (2011)	12
20	<i>Rose v. City of Haywood</i> , 126 Cal.App.3d 926 (1981)	15
21	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> , 34 Cal.4th 319 (2004).....	15
22	<i>Seastrom v. Neways, Inc.</i> , 149 Cal.App.4th 1496 (2007)	16
23	<i>Stovall-Gusman v. W.W. Granger, Inc.</i> , 2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015).....	14
24	<i>Thurman v. Bayshore Transit Management, Inc.</i> , 203 Cal.App.4th 1122 (2012)	13
25	<i>Van Vranken</i> , 901 F.Supp. 294 (N.D. Cal. 1995)	19
26	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th 224 (2001)	19
27	<i>Wesson v. Staples The Office Superstore</i> , 68 Cal.App.5th 746 (2021).....	12
28	<i>Williams v. Sup. Ct.</i> , 3 Cal.5th 531 (2017).....	13

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Statutes

Cal. Lab. Code § 2699(2) 13

Other Authorities

Conte & Newberg, Newberg on Class Actions § 14.03 (4th Ed.) 18

Rules

Cal. Rules of Court, Rule 3.769(c)..... 6

California Rules of Court, Rule 3.766 21

California Rules of Court, Rule 3.769 21

MEMORANDUM OF POINT AND AUTHORITIES

I. INTRODUCTION

This is a putative class and representative wage and hour action brought by Plaintiff Nadia Estrada (“Plaintiff”) against Defendant Belshire Environmental Services, Inc. (“Defendant”) on behalf of Defendant’s current and former non-exempt employees. By way of this Motion, Plaintiff seeks preliminary approval of a non-reversionary Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Agreement”)¹, which will resolve the Action in its entirety. The key terms of the Agreement are as follows:

- Size of the Class: approximately 204 individuals.
- Gross Settlement Amount: \$750,000.00, exclusive of employer payroll taxes.
- Settlement Administration Costs: \$10,000.00.
- Requested Class Representative Enhancement Payment: \$7,500.00.
- Requested Attorney’s Fees and Costs: \$262,500.00, plus costs not to exceed \$30,000.00.
- PAGA Penalties: \$50,000.00, 75% of which will be paid to the LWDA, with the remaining 25% paid to PAGA Members.
- Estimated Net Settlement Amount: \$390,000.00.
- Average Estimated Individual Class Payment: \$1,911.76.
- Average Estimated Individual PAGA Payment: \$83.89.

As set forth herein, the Agreement is the product of informed discovery, arms-length negotiations by experienced counsel, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiff therefore respectfully requests that the Court enter an order granting preliminary approval of the proposed Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is a provider of waste management and environmental regulation compliance services headquartered in Foothill Ranch, California. (Minne Decl., ¶ 3.) Plaintiff is former non-exempt employee of Defendant who was employed by Defendant as a Designated Operator from

¹ The Joint Stipulation of Class Action and PAGA Settlement A is attached as Exhibit 1 to the Declaration of S. Emi Minne in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Minne Decl.”).

1 approximately February 18, 2021 to September 9, 2021. (*Id.*, ¶ 4; Declaration of Nadia Estrada
2 [“Estrada Decl.”], ¶ 3.)

3 On March 23, 2022, Plaintiff provided written notice to Defendant and the California Labor &
4 Workforce Development Agency (“LWDA”) of her intent to seek civil penalties pursuant to the Labor
5 Code Private Attorneys General Act of 2004, Cal. Labor Code sections 2698, et seq. (“PAGA”).
6 (Minne Decl., ¶ 5.) The LWDA did not respond to Plaintiff’s PAGA Notice. (Minne Decl., ¶ 5.)

7 On May 31, 2022, after fully exhausting PAGA’s 65-day notice period, Plaintiff filed a putative
8 class action and representative action complaint against Defendant entitled *Nadia Estrada v. Belshire*
9 *Environmental Services, Inc.* (Orange County Superior Court Case No. 30-2022-01262282-CU-OE-
10 CXC, hereinafter “Action”). The Complaint alleged the following causes of action: (1) Violation of
11 California Labor Code §§ 510 and 1198 (Unpaid Overtime Wages); (2) Violation of California Labor
12 Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code §
13 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and
14 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final
15 Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid
16 During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage
17 Statements); (8) Violation of California Labor Code § 1174(d) (Failure to Keep Requisite Payroll
18 Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business
19 Expenses); (10) Violation of California Business and Professions Code §§ 17200, et seq.; and (11)
20 Violation of California Labor Code § 2698, et seq. (California Labor Code Private Attorneys General
21 Act of 2004). (Minne Decl., ¶ 6.)

22 Shortly after the Action was initiated, Plaintiff’s counsel met and conferred with Defendant’s
23 counsel regarding the potential for resolution of the Action. (Minne Decl., ¶ 7; Declaration of Joanna
24 Ghosh [“Ghosh Decl.”], ¶ 11.) Pursuant to these discussions, the Parties agreed to exchange informal
25 discovery, engage in private mediation, and stay formal discovery pending the completion of
26 mediation. (Minne Decl., ¶ 7.; Ghosh Decl., ¶ 11.) Per the Parties’ agreement, Defendant provided
27 Plaintiff’s counsel with extensive informal discovery prior to mediation, which included a 20%
28 sampling of Class Members’ time and payroll records. (Minne Decl., ¶ 8.) The sampling was randomly

1 selected and included employees across the Class Period. (Minne Decl., ¶ 8.) Defendant also provided
2 Plaintiff's counsel with all versions of Defendant's employee handbooks in use during the Class
3 Period, the collective bargaining agreement governing Class Members' employment, and other
4 documents evidencing its relevant wage and hour policies and procedures. (Minne Decl., ¶ 8.) Finally,
5 Defendant provided Plaintiff's counsel with key data points regarding the size and composition of the
6 Class, such as the number of Class Members and PAGA Members (including the number of current
7 versus former employees), the total number of workweek and pay periods worked by Class Members,
8 the number of pay periods worked by PAGA Members, and the average rates of pay for the Class.
9 (Minne Decl., ¶ 8.)

