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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

JOY NAVA, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

CHANNING HOUSE, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO. 22CV398619

[Assigned for all purposes to The
Honorable Charles F. Adams, Dept. 7]

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

Date: May 2, 2024
Time: 1:30 p.m.
Dept.: 7

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on May 2, 2024, at 1:30 p.m., or as soon thereafter as the
3 matter may be heard, before the Honorable Charles F. Adams, judge presiding, in Department 7
4 of the above referenced Court located at 191 North First Street, San Jose, California 95113,
5 Plaintiff Joy Nava (“Plaintiff”) will and hereby does move this Court for the following relief with
6 respect to the Joint Stipulation of Class Action and PAGA Settlement (“Agreement”) entered into
7 by Plaintiff and Defendant Channing House (“Defendant”) (together with Plaintiff, the “Parties”):

8 1. That the Court approve the Agreement referenced above, which is attached as
9 Exhibit 1 to the accompanying Declaration of Dennis S. Hyun;

10 2. That the Court conditionally certify the following Classes for settlement purposes
11 only:

- 12 (a) All of Defendant’s current and former non-exempt employees in the state
13 of California who were paid sick pay in the same workweek in which they
14 earned any nondiscretionary remuneration, including without limitation,
15 shift differentials and shift premiums during the Class Period [from May
16 25, 2018 through June 22, 2023] (the “Sick Pay Class”).
- 17 (b) All of Defendant’s current and former non-exempt employees in the State
18 of California who were paid any meal period premium payments in the
19 same workweek in which they earned any non-discretionary remuneration,
20 including without limitation, shift differentials and shift premiums,
21 covering the same period that meal period premiums were paid, during the
22 Class Period (the “Meal Period Premium Class”).
- 23 (c) All of Defendant’s current and former non-exempt employees in the State
24 of California who were paid any rest period premium payments in the same
25 workweek in which they earned any non-discretionary remuneration,
26 including without limitation, shift differentials and shift premiums,
27 covering the same period that rest period premiums were paid, during the
28 Class Period (the “Rest Period Premium Class”).

3. That Plaintiff be appointed as the Class Representative and William L. Marder of Polaris Law Group and Dennis Hyun of Hyun Legal, APC be appointed as Class Counsel;

4. That the Court preliminarily approve the Agreement and the total Gross Settlement Amount in the amount of One Hundred and Ninety-Five Thousand Dollars and Zero Cents (\$195,000.00);

5. That the Court finds on a preliminary basis that the Agreement appears to be within the range of reasonableness of a settlement, including the amount of the PAGA penalties, the service award to the Class Representative, Class Counsel award of attorneys' fees and costs, settlement administration costs, and the allocation of individual payments to Class Members, that could ultimately be given final approval by this Court;

6. That the Court approve the mailing of the proposed Class Notice to be sent to Class Members (attached as Exhibit A to the Agreement);

7. That the Court appoint ILYM Group, Inc. as the Settlement Administrator; and

8. That the Court schedule the matter for a Final Fairness and Final Approval hearing.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a purported class action and allows the Court to preliminarily certify a class for settlement purposes.

The basis for this unopposed Motion is that the proposed settlement is fair, adequate, and reasonable, and the procedures proposed by the Parties are adequate to ensure the opportunity of Class Members to participate in, opt-out of, or object to the settlement. This Motion is based on the attached Memorandum of Points and Authorities, the Agreement and the proposed Notice of Settlement, and the supporting Declarations of William L. Marder, Dennis Hyun and Plaintiff, upon the oral arguments of counsel (should there be any), and on the complete records and file herein.

1 DATED: February 20, 2024

POLARIS LAW GROUP

2 By: 
3 William L. Marder
4 Attorneys for PLAINTIFF and the CLASS

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1 **I. INTRODUCTION**

2 This is a wage and hour class and representative Private Attorneys General Act (the
3 “PAGA”) action seeking statutory and civil penalties under the California Labor Code. Plaintiff
4 Joy Nava (“Plaintiff”) alleges that Defendant Channing House (“Defendant”) failed to: (1) pay
5 sick pay at the regular rate of pay; and (2) pay meal and rest period premium wages at the regular
6 rate of pay. Based on these violations, Plaintiff also seeks attendant penalties under Labor Code
7 §§ 201-203, 226, and the PAGA, as well as a claim under the Unfair Competition Law (“UCL”).
8 The Parties have reached a class and PAGA action settlement, the terms of which are reflected in
9 the Parties’ Joint Stipulation for Class Action and PAGA Settlement (“Agreement”).

