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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

VANESSA R. TORRES, on behalf of herself and all others similarly situated, Plaintiffs, v. EMPOWER SOLAR, INC., a California Corporation; and DOES 1-50, inclusive. Defendants.	CASE NO.: CVRI2201894 *Assigned to Hon. Harold W. Hopp* **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA SETTLEMENT** <u>Hearing Information:</u> Date: February 2, 2026 Time: 8:30 a.m. Dept.: 1

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on February 2, 2026, at 8:30 a.m., or as soon thereafter as the matter may be heard by the Honorable Harold W. Hopp in Department 1 of the Riverside County Superior Court, located at 4050 Main Street, Riverside, CA 92501, Plaintiffs Vanessa R. Torres and Francisco Moreno, individually and on behalf of all others similarly situated, will and hereby does move this Court for:

- Granting preliminary approval of the proposed class action settlement reached and described herein and in the Declarations of Mehrdad Bokhour and Joshua Falakassa in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, including the means of allocation and distribution of the Gross Settlement Amount and the Net Settlement Amount, and the allocations for the Class Counsel attorneys' fees and costs, Class Representatives Service Award, PAGA Penalties, and Settlement Administration Costs;
- Certifying the proposed Class for settlement purposes only;
- Preliminarily appointing Plaintiffs Vanessa R. Torres and Francisco Moreno as Class Representatives;
- Preliminarily appointing Mehrdad Bokhour of Bokhour Law Group, P.C., and Joshua Falakassa of Falakassa Law, P.C. as Class Counsel;
- Approving the Notice of Proposed Settlement of Class Action ("Class Notice") described herein and in the Declaration Mehrdad Bokhour;
- Appointing ILYM Group, Inc. ("ILYM") as the Settlement Administrator to handle the notice and administration process for the Settlement and preliminarily approving Settlement Administration Costs;
- Directing ILYM to mail the Class Notice to the proposed Class;
- Approving the proposed deadlines for the notice and administration process as reflected herein and in the Settlement Agreement; and
- Scheduling a hearing to consider final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Class Counsel attorneys' fees and costs, Class Representatives Service Payment, and Settlement Administration

Costs.

This motion is based upon this accompanying memorandum of points and authorities; the settlement agreement; the Declarations of Mehrdad Bokhour and Joshua Falakassa, the Declarations of Vanessa R. Torres and Francisco Moreno, and the Declaration of Lisa Mullins of ILYM Group, Inc., in support thereof, as well as the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Given the multiplicity of issues addressed in this Motion, Plaintiffs respectfully request that the Court consider Plaintiffs' entire memorandum of points and authorities.

Dated: January 8, 2026

BOKHOUR LAW GROUP, P.C.
FALAKASSA LAW, P.C.

By: ______________________________
Mehrdad Bokhour
Joshua Falakassa
Attorneys for Plaintiffs and the Putative Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Vanessa R. Torres and Francisco Moreno ("Plaintiffs") respectfully requests that this Court grant preliminary approval of the Class Action and PAGA Settlement Agreement (also referred to as "Agreement," or "Settlement Agreement") entered into by and between Plaintiffs, individually and on behalf of the proposed Class, and Defendant Empower Solar, Inc. ("Defendant").

Subject to Court approval, Plaintiffs and Defendant have agreed to settle this lawsuit for a Gross Settlement Amount of $600,000 on a non-reversionary basis.[1] The Gross Settlement Amount includes all amounts to be paid by Defendant in connection with the Settlement, including any employer-side payroll taxes attributable to the wage portion of the Individual Settlement Payments. The employer side payroll taxes shall be calculated by the Settlement Administrator following the Effective Date based on the actual wage allocation and shall be funded by Defendant in accordance with the Settlement Agreement. No portion of the Gross Settlement Amount shall revert to Defendant. [Settlement Agreement ¶ 57 *et seq*.].

The Parties reached the Settlement after engaging in extensive informal discovery, investigation, and arm's-length negotiations at multiple mediations. Additionally, the contemplated Class Notice provides the best notice practicable under the circumstances and will allow each Class Member a full and fair opportunity to evaluate the Settlement and decide whether to participate in it. Accordingly, Plaintiffs move the Court to grant preliminary approval of the Settlement and the allocations for the Class Counsel Attorneys' Fees and Costs, Service Payments to Class Representatives, and Settlement Administration Costs; certify the proposed Class for settlement purposes; direct distribution of the Class Notice; and set a Final Approval Hearing date.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

A. Procedural History

This Settlement settles the following Action filed on or about May 11, 2022, entitled *Torres et*

[1] The Class Action and PAGA Settlement Agreement ("Agreement" or Settlement Agreement") is attached to the Declaration of Mehrdad Bokhour as Exhibit A. The proposed Class Notice is attached as Exhibit A to the Settlement Agreement.

al. v. Empower Solar, Inc., filed in the Riverside County Superior Court and assigned case number CVRI2201894. [Bokhour Decl., ¶ 3.] Plaintiffs asserted claims for (1) failure to pay overtime wages, (2) failure to pay sick time wages, (3) meal period violations, (4) rest period violations, (5) failure to reimburse necessary business expenses, (6) wage statement violations, (7) waiting time penalties, and (8) unfair competition. [Bokhour Decl., ¶ 3.]