10 Prior to mediation, Plaintiff's counsel thoroughly reviewed the informal discovery produced
11 by Defendant, which included consulting with an expert to analyze Class Members' time and payroll
12 records. (Minne Decl., ¶ 9.) Plaintiff's counsel also engaged in further independent investigation, and
13 conducted further legal research regarding the merits of Plaintiff's claims and Defendant's potential
14 defenses thereto. (Minne Decl.; Ghosh Decl., ¶¶ 11-12.) Based on this investigation and informal
15 discovery, Plaintiff's counsel prepared a detailed and informed assessment of Defendant's potential
16 liability in advance of mediation. (Minne Decl., ¶ 9; Ghosh Decl., 12.) Plaintiff's counsel also
17 extensively briefed the strengths and weaknesses of Plaintiff's claims and Defendant's anticipated
18 defenses, and provided their analysis to the mediator for his consideration. (Minne Decl., ¶ 9.)

19 After completing a thorough investigation and analysis of Plaintiffs' claims, on March 27,
20 2023, the Parties attended a formal mediation with Steven J. Rottman, Esq., a neutral and respected
21 mediator with extensive experience in complex wage and hour matters. (Minne Decl., ¶ 10.; Ghosh
22 Decl., ¶ 13.) The Parties engaged in a full day of settlement discussions, during which the Parties
23 debated their respective positions and exchanged views regarding the strengths and weaknesses of
24 their claims and defenses. (Minne Decl., ¶ 10; Ghosh Decl., ¶ 13.) The settlement discussions were at
25 all times at arm's length and, although conducted with appropriate professional decorum, were
26 adversarial. (Minne Decl., ¶ 10; Ghosh Decl., ¶ 13.) Plaintiff and her counsel went into mediation
27 willing to explore the potential for a settlement of the Action, but were also prepared to litigate
28 Plaintiff's claims through class certification, trial, and appeal if a settlement was not reached. (Minne

Decl., ¶ 10.) After a full day of negotiations, the Parties reached an agreement to settle this action and executed a memorandum of understanding memorializing the key terms of the agreement. (Minne Decl., ¶ 10; Ghosh Decl., ¶ 13.)

On or about May 4, 2023, after further negotiations, the Parties fully executed a long form Joint Stipulation of Class Action and PAGA Settlement. (Minne Decl., ¶ 11, Exh. 1 [“Agreement”].)

III. SUMMARY OF THE SETTLEMENT TERMS

A. Definition of the Proposed Class and PAGA Members.

For purposes of Settlement only, the Parties have agreed to certify the following class: “All current and former hourly-paid, non-exempt employees of Defendant Belshire Environmental Service, Inc. who were employed by Defendant in the State of California at any time during the Class Period.” (Minne Decl., ¶ 13; Agreement, ¶ 6) The Class Period commences on May 31, 2018, and ends on May 31, 2023. (Minne Decl., ¶ 13; Agreement, ¶ 7.) There are approximately 204 Class Members. (Minne Decl., ¶ 14.)

The Settlement also includes a subgroup of “PAGA Members” which consists of all current and former non-exempt employees of Defendant who were employed by Defendant in the state of California at any time during the PAGA Period. (Minne Decl., ¶ 15; Agreement, ¶ 22.) The PAGA Period commences on January 27, 2022, and ends on May 31, 2023. (Minne Decl., ¶ 15; Agreement, ¶ 24.) There are approximately 149 PAGA Members. (Minne Decl., ¶ 16.)

B. Gross Settlement Amount

The Parties have agreed to settle the Class and PAGA claims at issue in the Action for Gross Settlement Amount of \$750,000.00. (Minne Decl., ¶ 17; Agreement, ¶¶ 15, 48.) The Gross Settlement Amount is non-reversionary, and does not include employer-side payroll taxes, which shall be separately paid by Defendant. (*Id.*) The Gross Settlement Amount shall be allocated as follows:

- Attorneys’ Fees to Class Counsel in the amount of 35% of the Gross Settlement Amount (i.e., \$262,500.00). (Minne Decl., ¶ 18; Agreement, ¶¶ 4, 52.)
- Reimbursement of Class Counsel’s actual litigation costs and expenses, not to exceed \$30,000.00. (Minne Decl., ¶ 18; Agreement, ¶¶ 4, 52.)
- Class Representative Enhancement Payment of \$7,500.00 to Plaintiff. (Minne Decl., ¶ 18;

Agreement, ¶¶ 8, 53.)

- Settlement Administration Costs not to exceed \$10,000.00. (Minne Decl., ¶ 18; Agreement, ¶¶ 37, 564)
- PAGA Penalties in the amount of \$50,000.00, 75% of which shall be allocated to the LWDA, and 25% of which shall be distributed to PAGA Members. (Minne Decl., ¶ 18; Agreement, ¶¶ 21, 55.)

The Gross Settlement Amount, less the payments listed above, shall be the “Net Settlement Amount”, which shall be distributed to Participating Class Members as Individual Class Payments on a pro rata basis according to the number of Workweeks worked during the Class Period. (Minne Decl., ¶¶ 19-20; Agreement ¶¶ 16, 56-57.) The Net Settlement Amount is currently estimated to be approximately \$390,000.00. (Minne Decl., ¶ 19; Agreement, ¶ 56.)

The Net Settlement Amount will be distributed to Participating Class Members on a pro-rata basis based on the number of Workweeks they worked during the Class Period. (Minne Decl., ¶ 20; Agreement, ¶¶ 16, 56-57.) It is currently estimated that the average Individual Class Payment to Participating Class Members will be approximately \$1,911.76. (Minne Decl., ¶ 21.) The specific range of Individual Class Payments will vary based on the total Workweeks they worked and the number of Class Members who ultimately request to be excluded from the Settlement, and will be calculated by the Settlement Administrator upon receipt of the Class List from Defendant. (Minne Decl., ¶ 21.) However, based on Class Counsel’s current estimates, the lowest Individual Class Payment will be approximately \$18.26, and the highest potential Individual Class Payment is approximately \$4,765.23. (*Id.*) Plaintiff’s Individual Class Payment is currently estimated to be approximately \$529.54. (Minne Decl., ¶ 21.) Individual Class Payments shall be allocated as 20% wages subject to all applicable tax withholdings, and 40% interest and 40% penalties not subject to tax withholdings. (Minne Decl., ¶ 22; Agreement, ¶ 58.)