10 Prior to the settlement of this action, the Parties thoroughly investigated the facts relating
11 to the class and PAGA claims alleged in this lawsuit and engaged in a thorough study of the legal
12 principles applicable to the claims asserted against Defendant. Through the exchange of informal
13 discovery in connection with mediation, Defendant provided necessary data pertaining to the
14 number of putative class members and pay periods at issue, as well as a sampling of payroll
15 records. The information provided by Defendant allowed Plaintiff to review and analyze the
16 liability and potential exposure. Thereafter, the Parties attended a full day of mediation with Todd
17 Smith, Esq., at the conclusion of which the Parties reached this settlement.

18 The terms of the Agreement provide that Defendant pay a Gross Settlement Amount of
19 One Hundred and Ninety Five Thousand Dollars (\$195,000.00) to resolve the class and PAGA
20 claims. Significantly, the entire Gross Settlement Amount will be distributed to the class on a
21 **non-reversionary basis, such that no remaining monies will revert to Defendant.** Further, no
22 claim forms are required. The following represents the key terms of the settlement:

- 23 • Gross Settlement Amount of \$195,000.00;
- 24 • Estimated class size of 341 individuals in the Class;¹
- 25 • Service Award to the Class Representative of up to \$10,000.00;
- 26

27 ¹ Class Members consist of all current and former non-exempt employees, as further defined
28 below, who worked for Defendant in California any time between May 25, 2018 and June 22,,
2023, inclusive (the “Class”).

- Class Counsel’s attorneys’ fees of one-third of the Gross Settlement Amount, up to \$65,000.00;
- Class Counsel’s costs of up to \$30,000.00;
- Settlement administration costs of up to \$8,250.00;
- Payment to the California Labor & Workforce Development Agency (“LWDA”) of \$14,625.00, representing 75% of the total PAGA Payment of \$19,500.00;
- Net Settlement Amount of approximately \$62,250.00, which will be apportioned among the Class Members on a pro rata basis, based on the number of workweeks worked during the Class Period; and
- Raw average of approximately \$182.55 (\$62,250.00 / 341 class members) (to each Settlement Class Member (or Class Member who does not opt out of the settlement)).

The Parties and their respective counsel believe that the settlement for the consideration and on the terms set forth in the Agreement is fair, reasonable, and adequate, in light of all known circumstances and the expenses and risks inherent in litigation. Although Plaintiff and her counsel are confident that they can prevail on class certification, as well as on the merits, they recognize the inherent risks in drawn-out litigation and the specific risks that the Class might not be certified and/or that Plaintiff could fail to establish liability.

Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

I. PROCEDURAL HISTORY

On April 7, 2022 Plaintiff sent notice to Defendant and the Labor Workforce Development Agency (the “LWDA”) of the violations of Labor Code §§ 201-204, 226, 226.7, 233, 246, and 512. Declaration of Dennis Hyun (“Hyun Decl.”) ¶ 7. Thereafter, on May 26, 2022, Plaintiff filed her class and PAGA Complaint against Defendant in the Superior Court of California, County of Santa Clara. The Complaint alleges causes of action for: (1) violation of Labor Code § 226; (2) violation of Labor Code §§ 201-204, 233, and 246; (3) violation of Labor Code §§ 226.7 and 512; (4) violation of Labor Code § 226.7; (5) violation of the PAGA; and (6)

1 violation of Business and Professions Code § 17200, *et seq.*

2 Plaintiff's class and PAGA claims as pled in the Complaint are predicated upon
3 Defendant's alleged failure to pay sick pay and meal and rest period premium wages based on the
4 regular rate of pay. After the filing of the Complaint, the Parties met and conferred and agreed to
5 participate in private mediation. Hyun Decl. ¶ 8. In connection with mediation, the Parties
6 engaged in informal discovery to allow Plaintiff to assess the claims and liability, as well as
7 analyze the maximum exposure of damages and penalties. *Id.* Defendant provided necessary data
8 pertaining to the number of putative class members and pay periods at issue, as well as a
9 sampling of payroll records. *Id.* The information provided by Defendant allowed Plaintiff to
10 review and analyze the liability and potential exposure. *Id.*

11 On June 22, 2023, the Parties engaged in a full-day mediation with mediator Todd Smith,
12 Esq. Hyun Decl. ¶ 8. After a full day of negotiations facilitated by Mr. Smith, the Parties
13 ultimately reached the current settlement. *Id.* In resolution of Plaintiff's class and PAGA claims,
14 the Parties entered into the Agreement, a true and correct copy of which is attached as **Exhibit 1**
15 to the Declaration of Dennis Hyun.