On or about July 31, 2024, Plaintiff filed a First Amended Complaint ("FAC") to add Francisco Moreno as an additional class representative and a cause of action for PAGA penalties based on the foregoing Labor Code violations. [Bokhour Decl., ¶ 4.]

B. Plaintiffs' Claims and Defendant's Defenses

Plaintiffs' core allegations are that Defendant violated the California Labor Code, *inter alia*, by failing to properly pay overtime and sick pay wages, failing to provide compliant meal and rest periods or pay associated premiums, failing to provide compliant wage statements, failing to adequately reimburse incurred business expenses, including the for the use of personal cell phones, failing to timely pay final wages upon separation of employment. [Bokhour Decl., ¶ 5.] Plaintiffs contend that Defendant's conduct constitutes unfair business practices and gives rise to penalties under PAGA. *Id.*

Defendant denies any liability of any kind associated with the claims and allegations and further denies that Plaintiffs or the Class Members are entitled to any relief. [Bokhour Decl., ¶ 6.] Defendant also denies that the Action is appropriate for class or representative treatment for any purpose other than the Settlement. *Id*. Defendant maintains, among other things, that it has complied with California laws in all respects. *Id*.

C. Discovery and Mediation

Prior to reaching the Settlement, the Parties exchanged substantial information, including payroll and timekeeping data, written policies, and other employment records, and participated in multiple arm's length mediations with experienced wage and hour mediators. The Settlement was reached after continued negotiations informed by this discovery and the Parties' assessment of the risks, costs, and uncertainties of continued litigation.

III. SUMMARY OF THE SETTLEMENT TERMS

A. The Class for Settlement Purposes

For settlement purposes only, the parties agree to certification of the following Class (individually referred to as "Class Members"): all persons who are or were previously employed by Defendant in California and classified as a non-exempt employee during May 11, 2018, through September 24, 2025 (the "Class Period").

The PAGA Employees means all persons who are or were previously employed by Defendant in California and classified as a non-exempt or hourly employee at any time from May 10, 2021, through September 24, 2025 (i.e., the "PAGA Period") [Settlement Agreement ¶¶ 8, 11, 31]. There are approximately 882 class members and 819 aggrieved employees.

B. Essential Terms of the Settlement

Defendant will pay a Gross Settlement Amount of $600,000 on a non-reversionary basis to settle this action. The Net Settlement Amount is the amount remaining after deducting the following from the Gross Settlement Amount: (1) Attorneys' Fees of up to one-third of the Gross Settlement Amount (i.e., $200,000) and the Class Counsel Litigation Costs of up to Forty Thousand Dollars ($40,000) to Class Counsel; (2) the Class Representatives Service Award of up to Twelve Thousand Five Hundred Dollars ($12,500) to each Plaintiff; (3) the PAGA Award[2] in the amount of Twenty Thousand Dollars ($20,000); and (4) Settlement Administration Costs, which are currently estimated not to exceed Seven Thousand Five Hundred Dollars ($10,000).

	Total Amount
Settlement Amount	$600,000
Attorneys' Fees (33.33%)	$200,000
Litigation Costs (not to exceed 40k)	$40,000
Administrator Costs	$11,000
PAGA Penalties to LWDA (75% of 20k allocation)	$15,000
PAGA Penalties to Aggrieved Employees	$5,000

[2] The Parties will seek approval from the Court for a PAGA Payment in the total amount of Twenty Thousand Dollars ($20,000) from the Gross Settlement Amount. Of this amount, Seventy Five Percent ($15,000) shall be allocated to the California Labor and Workforce Development Agency as its share of the civil penalties pursuant to the Private Attorneys General Act (the "LWDA Payment"), and Twenty Five Percent ($5,000) shall be included in the Net Settlement Amount for distribution to the PAGA Class Members in accordance with the Settlement Agreement.