In addition to the Individual Class Payments from the Net Settlement Amount, PAGA Members shall receive a pro-rata share of the 25% portion of PAGA Penalties allocated for distribution to PAGA Members. (Minne Decl., ¶ 23; Agreement, ¶ 17, 59.) Individual PAGA Payments will be distributed on a pro-rata basis based on the number of Workweeks worked by PAGA Members during

1 the PAGA Period. (*Id.*) The estimated average Individual PAGA Payment to PAGA Members is
2 \$83.89. (Minne Decl., ¶ 23.)

3 The Settlement Administrator shall determine the eligibility for, and the amounts of, each
4 Individual Settlement Award under the terms of the Settlement Agreement. (Minne Decl., ¶ 24;
5 Agreement, ¶¶ 37, 51, 62.) All payments owed under the Settlement shall be disbursed within 44
6 calendar days of the Effective Date. (Minne Decl., ¶ 24; Agreement ¶¶ 50-51.) If an Individual Class
7 Payment check or Individual PAGA Payment check remains uncashed after one hundred eighty (180)
8 days from the initial mailing, the Settlement Administrator shall transfer the value of the uncashed
9 checks to the California Controller's Unclaimed Property Fund in the name of the Participating Class
10 Member or PAGA Member. (Minne Decl., ¶ 24, Agreement ¶ 77.) As such, no "unpaid residue" under
11 California Code of Civil Procedure § 384 will result from the Settlement. (Minne Decl., ¶ 24.)

12 **C. Release of Class and PAGA Claims.**

13 Upon the funding of the Gross Settlement Amount and all employer payroll taxes, Plaintiffs,
14 Participating Class Members, and PAGA Members shall be deemed to have released their respective
15 Released Claims against the Released Parties. (Agreement ¶¶ 30-31, 83-84.) The scope of the release
16 is narrowly tailored to release claims based on facts alleged in the FAC, depending on whether Class
17 Members elect to opt-out of the settlement and whether such individuals qualify as PAGA Members.
18 (*Id.*) All Class Members who are PAGA Members will release PAGA claims even if they request
19 exclusion from the Class. (*Id.*, ¶¶ 31, 84) In addition to the release of claims made by all Participating
20 Class Members and PAGA Members, as set forth above, Plaintiff, in her individual capacities, agrees
21 to a general release of all claims against Defendant. (*Id.*, ¶ 85.)

22 Plaintiff's counsel is unaware of any other pending matters or actions that assert claims that
23 will be extinguished to adversely affected by the Settlement. (Minne Decl., ¶ 62; Declaration of Joanna
24 Ghosh ("Ghosh Decl."), ¶ 15.)

25 **IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL.**

26 **A. Standard of Review for Preliminary Approval**

27 The review and approval of a proposed class action settlement involves a two-step process. *See*
28 Cal. Rules of Court, Rule 3.769(c). First, counsel submit the proposed terms of settlement and the

1 Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the
2 range of a fair settlement to justify providing notice of the proposed settlement to class members.
3 Second, after notice is provided to the class, the Court must conduct a second inquiry into whether the
4 proposed settlement is fair, reasonable and adequate. *Id.*

5 The initial evaluation of a settlement at preliminary approval “is not a fairness hearing.”
6 *Armstrong v. Bd. of Sch. Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), overruled
7 on other grounds by *Felzen v. Andreas*, 134 F.3d 873, 875 (7th Cir. 1998). Rather, the limited purpose
8 of this initial inquiry is to determine, at a threshold level, whether the proposed settlement is within
9 the range of possible approval and, as a result, “whether there is any reason to notify the class members
10 of the proposed settlement and to proceed with a fairness hearing.” *Id.* As set forth below, the
11 Settlement is within the range of possible approval. Accordingly, preliminary approval should be
12 granted.

13 **B. The Settlement is Entitled to a Presumption of Fairness.**

14 California Courts recognize that a presumption of fairness exists where: (1) the settlement is
15 reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow
16 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
17 percentage of objectors is small. *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006); *7-Eleven*
18 *Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1146 (2000). Because the
19 proposed Settlement was reached through arm’s-length negotiations based on sufficient investigation
20 and discovery by qualified counsel, it is entitled to a presumption of fairness.²

21 1. The Proposed Settlement Was Reached Through Arm’s Length Bargaining.

22 The Settlement was reached following a full day of mediation with Steven J. Rottman, Esq., a
23 highly respected mediator. (Minne Decl., ¶ 10; Ghosh Decl., ¶ 13.) The settlement negotiations were
24 at arm’s length and, although conducted in a professional manner, were adversarial. (Minne Decl., ¶
25 10; Ghosh Decl., ¶ 13.) The Parties went into settlement discussions willing to explore the potential
26 for a settlement of the dispute, but each side was also prepared to litigate its position through class
27

28 ² At preliminary approval, the fourth factor – the percentage of objectors – is not applicable, as notice has not yet been provided to the Class and Class Members have not yet had an opportunity to object to the Settlement.

1 certification, trial, and appeal if a settlement was not reached. (Minne Decl., ¶ 10.) The proposed
2 Settlement was reached at the end of a process that was neither fraudulent nor collusive. (Minne Decl.,
3 ¶ 12.) To the contrary, counsel for the Parties advanced their respective positions throughout the
4 settlement negotiations. (Minne Decl., ¶ 12.)

5 2. Plaintiff and Her Counsel Conducted Sufficient Investigation and Discovery to
6 Allow the Court and the Parties Act Intelligently.