16 The Parties recognize the risk, expense, and delay in continuing litigation with the class
17 and PAGA claims, and believe the settlement to be fair, reasonable, and adequate. Hyun Decl. ¶
18 9. Accordingly, the Parties desire to settle, compromise, and discharge all disputes and claims
19 arising from or relating to the class and PAGA claims as set forth in the Agreement.

20 **II. DISCUSSION**

21 Any settlement of a class action lawsuit must be reviewed and approved by the Court.
22 This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final
23 review after notice has been distributed to the class members for their comment or objections.

24 *The Manual for Complex Litigation, Third* § 30.41 states:

25 Approval of class action settlements involves a two-step process.
26 First, counsel submits the proposed terms of settlement and the
27 court makes a preliminary fairness evaluation. If the preliminary
28 evaluation of the proposed settlement does not disclose grounds to
doubt its fairness or other obvious deficiencies, such as unduly
preferential treatment of class representatives or of segments of the

1 class, or excessive compensation for attorneys, and appears to fall
2 within the range of possible approval, the court should direct that
3 notice...be given to the class members of a formal fairness hearing,
4 at which arguments and evidence may be presented in support of
5 and in opposition to the settlement.

6 (Fed. Jud. Ctr., 3rd ed. 1995).

7 Thus, the preliminary approval by the trial court is simply a conditional finding that the
8 settlement appears to be within the range of acceptable settlements. As Professor Newberg
9 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
10 concerning a tentative settlement proposal may vary. The court may find that the settlement
11 proposal contains some merit, is within the range of reasonableness required for a settlement
12 offer, or is presumptively valid subject only to any objections that may be raised at a final
13 hearing.” Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.26 (4th ed. 2002).

14 The procedures for the parties’ submission of a proposed settlement for preliminary
15 approval by the court also are discussed in *4 Newberg on Class Actions*:

16 When the parties to an action reach a monetary settlement, they will
17 usually prepare and execute a joint Agreement of settlement, which
18 is submitted to the court for preliminary approval. The Agreement
19 should set forth the central terms of the agreement, including but
20 not limited to, the amount of settlement, form of payment, manner
21 of determining the effective date of settlement and any recapture
22 clause.

23 *Id.* § 11.24.

24 Here, the Parties have reached such an agreement and have submitted to this Court in
25 connection with this Motion a copy of the Agreement fully setting forth the agreement reached by
26 the Parties. The Agreement sets forth all terms of the agreement reached by the Parties as to
27 settlement of the class and PAGA claims. Said terms in the Agreement include, among other
28 things, the method for calculating the Class Members’ individual portions of the settlement
29 payment.

30 The parties also may, at the preliminary approval stage, request that the court
31 provisionally approve certification of the class for settlement purposes – conditional upon final

1 approval of the settlement. “[P]re-certification settlements are routinely approved if found to be
2 fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); *accord*
3 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (although the settlement was
4 reached before any “adversary certification,” the court was satisfied that it was “fair, adequate
5 and reasonable”); *In re Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many
6 courts have employed this practice in the name of judicial efficiency in order to facilitate
7 apparently beneficial settlement proposals”). As further explained by Professor Newberg:

8 The strength of the findings made by a judge at a preliminary
9 hearing or conference concerning a tentative settlement
10 proposal...may be set out in conditional orders granting tentative
11 approval to the various items submitted to the court. Three basic
12 rulings are often conditionally entered at this preliminary hearing.
These conditional rulings may approve a temporary settlement
class, the proposed settlement, and the class counsel’s application
for fees and expenses.

13 *4 Newberg on Class Actions* § 11.26.

14 In addition to such terms as class identification, settlement amount, and payment
15 procedures, the Agreement reached by the Parties contains a provision pursuant to which the
16 Parties stipulate to the Court’s provisional certification of the Class for the purposes of this
17 settlement only. *See* Agreement ¶ I(4).

18 **A. Proposed Class Definition**

19 The current settlement is being settled on behalf of the following classes:

- 20 (a) All of Defendant’s current and former non-exempt employees in the state of
21 California who were paid sick pay in the same workweek in which they earned any
22 nondiscretionary remuneration, including without limitation, shift differentials and
shift premiums during the Class Period [from May 25, 2018 through June 22,
23 2023] (the “Sick Pay Class”).
- 24 (b) All of Defendant’s current and former non-exempt employees in the State of
25 California who were paid any meal period premium payments in the same
workweek in which they earned any non-discretionary remuneration, including
26 without limitation, shift differentials and shift premiums, covering the same period
that meal period premiums were paid, during the Class Period (the “Meal Period
27 Premium Class”).
- 28 (c) All of Defendant’s current and former non-exempt employees in the State of
California who were paid any rest period premium payments in the same
workweek in which they earned any non-discretionary remuneration, including
without limitation, shift differentials and shift premiums, covering the same period
that rest period premiums were paid, during the Class Period (the “Rest Period

Premium Class”).

See Agreement ¶ I(2). Pursuant to the Agreement, Defendant has represented that there are approximately 341 individuals that comprise the Class. Hyun Decl. ¶ 9.

B. Settlement Terms and Evaluation

Courts presume the absence of fraud or collusion in the negotiation of settlement unless evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980).) Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n*, 79 F.R.D. 571 (E.D. Pa. 1978).

While the recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly where, as here, they have been involved in informal discovery and negotiations for some period of time, appear to be competent, have experience with this type of litigation, and have exchanged substantial evidence from the opposing party. See *Newberg on Class Actions*, *supra* § 11.47; *Nat’l Rural Telecomms. Coop.*, 221 F.R.D. at p. 528 (“[s]o long as the integrity of the arm’s length negotiation process is preserved, however, a strong initial presumption of fairness attaches to the proposed settlement...[citations] and ‘great weight’ is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation”).

Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage and hour class action litigation. Plaintiff’s counsel has been approved as class counsel in a number of wage and hour class actions and has extensive litigation experience. Declaration of William L. Marder (“Marder Decl.”) ¶¶ 8-14; Hyun Decl. ¶¶ 3-6. Each side has apprised the other of their respective factual contentions, legal theories and defenses, resulting in negotiations taking

place between the Parties. Hyun Decl. ¶ 10.

Based on the class data provided by Defendant, Plaintiff estimated that Defendant would face potential liability of up to approximately \$2.27 million for Plaintiff's sick pay and meal and rest period premium, and derivative penalties if Plaintiff succeeded at trial. Hyun Decl. ¶ *.

Plaintiff was able to estimate the potential damages as follows.

Plaintiff estimated Defendant's maximum exposure as follows:

Claim	Estimated Exposure	Calculations/Formula
Sick Pay	\$28,539.78	Approximately \$83.69 per class member x 341 class members at the time the mediation data was pulled
Meal and Rest Period	\$28,539.78	Approximately \$83.69 per class member x 341 class members at the time the mediation data was pulled
Labor Code § 226	\$884,150.00	341 Employees and 9,012 pay periods
Labor Code § 203	\$998,049.60	162 Former Employees at \$25.67 average hourly rate x 30 days x 8 hours
PAGA	\$333,000.00	\$100 per pay period
Total Estimated Maximum Exposure	\$2,272,279.16	

Hyun Decl. ¶ 11.

The estimated exposure above likely significantly overestimates the potential liability in this action for a number of reasons. For example, on Plaintiff's meal and rest period premium claims, Defendant would likely argue that even if the premium wages were incorrectly calculated, Plaintiff would still have to prove an underlying violation. Further, Defendant argued that its obligation was only to make breaks available to employees—not to police them. *See Brinker Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537 (2012) ("On the other hand, the employer is not obligated to police meal breaks and ensure no work thereafter is performed."). Defendant would have also likely argued that there is no private right of pay for sick pay wages. While Plaintiff disagrees with these arguments, Defendant may have relied on said arguments to defeat Plaintiff's claims, or at the very least, argue that Defendant did not act knowingly, or willfully to support Labor Code penalties. Accordingly, the bulk of the damages associated with this claim likely would be in the form of waiting time penalties and wage

1 statement penalties, which are discussed further below. Hyun Decl. ¶ 12.

2 Even had Plaintiff ultimately prevailed on the merits, given the novelty of the legal
3 questions it raised, Defendant may have sought immediate appellate review through a writ or
4 appeal. Thus, the maximum exposure estimated on this claim was discounted for purposes of
5 analyzing a reasonable settlement value. Hyun Decl. ¶ 13.

6 Finally, with respect to potential liability of Plaintiff's PAGA claim, Plaintiff estimated
7 that Defendant could face civil penalties of up to a maximum \$333,000 if Plaintiff were
8 successful at trial. Hyun Decl. ¶ 14. However, even assuming Plaintiff ultimately prevails on her
9 PAGA claims, the Court still has discretion to reduce any PAGA penalties. Pursuant to Labor
10 Code § 2699(e)(2), the Court can decline to award PAGA penalties where "if, based on the facts
11 and circumstances of the particular case, to do otherwise, would result in an award that is unjust,
12 arbitrary and oppressive, or confiscatory." Indeed, as shown in the Court of Appeal's decision in
13 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his
14 PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%,
15 citing the employer's good faith attempt at complying with the law. *Id.* at p. 517. Upon review,
16 the Court of Appeal found such reduction to be proper. *Id.* at p. 539.