7 Courts typically assess the status of discovery in determining whether a proposed class action
8 settlement is fair, reasonable, and adequate. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801
9 (1996). As detailed above, prior to reaching the Settlement, Plaintiff's counsel obtained extensive
10 informal discovery before the mediation, which included: a representative 20% sampling of Class
11 Members' time and payroll documents; all versions of Defendant's employee handbooks in use during
12 the Class Period and other documents reflecting Defendant's applicable wage and hour policies; and
13 data points regarding the size and composition of the putative class, total workweeks and pay periods
14 worked by Class Members and PAGA Members, and the average rate of pay for the Class. (Minne
15 Decl., ¶ 8.) Plaintiff's counsel thoroughly reviewed this informal discovery prior to mediation, which
16 included consulting with an expert to fully analyze Class Members' time and payroll records. (Minne
17 Decl., ¶ 9.) Plaintiff's counsel also conducted further independent investigation and research of
18 Plaintiff's claims and Defendant's defenses thereto. (Minne Decl., ¶ 9.) Based on this investigation,
19 Plaintiff's counsel prepared a detailed assessment of Defendant's potential liability, and extensively
20 briefed the strengths and weaknesses of Plaintiff's claims and Defendant's anticipated defenses prior
21 to mediation. Thus, Plaintiff's counsel was able to act intelligently and effectively in negotiating the
22 proposed Settlement. (Minne Decl., ¶ 9; Ghosh Decl., ¶¶ 10-13.)

23 3. Plaintiff's Counsel is Experienced in Class Action Litigation.

24 The settlement negotiations were conducted by highly capable and experienced counsel.
25 Plaintiff's counsel are respected members of the bar with strong records of effective advocacy for their
26 clients, and are experienced in handling complex wage-and-hour class action litigation. (*Id.*, ¶¶ 54-59;
27 Ghosh Decl., ¶¶ 2-7.) Although Plaintiff and her counsel were prepared to litigate the claims in this
28 action, they support the proposed Settlement as being in the best interests of the Class Members. (*Id.*,

¶¶ 50-51; Ghosh Decl., ¶ 16; Estrada Decl., ¶ 8.)

C. The Settlement is Fair, Adequate, and Reasonable in Light of the Parties' Respective Positions and Risks of Continued Litigation

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 246, 250 (2001). In evaluating the reasonableness of a settlement, a trial court must consider “the strength of plaintiffs’ 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 views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008).

Plaintiff’s counsel has carefully considered Plaintiff’s claims and analyzed class-wide violation rates. Based on information gathered by Plaintiff’s counsel, including calculations of Defendant’s maximum potential liability exposure and the risks associated with continued litigation, Plaintiff’s counsel has determined that the proposed Settlement is fair, adequate, and reasonable. (Minne Decl., ¶¶ 26-51; Ghosh Decl., ¶¶ 10-13, 16.)

a. Defendant’s Maximum Potential Exposure.

Based on information gathered through discovery, Plaintiff’s counsel estimated that if all class claims were adjudicated in favor of the Class, Defendant’s maximum potential liability for the Class claims is \$3,842,194.99. (Minne Decl., ¶ 26.) This estimate can be broken down by claim as follows: \$795,697.25 in unpaid overtime and minimum wages; \$876,210.28 in unpaid meal period premiums; \$1,060,787.26 in unpaid rest period premiums; \$106,805.00 in unreimbursed business expenses; \$782,695.20 in waiting time penalties under Labor Code § 203; and \$520,000.00 in wage statement penalties under Labor Code § 226. (Minne Decl., ¶¶ 26-32.)

In addition to the damages for the Class claims, Plaintiff’s counsel also separately calculated Defendant’s potential liability for civil penalties under PAGA to be \$4,614,755.20, which can be broken down by violation as follows: \$456,950.00 for unpaid overtime; \$913,900.00 for unpaid

1 minimum wages; \$436,844.20 for meal period violations; \$904,761.00 for rest period violations;
2 \$913,900.00 for failure to timely pay wages during employment; \$74,500.00 for failure to maintain
3 required payroll records; and \$913,900.00 for failure to reimburse business expenses. (Minne Decl., ¶
4 33.) These calculations did not include duplicative penalties that Plaintiff's counsel anticipated would
5 be recovered as part of the Class claims, such as waiting time penalties under Labor Code § 203 and
6 wage statement penalties under Labor Code § 226. (Minne Decl., ¶ 33.)

7 b. Strengths and Weaknesses of Plaintiff's Claims and the Risks of Continued
8 Litigation.

9 Despite Defendant's significant potential exposure, Plaintiff's counsel recognized that there
10 are significant risks associated with proceeding with this case through class certification, trial, and
11 likely appeals. As with all class actions, this is a complex case that raises difficult management and
12 proof issues. Accordingly, there is a significant risk that the Court may deny class certification. While
13 Plaintiff and Plaintiff's counsel were confident that Plaintiff's claims are fundamentally meritorious
14 and suitable for class-wide resolution, consideration of these risks factored into their decision to enter
15 into the Settlement at this point in the litigation. (Minne Decl., ¶¶ 34-49.)

16 For example, a significant portion of Defendant's estimated liability is based on Plaintiff's
17 meal period claim. Plaintiff contends that Defendant's formal meal period policies are facially
18 unlawful, as they failed to inform Class Members of their right to take a meal period before the end of
19 their fifth hour of work. Plaintiff also contends that employees were required to remain on-call during
20 meal periods. Plaintiff further contends that, as a matter of actual practice, Class Members were often
21 required to skip meal periods, to delay meal periods after their fifth hour of work, and to cut their meal
22 periods short, and were not paid meal premiums for such violations. Defendant asserted that its written
23 policies substantially complied with California law. Defendant also maintained that as a matter of
24 practice it provided ample opportunity for Class Members to take meal periods, and that if Class
25 Members did not take compliant meal breaks, it is because they voluntarily chose not to do so.
26 Defendant also argued that questions of whether employees had received compliant meal periods, why
27 such meal periods were not taken, and whether such meal and rest periods were voluntarily waived
28 were individualized issues that would bar certification. Defendant also asserted that Class Members

1 worked in a variety of different job positions with different job duties in different locations, and that
2 this variation between employees raised highly individualized questions of fact. While Plaintiff's
3 counsel strongly disagreed with Defendant's arguments and factual contentions, they recognized that
4 meal period claims have become increasingly difficult to certify since *Brinker Restaurants Corp. v.*
5 *Sup. Ct.*, 53 Cal.4th 1004 (2012). (Minne Decl., ¶ 36.)