17 Although Plaintiff believes in the merits of the alleged claims and maintains that there is
18 no reason for reducing PAGA penalties, Plaintiff is aware that Defendant may raise defenses to
19 the claims and further with respect to the reduction of PAGA penalties and that it could be
20 persuasive to the Court. Hyun Decl. ¶¶ 12-14. Thus, even if Plaintiff were to successfully prove
21 her claims at trial, there is a possibility that the Court may only award a small percentage of
22 PAGA penalties, as the Court has discretion to do so. The Gross Settlement Amount was
23 premised with this risk in mind, associated with the possibility of the Court significantly reducing
24 Plaintiff's PAGA penalties, along with other attendant risks, even if Plaintiff was to prevail at
25 trial. *Id.*

26 Thus, the settlement for each Class Member is fair, reasonable, and adequate, given the
27 inherent risks of litigation, including the substantial risks relative to class certification and the
28 merits of the claims, the costs of pursuing such litigation, and the risks associated with the

1 Court's discretion to reduce PAGA penalties. The settlement is the result of extensive arm's-
2 length negotiations between the Parties and their counsel and was facilitated by an experienced
3 and neutral mediator.

4 Although Plaintiff believes that the class can be certified, Plaintiff also believes in the
5 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
6 involved in not prevailing on one or more of the causes of action or theories alleged in the
7 operative Complaint, the possibility of non-certification, and the potential for appeals. Hyun Decl.
8 ¶ 10. These risks on class certification are compounded by the California Supreme Court's
9 holding in *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained
10 class certification and subsequently prevailed at trial after eight years of litigation, but the
11 judgment and the certification ruling were reversed by the California Supreme Court after an
12 additional five years of litigation. The case was remanded back to superior court where class
13 certification was denied and plaintiffs' subsequent appeal also was denied.

14 Indeed, numerous courts have held that **gross** settlements approximating between only 8
15 and 25% of the defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego Fin.*
16 *Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement
17 recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a cash
18 settlement amounting to only a fraction of the potential recovery does not per se render the
19 settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be
20 assessed relative to risks of pursuing the litigation to judgment"; noting that whether the
21 settlement is fair and adequate depends on the "the difficulties in proving the case");
22 *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at p.*6 (N.D.
23 Cal. Mar. 20, 2015) (holding that class action settlement recovering between **8.5% and 25%** of
24 the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct.
25 Case No. 8:12-cv-02161 (C.D. Cal. 2014) (granting preliminary approval of wage and hour class
26 settlement which obtained **only 9.1%** of projected damages, given the risks of continued
27 litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL
28 5878390, at p.*6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of

1 approximately 15% of the potential recovery was fair and reasonable).

2 Here, the total amount of class and PAGA penalties amount to approximately \$2.27
3 million, without discounting for potentially losing on any of the causes of action. Hyun Decl. ¶
4 11. The Gross Settlement Amount is \$195,000.00, which is approximately **8.6%** of the maximum
5 class and PAGA penalties. *Id.* Thus, the settlement was negotiated at arm's-length and the high
6 settlement percentage-to-recovery further supports that the settlement is fair and reasonable.

7 Despite the asserted fairness of the settlement terms, as set forth in the Class Notice,
8 should any Class Member wish to pursue his or her own case for the claims being released herein,
9 each Class Member has the right to submit a Request for Exclusion (*i.e.*, opt-out) from the
10 settlement. *See* Class Notice attached as **Exhibit A** to Agreement. Moreover, as set forth in the
11 Class Notice, Class Members are advised of their right to object to any of the terms contained in
12 the Agreement and attend the final approval hearing. *Id.*

13 **1. Amount and Manner of Distribution of the Compensation to be**
14 **Provided to Class Members Including the Amount, or an Estimate, of**
15 **What Each Class Member Will Receive**

16 The Agreement provides for \$195,000.00 as the Gross Settlement Amount. *See*
17 Agreement ¶ 1.22. The Net Settlement Amount, calculated after deduction of attorneys' fees (up
18 to \$65,000.00), litigation costs (up to \$30,000.00), the service award to the Class Representative
19 (up to \$10,000.00), payment of PAGA penalties to the LWDA (\$14,625.00) and Aggrieved
20 Employees (\$4,875.00), and Administrative Costs (up to \$8,250.00), is estimated to be
21 approximately **\$62,250.00**. *Id.* ¶ I(29).