6 Plaintiff's counsel was also cognizant of the challenges associated with maintaining Plaintiff's
7 rest period claims on a class-wide basis. Plaintiff contends that Class Members were required to skip
8 their rest periods, or had their rest periods interrupted by their supervisors. Plaintiff further contends
9 that Defendant required Class Members to stay on-call during their rest periods in a manner that
10 violated California law as set forth in *Augustus v. ABM Securities*, 2 Cal.5th 257, 270 (2016).
11 Defendant asserted that its policies authorized employees to take all rest periods required under
12 California law, and that Class Members who worked through their rest periods did so voluntarily.
13 Defendant likewise argued that whether Class Members had received a compliant rest period and the
14 reasons why Class Members failed to receive compliant rest periods raised individualized issues that
15 could not be certified. While Plaintiff's counsel disagreed with Defendant's positions, they also
16 recognized that rest period claims are inherently difficult to certify and prove, given that an employer
17 has no obligation to maintain records of rest periods. (Minne Decl., ¶ 37.)

18 Plaintiff also faced challenges related to certifying and proving liability for her minimum wage
19 and off-the-clock claims. Such claims were primarily based on Plaintiff's allegations that Defendant
20 failed to pay Class Members all minimum wages and overtime compensation owed due to its practice
21 of pressuring Class Members to work off-the-clock. Defendant asserted that its formal written policies
22 regarding payment of wages were facially compliant, and that Class Members were instructed to
23 record all hours worked. Defendant also argued that individual liability issues predominate, including:
24 (1) whether each employee worked off-the-clock; and (2) whether Defendant knew or should have
25 known about each employee's off-the-clock work. (*Id.*) Moreover, given that these claims were based
26 on off-the-clock work not reflected in Defendant's time records, Defendant argued that proving
27 damages at trial would not be manageable. (Minne Decl., ¶ 38.)

1 In addition to meal period, rest period, overtime, and minimum wage claims, Plaintiff also
2 contends that Defendant failed to reimburse Class Members for overhead costs associated with
3 working from home. Defendant asserted that its policies authorized employees to seek reimbursement
4 of any work-related expenses, and that only certain employees worked from home in any capacity.
5 Defendant further asserted that individualized inquiries regarding why a Class Member failed to receive
6 reimbursement for certain expenses would predominate. (Minne Decl., ¶ 39.)

7 There are also substantial risks attached to Plaintiff's claims for waiting time penalties and
8 wage statement penalties. Such claims are derivative of Plaintiff's primary claims for meal period, rest
9 period, minimum wage and overtime violations. Thus, if certification is denied on the primary claims,
10 these derivative claims would also likely fail. Moreover, even if Plaintiff prevails on the underlying
11 claims, Plaintiff would still be required to show that Defendant's conduct was willful in order to obtain
12 Labor Code § 203 penalties, a difficult prospect. *See, e.g., Choate v. Celite Corp.*, 215 Cal App. 4th
13 1460, 1468 (2013) (holding that "an employer's reasonable, good faith belief that wages are not owed
14 may negate a finding of willfulness"). Wage statement claims have also seen varying treatment at the
15 appellate level because such claims have an element of discretion attached to them. *Cf., Jaimez v.*
16 *DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) *with Price v. Starbucks Corp.*, 192 Cal.App.4th
17 1136 (2011). Accordingly, these derivative claims were extremely uncertain. (Minne Decl., ¶¶ 39-40.)

18 Plaintiff's counsel also separately contemplated the numerous risks of proceeding with a
19 PAGA claim. First, the same defenses and merits-based risks associated with Plaintiff's direct Labor
20 Code claims are also applicable to a PAGA claim. *See Green v. Lawrence Service Co.*, 2013 U.S. Dist.
21 LEXIS 109270, at *5, fn. 5 (C.D. Cal. 2013) ("whether each PAGA claim succeeds or fails is
22 determined by the merits of the substantive claims on which each is based.") Second, although
23 California law is clear that PAGA actions need not satisfy class action requirements, there is currently
24 a split in authority over whether PAGA claims may nevertheless be stricken based on manageability
25 concerns. *Cf. Wesson v. Staples The Office Superstore*, 68 Cal.App.5th 746 (2021) *with Estrada v.*
26 *Royalty Carpet Mills, Inc.*, 76 Cal.App.5th 685 (2022). Even if Plaintiff defeated any challenges to
27 manageability, the Court could ultimately exercise its discretion to find that the imposition of
28 heightened civil penalties was inappropriate, particularly if Plaintiff prevailed on her class claims. Cal.

1 Lab. Code § 2699(2); *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1122 (2012).³
2 (Minne Decl., ¶¶ 42-45.)

3 Finally, Plaintiff's counsel recognized the significant risk and expense generally associated
4 with continued litigation, trial, and possible appeals, all of which would substantially delay and reduce
5 any recovery by the Class Members. Even if Plaintiff prevailed at class certification, proving the
6 amount of wages due to each Class Member would be an expensive, time-consuming, and extremely
7 uncertain proposition. In order to prove liability and damages, Plaintiff's counsel will need to request
8 and analyze thousands of pages of documents, obtain the Class Members' contact information, contact
9 them and obtain numerous declarations at great expense. Obtaining the cooperation of current
10 employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a
11 current employer. On the other hand, Defendant would likely be able to obtain the cooperation of its
12 current employees. This puts Plaintiff at a particular disadvantage in this case because almost 50% of
13 the Class (approximately 102 of the estimated 204 Class Members) are current employees of
14 Defendant. Moreover, even if Plaintiff prevails at class certification and trial, possible appeals would
15 substantially delay any recovery by the Class. These risks are all obviated by the Settlement, which if
16 approved by the Court will ensure that class members receive timely relief without the risk of an
17 unfavorable judgment. (Minne Decl., ¶ 48.)

18 Taking into account the specific strengths and weaknesses of each claim, and the unique risks
19 associated therewith, the general risks and significant costs associated with litigation this Action
20 through class certification, trial, and appeals, Plaintiff's counsel estimated that Defendant faced a risk-
21 adjusted liability of \$774,900.30 for Plaintiff's Class claims, and \$346,106.64 for Plaintiff's PAGA
22 claims. (Minne Decl., ¶¶ 36-41, 47, 49.)