22 Based thereon, on a raw average, each Class Member may potentially recover
23 approximately \$182.55 (\$62,250.00 / 341 class members). Hyun Decl. ¶ 9. The amount actually
24 paid to each Class Member may increase or decrease depending on the actual number of
25 workweeks worked by each Class Member during the Class Period. *Id.*

26 The Agreement also provides for (\$4,875.00) to be distributed to Aggrieved Employees in
27 settlement of their claims for civil penalties under PAGA. *Id.* ¶ I(25). Aggrieved Employees are
28 defined as "individuals who fall within any of the three [class] definitions above during the

1 PAGA Period, *i.e.* April 7, 2021, through June 22, 2023.” *Id.* ¶ I(3).

2 Finally, the terms of the settlement provide that uncashed checks (upon the expiration
3 date) shall be distributed to the California State Controller to be held in the name of the class
4 member. *See* Agreement ¶ II(11)(d).

5 **2. Whether, and Under What Circumstances, Amounts Available for**
6 **Payment in Settlement Might Not Be Paid to Class Members or Might**
7 **Revert to the Defendants**

8 This settlement is non-reversionary, meaning that none of the settlement funds will revert
9 to Defendant.

10 **3. Scope of the Release of Class Members’ Claims**

11 As a condition of participating in this settlement, Eligible Class Members who do not opt
12 out of the Settlement will release the following claims (“Released Claims”) upon the Effective
13 Date and Defendant’s funding of the Gross Settlement Amount:

14 The term “Released Claims,” as applied to releases by Eligible
15 Class Members, shall mean any and all claims, demands, liabilities,
16 damages, attorneys’ fees, costs, and penalties against Released
17 Parties, relating to any and all facts and claims asserted in the
18 Action or any other claims that could have been asserted in the
19 Action based on the facts alleged, including but not limited to
20 claims arising from alleged unpaid sick pay wages; meal and rest
21 period violations during employment; wage statement violations
22 based on unpaid sick pay wages, meal and rest period violations;
23 timely pay wages based on unpaid sick pay wages, meal and rest
24 period violations upon separation of employment.

25 *See* Agreement ¶¶ I(38), II(9).

26 Regardless of whether they opt out of the class portion of the settlement, Class Members
27 who are also Aggrieved Employees will release the following PAGA claims:

28 Plaintiff, on behalf of the State of California and Aggrieved Employees shall
release any and all PAGA penalties based on unpaid sick pay wages, meal and rest
period violations during the PAGA Period. Regardless of whether Class Members
opt-out of the Class Settlement, Aggrieved Employees and the State of California
shall release all PAGA claims as alleged on behalf of all Aggrieved Employees, as
detailed herein.

Agreement ¶¶ I(38), II(9). Given that the releases are tailored to only claims pled in the operative
Complaint, the releases are appropriately limited.

1 **4. Tax Treatment of Settlement Amounts**

2 10% of the Net Settlement Amount shall be allocated to Form W-2 wages, 45% of the Net
3 Settlement Amount shall be allocated to interest subject to Form 1099 report, and 45% of the Net
4 Settlement Amount be allocated to penalties (including the LWDA Fund Remainder) and other
5 non-wages subject to Form 1099 reporting. Agreement ¶ II(11). These allocations shall apply to
6 each of the Eligible Class Member Shares. *Id.*

7 **5. Affirmative Obligations to be Undertaken by Class Members or Class**
8 **Counsel and the Reasons for Any Such Obligations**

9 As stated above, Class Members do **not** need to do anything should they wish to receive
10 their share of the settlement funds. In other words, because this is not a claims-made settlement,
11 Class Members will not be required to make a submission to participate in the settlement. No
12 claim forms are required. Thus, this substantially decreases the amount of burden each Class
13 Member must bear in order to receive their share of the settlement funds.

14 If a Class Member does not wish to take part in this settlement or be bound by the
15 Released Claims, the Class Member must submit a Request for Exclusion. *See* Agreement ¶ II(6).

16 **C. Notice to Class Members**

17 Within thirty (30) days of Defendant’s receipt of notice of entry of Preliminary Approval,
18 Defendant shall cause to be delivered as confidential and privileged information by email or
19 otherwise to the Settlement Administrator a list of the Class Members that includes their names,
20 last known address(es), full social security numbers, and dates of employment with Defendant in
21 a Class Position during the Class Period. *See* Agreement ¶ II(4).