23 Therefore, after considering the strengths and weaknesses of each claim, and the unique risks
24 associated therewith, the general risks of continue litigation, and the significant costs, expenses, and
25 delay that would result from continued litigation, it is clear that the Settlement is fair, reasonable, and
26

27 ³ See also, *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (reducing penalties by 97.5%); *Fleming v.*
28 *Covidien*, 2011 U.S. Dist. LEXIS 154590, *8-9 (C.D. Cal. 2011) (reducing potential PAGA penalties by over 80 percent);
Magadia v. Wal-Mart Assocs. et al., 384 F. Supp. 3d 1058, 1069 (N.D. Cal. 2019)(applying 67% and 80% reductions to
PAGA Penalties).

adequate, and is in the best interest of the Class. (Minne Decl., ¶ 50; Ghosh Decl., ¶ 16.) Moreover, the Gross Settlement Amount of \$750,000.00 – which represents 19.5% of the maximum value of the direct Class claims at issue - falls within an acceptable range of recovery for this type of litigation given the strengths and weaknesses of the case and the inhere costs and risks associated with class certification, representative adjudication, trial, and/or appeals. *See, e.g., Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (approving settlement amount representing approximately 10% of the estimated actual damages to the class); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 256 (N.D. Cal. 2015) (approving settlement representing approximately 8.5% of the maximum damages); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal 2017) (approving settlement where gross recovery was 11% of the maximum damages). (Minne Decl., ¶ 50.)

D. The PAGA Allocation is Reasonable.

The \$50,000.00 allocated for penalties under PAGA is fair and reasonable. PAGA is fundamentally not intended to be compensatory in nature, but is instead intended to facilitate enforcement of California’s labor laws by financing state activities and educating and deterring non-compliance. *See* Cal. Labor Code § 2699(i); *Arias v. Sup. Ct.*, 46 Cal. 4th 980; *Williams v. Sup. Ct.*, 3 Cal.5th 531, 546 (2017); *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 379 (2014). Where, as here, the parties reach a substantial class-wide settlement providing employees with monetary compensation for underlying Labor Code violations, many of PAGA’s underlying policy objectives are satisfied. Indeed, the \$50,000.00 PAGA Payment (6.67% of the Gross Settlement Amount) is well-within the range approved by California courts. *See Nordstrom Comm. Cases*, 186 Cal.App.4th 576, 589 (2010)(finding no abuse of trial court’s discretion in approval of release that included PAGA claims but allocated \$0 to PAGA penalties); *Alcala v. Meyer Logistics, Inc.*, 2019 WL 4452961, *9 (C.D. Cal. June 17, 2019) (settlement of claims for PAGA penalties representing 1.25% of gross settlement amount was reasonable, as it “falls within the zero to two percent range for PAGA claims approved by courts.”); *In re M.L. Stern Overtime Litig.*, 2009 WL 995864, *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2%); *Hopson v. Hanesbrands, Inc.*, 2008 WL 3385452, *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 0.3%). (Minne Decl., ¶ 51.)

1 **V. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED.**

2 Code of Civil Procedure § 382 provides that three basic requirements must be met in order to
3 sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined
4 community of interest in the question of law or fact affecting the parties to be represented; and (3)
5 certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class is
6 superior to other methods. *Fireside Bank v. Superior Court*, 40 Cal.4th 1069, 1089 (2007); *see also*
7 *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326 (2004). Courts utilize a less stringent
8 standard for class certification during settlement. *Global Minerals & Metals Corp. v. Superior Court*,
9 113 Cal.App.4th 836, 859 (2003). The reason: “no trial is anticipated in a settlement class case, so the
10 case management issues inherent in the ascertainable class determination need not be confronted.” *Id.*

11 As demonstrated below, all three requirements for certification of the Class as defined by the
12 Settlement are satisfied. Furthermore, Defendant has stipulated to certification of the proposed Class
13 for settlement purposes only. (Agreement, ¶ 47.)

14 **A. There is an Ascertainable Class.**

15 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size
16 of the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal.App.3d
17 862, 873 (1983). In this case, all three considerations strongly favor class certification. Here, the Class
18 is defined as all persons employed by Defendant in California and classified as hourly-paid and/or non-
19 exempt who worked for Defendant at any time from May 5, 2018, to May 5, 2023. (Agreement, ¶¶ 6-7.)
20 This provides a clear and definite scope for the proposed class.

21 Next, the class is sufficiently numerous. There is no magic number that satisfies the numerosity
22 requirement. Under the Federal Rules, the minimum number of a class is 100 individuals. Under
23 California law, that number is significantly less. *See e.g., Rose v. City of Haywood*, 126 Cal.App.3d
24 926, 934 (1981) (holding 42 class members sufficient to satisfy numerosity); *Bowles v. Superior Court*,
25 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous). Here, the estimated Class size
26 of 204 individuals plainly favors class certification. (Minne Decl., ¶ 14.)

27 Finally, the question whether class members are easily identifiable turns on whether a plaintiff
28 can establish “the existence of an ascertainable class.” *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 706

(1967). The existence of an ascertainable class in this case can be established through Defendant’s payroll records, and the class definition is sufficiently specific to enable the parties, potential Class Members and the Court to determine the parameters of the Class.

B. The Class Shares a Well-Defined Community of Interest.

The community of interest requirement embodies three factors: (1) predominant questions of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. *Dunk*, 48 Cal.App.4th at 1806. This case easily satisfies all three requirements.

1. Common Issues of Law and Fact Predominate.

The commonality criterion requires the existence of common question of law or fact and is generally established with the issues of predominance and typicality. *See Daar*, 67 Cal.2d 695, 706. What is required is that a common question of fact or law exist which predominates over issues unique to individual plaintiffs. The existence of individual issues or facts—generally present in any case arising from employment—is not a bar to class certification as long as they do not render class litigation unmanageable or predominate over the common issues. *See B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

Here, Plaintiff’s claims present sufficient common issues of law and fact that predominate and warrant class certification. Plaintiff alleges that Defendant prohibited employees from taking compliant meal and rest periods, and required Class Members to perform work off-the-clock. These policies and practices meant that Defendant failed to pay required meal period premiums, minimum wages, and overtime wages, and other related claims. Plaintiff alleges that Defendant’s policies and practices were uniform as to all Class Members. Thus, class treatment is appropriate.