22 Within ten (10) days after delivery of the information described in Section II.4 above, the
23 Settlement Administrator will mail a Class Notice to each Class Member via United States Mail,
24 first class, postage pre-paid to each Class Member’s last-known address. *See* Agreement ¶ II(5).
25 If any mailed Notices are returned as undeliverable, then the Settlement Administrator shall have
26 forty-five (45) days from receipt of notice that a Notice was undeliverable to perform one “skip
27 trace” or similar search and to re-mail the same Notice (or a true and correct copy thereof) to any
28 new addresses disclosed by such search via first-class regular U.S. Mail indicating on the Notice

1 the date it was re-mailed, and including written notice that a Class Member has fifteen (15) days
2 to respond to a re-mailed Notice via either Objection or Opt-Out Request. *Id.*

3 The Class Notice will advise Class Members of what the litigation is about, their rights
4 under the settlement, the total settlement amount and other terms of the settlement, their expected
5 settlement payment share, their opportunity to and procedures to opt out or to object to the
6 settlement, and the release of claims. *See* Notice of Settlement. As set forth in the Notice of
7 Settlement, Class Members will be allowed to opt out of or object to the settlement by a certain
8 deadline, which is 45 calendar days after the initial mailing of the Notice of Settlement. *See*
9 Agreement ¶ II(6). With respect to objections, Class Members are also informed in the Class
10 Notice that they may object in writing or appear at the final approval hearing to present their
11 objections to the Court. *Id.* ¶ II(6)(b); *see* Class Notice ¶ 7.

12 If Class Members need further information about the settlement and/or the lawsuit, Class
13 Counsel's contact information is provided in the Class Notice. *See* Class Notice, at p 7. Class
14 Members are also provided with the URL to the Court's website. *Id.*

15 **D. Typicality and Adequacy of Representation**

16 **1. Class Representative's Claims are Typical of the Class**

17 The commonality requirement is met when there are questions of law and fact common to
18 the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) ("The existence of shared
19 legal issues with divergent legal factual predicates is sufficient, as is a common core of salient
20 facts couple with disparate legal remedies within the class"). Commonality requires only that
21 some common legal or factual questions exist; the plaintiffs need not show that all issues in the
22 litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981).
23 Defendant's conduct is central to the commonality inquiry. *See City of San Jose v. Superior*
24 *Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971).
25 Where the employer's conduct is uniformly directed at a class of employees, as Plaintiff alleges
26 here, the class-wide impact of the Defendant's policies satisfies the commonality requirement.
27 *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

28 In the present case, Plaintiff alleges that Defendant is liable to the Class for failure to pay

1 sick pay and meal and rest period premium wages based on the regular rate of pay. Plaintiff
2 alleges that she was subjected to these same policies and practices. Declaration of Joy Nava
3 (“Nava Decl.”) ¶ 2.

4 Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such
5 issues been raised or presented. *Id.* ¶ 3. Plaintiff has taken all necessary steps to represent the
6 interests of the Class, including by providing information and documents to Plaintiff’s counsel.
7 *Id.* For such reasons, Plaintiff has adequately represented the Class Members and will continue to
8 do so.

9 2. Class Counsel Has Adequately Represented the Class and Has 10 Experience with Wage and Hour Class Action

11 From the inception of the case, Class Counsel has zealously represented the interests of
12 the Class. Hyun Decl. ¶ 8. The settlement was obtained for the benefit of the Class, as opposed to
13 the individual Class Representative. Further, Class Counsel has been approved as class counsel on
14 a number of prior cases, have litigated numerous other class action cases, and are competent to
15 represent the Class. Marder Decl. ¶¶ 8-14; Hyun Decl. ¶¶ 3-6.

16 E. Costs and Fees

17 1. Attorneys’ Fees and Costs

18 California state and federal courts have recognized that an appropriate method for
19 determining award of attorneys’ fees is based on a percentage of the total value of benefits to
20 class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254
21 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478
22 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this
23 equitable doctrine is to avoid unjust enrichment of counsel and to “spread litigation costs
24 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
25 burden alone.” *Vincent*, 557 F.2d at p. 769.

26 The common fund doctrine is predicated on the principle of preventing unjust enrichment.
27 When a litigant’s efforts create or preserve a fund from which others derive benefits, she may
28 require the passive beneficiaries to compensate those who created the fund. Both California state

1 and federal courts have embraced this doctrine. *Serrano III*, 20 Cal.3d at p. 35; *Vincent*, 557 F.2d
2 at p. 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995),
3 the California Supreme Court recognized that the common fund doctrine has been applied
4 “consistently in California when an action brought by one party creates a fund in which other
5 persons are entitled to share.” The reasons for applying the common fund doctrine include:

6 Fairness to the successful litigant, who might otherwise receive no
7 benefit because his recovery might be consumed by the expenses;
8 correlative prevention of an unfair advantage to the others who are
9 entitled to share in the fund and who should bear their share of the
10 burden of its recovery; encouragement of the attorney for the
11 successful litigant who will be more willing to undertake and
12 diligently prosecute proper litigation for the protection or recovery
13 of the fund if he is assured that he will be properly and directly
14 compensated should his efforts be successful.