2. Plaintiff’s Claims are Typical of the Class.

To satisfy the typicality requirement, California law does not require that Plaintiff have claims identical to the other class members. Rather, the test of typicality for a class representative is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiff, and whether other class members have been injured by the same course of conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007). The typicality

1 requirement for a class representative refers to the nature of the claim or defense of the representative,
2 and not to the specific facts from which it arose or the relief sought. *See Id.*

3 Here, Plaintiff alleges that her claims are based on the same legal theories, arise out of the same
4 unlawful policies and practices, and seek the same relief. Because Plaintiff's claims are based on the
5 same alleged conduct and business practices as the claims of the other Class Members, the typicality
6 requirement is satisfied.

7 3. Plaintiff and her Counsel Will Fairly and Adequately Represent the Class.

8 The question of adequacy of representation "depends on whether the plaintiff's attorney
9 qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests
10 of the class." *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations
11 are satisfied. Class Counsel are well-regarded and accomplished lawyers who are qualified and
12 experienced in employment-related, class-action litigation, and who do not have any conflicts of
13 interest which would impede their representation of the Class. (Minne Decl., ¶¶ 54-59; Ghosh Decl.,
14 ¶¶ 2-7.) Furthermore, because Plaintiff's claims are typical of those of other Class Members, and are
15 not based on unique circumstances that might jeopardize the claims of the class, there is no antagonism
16 of interests between Plaintiff and the Class. Plaintiff is also fully aware of her duties as the class
17 representative, and will vigorously and adequately represent the interests of the Class. (Estrada Decl.,
18 ¶¶ 3-10.) Therefore, the adequacy requirement is satisfied.

19 **C. A Class Action is Superior to a Multiplicity of Litigation.**

20 Under the circumstances, proceeding as a class action is a superior means of resolving this
21 dispute, as the Class Members and the court will derive substantial benefits. Class certification would
22 serve as the only means to deter and redress the alleged violations. *See Linder v. Thrifty Oil Co.*, 23
23 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will
24 come forward to prove her or her separate claim and whether the class approach would actually serve
25 to deter and redress the alleged wrongdoing). Further, individual actions arising out of the same
26 operative facts would unduly burden the courts and could result in inconsistent results. Therefore, class
27 action proceedings are superior to individual litigation.

28 ///

1 **VI. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE.**

2 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions
3 will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal, Inc.*,
4 82 Cal.App.4th 19, 41 (2000). California law provides that attorney fee awards should be equivalent
5 to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Id.* at 47.
6 In cases where class members present claims against a common fund and the defendant agrees a
7 percentage of the fund as part of the settlement, use of the percentage method is appropriate. *Id.* at 32.

8 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
9 depending on the circumstances of the case. *Newberg on Class Actions*, § 14.03 (4th Ed.); *see also In*
10 *re Ampicillin Antitrust Litig.*, 526 F.Supp. 494 (D.D.C. 1981) (awarding attorneys' fees in the amount
11 of 45% of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*
12 (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys' fees).
13 California courts routinely approve class action attorneys' fee awards averaging around one-third of
14 the recovery. *In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 558 at n.13 (2009); *Chavez v.*
15 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of
16 contingency fee in marketplace was appropriate in class actions.)

17 Here, the requested attorneys' fees of \$262,500.00 which is 35% of the common fund, is
18 disclosed to Class Members in the proposed Notice of Class Action Settlement. (Agreement, Exh. A.)
19 The requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by
20 Defendant. The Motion for Final Approval will elaborate on the nature of the legal services provided
21 and will also support Class Counsel's request for the reimbursement of litigation costs not to exceed
22 \$30,000.00. (Minne Decl., ¶ 53.)

23 **VII. THE PROPOSED ENHANCEMENT PAYMENT IS REASONABLE.**

24 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as
25 compensation "for the expense or risk they have incurred in conferring a benefit on other members of
26 the class." *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). Courts routinely
27 grant approval of class action settlement agreements containing enhancements for the class
28 representative, which are necessary to provide incentive to represent the class and are appropriate

1 given the benefit the class representatives help to bring about for the class. *See Van Vranken v. Atlantic*
2 *Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995) (approving \$50,000.00 enhancement); *In re*
3 *Online DVD Rental*, 779 F.3d 934, 947-948 (9th Cir. 2014) (approving incentive award 417 times
4 larger than individual payments where incentive award made up a mere .17% of the settlement);
5 *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding
6 service award of \$15,000 to be “fair and reasonable”); *Miller v. CEVA Logistics USA, Inc.*, 2015 WL
7 4730176, at * 9 (E.D. Cal. Aug. 10, 2015)(approving service award of \$15,000 to each plaintiff); *Glass*
8 *v. UBS Financial Services, Inc.*, 2007 WL 221862 at *16 (N.D. Cal. 2007) (approving payments of \$25,000
9 to each named plaintiff); *In re Heritage Bond Litigation*, 2005 WL 1594403 at *18 (C.D. Cal. 2005)
10 (awarding incentive payments between \$5,000 and \$18,000).

11 Plaintiff initiated this litigation on behalf of her former co-workers who can now collect
12 monetary payment from the Settlement. Plaintiff invested substantial time and effort into litigation
13 including her own research, reviewing documents, and extensive discussions with Class Counsel.
14 (Estrada Decl., ¶¶ 4-8.) Further, the requested Enhancement Payment is extremely reasonable given
15 the benefit gained by other Class Members. The requested Enhancement Payment of \$7,500.00 to
16 Plaintiff is disclosed to Class Members in the Class Notice. (Agreement, Exh. A.) For these reasons,
17 Plaintiff requests that an Enhancement Payment of \$7,500.00 be preliminarily approved by the Court.
18 (Minne Decl., ¶ 52; Ghosh Decl., ¶ 14; Estrada Decl., ¶ 11.)