15 *Id.*

16 Indeed, in 2016, the California Supreme Court has also now held that the award of
17 attorneys’ fees in common fund wage and hour class action settlements should start with the
18 percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the
19 overwhelming majority of federal and state courts in holding that when class action litigation
20 establishes a monetary fund for the benefit of the class members, and the trial court in its
21 equitable powers awards class counsel a fee out of that fund, the court may determine the amount
22 of a reasonable fee by choosing an appropriate percentage of the fund created”).

23 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent
24 of the fund. *Laffitte*, 1 Cal. 5th at p. 506. And this was based on a lodestar amount that required a
25 multiplier of 2.13. *Id.* at p. 487. As the Court held, only when the multiplier is “extraordinarily
26 high or low [should] the trial court [] consider whether the percentage method should be adjusted
27 so as to bring the imputed multiplier within a justifiable range.” *Id.* at p. 505.)

28 The Parties have agreed to a payment of a maximum of one-third of the Gross Settlement
Amount, or \$65,000.00, for payment to Class Counsel as attorneys’ fees. *See* Agreement ¶ I(6).
The Parties have agreed to a payment of the foregoing attorneys’ fees and, thus, this payment
should be presumed to be fair. Further, the Parties have agreed to reimbursement of Class

1 Counsel's litigation costs up to \$30,000.00. *Id.* Class Counsel has, at its own risk, expended costs,
2 for example, to file this instant action and other pleadings in the case, effect service of process,
3 participate in mediation, and advance other litigation-related costs. If Class Counsel's actual costs
4 total less than \$30,000.00, the remainder will go to the Class for distribution. Based on the
5 foregoing, the Court should preliminarily approve the attorney's fees and costs as requested by
6 the Parties.

7 **2. Proposed Payment to the Class Representative**

8 Plaintiff requests a modest enhancement of \$10,000.00. *See* Agreement ¶ I(28). The Class
9 Representative met and conferred with her counsel on a number of occasions to discuss the case,
10 provided documents and information to her counsel, and reviewed pleadings and documents,
11 including the Agreement. Nava Decl. ¶ 3. As part of her duties as the Class Representative,
12 Plaintiff provided invaluable information, evidence, and documents that resulted in this
13 settlement. Furthermore, in consideration for her service payment, Plaintiff also executed an
14 individual general release of all claims under California Civil Code § 1542, which other members
15 of the Class did not have to do. *See* Agreement ¶ I(38)(k).

16 In addition to the invaluable services that she provided, Plaintiff also took a significant
17 risk, both professionally and monetarily, in acting as the Class Representative and seeking
18 benefits on behalf of the Class. Because the claims alleged by the Class Representative involved
19 the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs
20 of Defendant, had she not prevailed in this action.

21 Furthermore, given that future employers are much less likely to hire individuals who
22 have filed suit against their prior employer, particularly cases of this nature, Plaintiff may face
23 prejudice in the future from other potential employers. Plaintiff took this risk upon herself and the
24 whole Class benefited from these risks taken by Plaintiff. Class Members did not have to file
25 individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they
26 have to face the potential for retaliation and not getting future employment had they filed a public
27 lawsuit.

1 **3. Settlement Administration Fees**

2 The Parties have agreed to an estimated payment of no more than \$8,250.00 to the
3 Settlement Administrator, ILYM Group, Inc., to send notices and to administer this settlement.
4 See Agreement ¶¶ I(42), (43). ILYM Group, Inc. is a well-recognized class action settlement
5 administrator. The Parties believe that the administration fee is reasonable and should be
6 approved.

7 **III. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR**
8 **PRELIMINARY APPROVAL**

9 The settlement presented here is fair, adequate, and reasonable. The settlement will result
10 in both substantial monetary benefits to Class Members; it is non-collusive; and it was achieved
11 as the result of informed, extensive, and arm's-length negotiations conducted by counsel for the
12 respective Parties who are experienced in wage and hour class action litigation and facilitated by
13 an experienced and neutral mediator.

14 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
15 approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of
16 the proposed Notice of Settlement, and set a date for a final approval hearing.

17 DATED: February 20, 2024

POLARIS LAW GROUP

19 By: William L. Marder
20 William L. Marder
21 Attorneys for PLAINTIFF and the CLASS