19 **VIII. THE PROPOSED CLASS NOTICE, AND OPT-OUT AND OBJECTION**
20 **PROCEDURES SATISFY DUE PROCESS REQUIREMENTS**

21 “The principal purpose of notice to the class is the protection of the integrity of the class action
22 process.” *Cartt v. Superior Court*, 50 Cal.App.3d 960, 970 (1975). The notice ““must fairly apprise
23 the class members of the terms of the proposed compromise and of the options open to the
24 dissenting class members.”” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 251 (2001).
25 Additionally, the notice given should have a reasonable chance of reaching a substantial percentage
26 of the class members. *Cartt*, 50 Cal.App.3d at 974.

27 The Parties have selected ILYM Group, Inc. to administer the Settlement. (Minne Decl., ¶ 25;
28 Agreement ¶ 36.) ILYM Group, Inc. has extensive experience in administering class action and PAGA

1 settlements, and has procedures in place to protect the security of class data as well as adequate
2 insurance for errors and omissions. (Declaration of Lisa Mullins [“Mullins Decl.”], ¶ 2, Exh. A-B.)
3 The Parties and their counsel do not have any financial interest in ILYM Group, Inc. that would create
4 a conflict of interest. (Minne Decl., ¶ 25; Mullins Decl., ¶ 3.)⁴

5 The Parties have jointly drafted a Notice of Class Action Settlement (“Class Notice”), which
6 will be sent to Class Members in both in both English and Spanish. (Agreement, ¶¶ 19, 66, Exh. A).
7 The Class Notice describes the nature of the lawsuit, the key terms of the Settlement, the scope of the
8 Released Class Claims and Released PAGA Claims the scope of the claims released, Class Members’
9 estimated Individual Settlement Payment and Individual PAGA Payment, Class Members’ total
10 Workweeks during the Class Period, and PAGA Member’s total Workweeks during the PAGA Period.
11 (Agreement, Exh. A.) The Class Notice also informs Class Members how to opt-out of the Settlement,
12 object to the Settlement, and challenge their reported Workweeks. (*Id.*) The Class Notice will indicate
13 that the Court has determined only that there is sufficient evidence to suggest that the proposed
14 settlement might be fair, adequate and reasonable, and a final determination of such issues will be
15 made at the Final Approval hearing. (*Id.*) The Class Notice also includes instructions on how to obtain
16 all relevant Settlement documents, including posting of the Final Judgment, and informs Class
17 Members of their right to attend the Final Approval hearing. (*Id.*).

18 No later than 21 calendar days after the Court grants Preliminary Approval of the Settlement,
19 Defendant shall provide the Administrator with the Class List containing all Class Members’ names,
20 last-known mailing addresses, Social Security numbers, start and end dates of active employment with
21 Defendant, total Workweeks during the Class Period Workweeks, and total Workweeks during the
22 PAGA Period. (*Id.*, ¶¶ 5, 63.) No later than 7 calendar days after receiving the Class List from
23 Defendant, the Administrator shall mail copies of the Class Notice to all Class Members via regular
24 First Class U.S. Mail. (*Id.*, ¶ 64.) Before mailing the Class Notice to Class Members, the Administrator
25 shall perform a search based on the National Change of Address Database to update and correct any
26

27 ⁴ Plaintiff’s counsel also obtained an administration estimate from Phoenix Class Action Settlement Administration
28 Solutions. However, ILYM Group, Inc. was ultimately selected as the third-party administrator because its bid was
slightly lower and, consequently, would result in a greater recovery by Participating Class Members. (Minne Decl., ¶ 25,
Exh. 2-3.)

1 known or identifiable address changes. (*Id.*, ¶ 65.)

2 If any Class Notice as undeliverable, the Administer shall promptly re-mail such returned Class
3 Notices to the forwarding address provided by the USPS. (*Id.*) If no forwarding address is provided,
4 the Administrator shall search for a current address using all readily available resources, such as skip
5 tracing, and re-mail the Class Notice to the most current address obtained. (*Id.*) The Administrator has
6 no obligation to make further attempts to locate or send Class Notice to Class Members whose Class
7 Notice is returned by the USPS a second time. (*Id.*) Class Members shall have 60 days after the
8 mailing of the Class Notice to submit request for exclusions, objection, or workweek dispute by fax,
9 email, or mail. (*Id.*, ¶¶ 34, 67, 69, 72.) Further, the Response Deadline shall be extended by 15 calendar
10 days for all Class Members whose Class Notices are re-mailed. (*Id.*, ¶ 65.)

11 Direct mail notice to Class Members' last known addresses is the best possible notice under
12 the circumstances. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 319 (1950); *Eisen*
13 *v. Carlisle & Jacquelin*, 417 U.S. 156, 173-176 (1974). Furthermore, the Class Notice comports with
14 the requirements of California Rules of Court, Rules 3.769 and 3.766. Pursuant to Rule 3.769(f), the
15 class notice must contain an explanation of the proposed settlement and procedures for class members
16 to follow in filing written objections to it and arranging to appear at the hearing and state objections to
17 the proposed settlement. Cal. R. Ct. 3.769(f). Rule 3.766 further requires that the class notice include
18 (1) a brief explanation of the case, including the basic contentions and denials of the parties; (2) a
19 procedure for the class member to follow in requesting exclusion, and a statement that the Court will
20 exclude the class member from the class if he or she so requests by the specified deadline; (3) a
21 statement that the judgment, whether favorable or not, will bind all class members who do not request
22 exclusion; (4) a statement that any class member who does not request exclusion may, if the class
23 member so desires, object and enter an appearance through counsel. The proposed Class Notice satisfies
24 each of these requirements. *See Agreement*, Exh. A.

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

1 **IX. CONCLUSION**

2 For the reasons set forth above, Plaintiff respectfully request that the Court: (1) grant
3 Preliminary Approval of the Settlement; (2) approve the Class Notice and plan for distribution of the
4 Class Notice; (3) provisionally certify the Class for settlement purposes only; and (4) schedule a
5 hearing on Final Approval of the Settlement.

6
7 Dated: June 1, 2023

Respectfully submitted,

PARKER & MINNE, LLP

8
9 By: _____



S. Emi Minne
Attorneys for Plaintiff
NADIA ESTRADA