Plaintiffs' Service Award	$25,000
Net Settlement Amount	**$304,000**

Assuming the allocations towards these payments are awarded in full, the Net Settlement Amount that will be available to be allocated to Class Members who do not submit timely and valid Requests for Exclusion ("Participating Class Member(s)") is currently estimated to be at least ($304,000). The entire Net Settlement Amount will be distributed to Participating Class Members and PAGA Class Members, pursuant to the Settlement Agreement, and no portion shall revert to Defendant.

C. <u>Calculation of Individual Settlement Shares</u>

The Settlement Administrator shall calculate each Class Member's estimated individual Settlement Share as follows:

<u>Individual Settlement Payment Calculation for Participating Class Members</u>

Participating Class Members will receive Individual Settlement Payments after the Court issues a Final Approval Order and the Settlement becomes final and binding with no possibility of an appeal or further appeal (i.e., the "Effective Date" of the Settlement is reached). The Settlement Administrator shall calculate each Participating Class Member's Individual Settlement Payment based on the number of workweeks worked by that Participating Class Member during the Class Period ("Work Weeks Worked"). The Settlement Administrator shall determine the value of each workweek by dividing the Net Settlement Amount by the total number of Work Weeks Worked by all Participating Class Members during the Class Period. Each Participating Class Member's Individual Settlement Payment shall be calculated by multiplying the Participating Class Member's total number of Work Weeks Worked by the workweek value.

<u>Payment Calculation for PAGA Employees</u>

All PAGA Employees will receive payments after the Effective Date as defined above. The Settlement Administrator will calculate the total number of pay periods each PAGA Employee worked during the PAGA Period ("Total PAGA Pay Periods"). The PAGA Period is from May 10, 2021, through September 24, 2025. The Settlement Administrator shall determine the value of each PAGA Pay Period by dividing the 25% of the PAGA Award allocated for PAGA Employees by the Total PAGA Pay Periods for all PAGA Employees ("PAGA Pay Period Value"). To determine each PAGA

Employee's payment for their prorated portion of the PAGA Distribution Fund, the Settlement Administrator will multiply the PAGA Employee's Total PAGA Pay Periods by the PAGA Pay Period value. A Class Member who is also a PAGA Employee will receive a payment under this section for their prorated portion of the PAGA Award, even if they opt out of the Class Settlement, and will be bound by the release of the PAGA claims released through this Settlement.

Based on data known at the time of settlement, the total number of pay periods/workweeks worked by Class Members during the Class Period is approximately 36,968. Thus, if the Net Distribution fund is $304,000 (assuming the Court awards the maximum amounts requested for Fees, Costs, the Service Award, and Settlement Administration), then the Class Pay Period Value would be approximately $8.38 work week period (i.e., $304,000 ÷ 36,968) subject to any adjustment necessary to account for updated figures through the end of the Class Period. A Participating Class Member who worked the average number of pay periods would then receive approximately **$351.47** (minus applicable withholdings for the wage portion of the payment). Based on the available data, the approximate range of Participating Class Member Individual Settlement Payments would be **$100** to **$3,000**. The average recovery per aggrieved employee is estimated at approximately $6.10 ($5,000 / 819 = $6.10).

Individual Settlement Payments shall be allocated twenty (20%) percent as wages and eighty (80%) percent as interest and penalties. [Settlement Agreement ¶ 57(e).] The wage portion will be reported on an IRS Form W-2, and the portions allocated to interest and penalties will be reported on an IRS Form 1099. The PAGA Employee payments will be allocated entirely as penalties and included on an IRS Form 1099 to each PAGA Class Member.

Based on the data available at the time of settlement, Class Members worked approximately 36,968 workweeks during the Class Period, which would result in an estimated average Individual Settlement Payment of approximately $351.47 assuming a Net Settlement Amount of $305,000, subject to adjustment based on final workweek totals.

D. Request for Exclusion and Objection Procedures

Class Members who wish to exclude themselves from the Settlement must mail a signed Request for Exclusion to the Settlement Administrator no later than forty-five (45) days after the

Settlement Administrator mails the Class Notice. To be valid, a Request for Exclusion must be timely submitted and must comply with the instructions set forth in the Class Notice. If a question arises regarding the authenticity of a signed Request for Exclusion, the Settlement Administrator shall have the authority to request additional proof of the Class Member's identity, provide notice of any deficiency, and afford the Class Member an opportunity to cure.

A Class Member who submits a valid and timely Request for Exclusion (a Non-Participating Class Member) shall not participate in, and shall not be bound by, the Settlement or the Judgment. Any Class Member who does not submit a valid and timely Request for Exclusion in the manner and by the deadline specified in the Class Notice shall automatically become a Participating Class Member and shall be bound by all terms and conditions of the Settlement and the Judgment, including the release of the Released Class Claims, regardless of whether the Class Member objects to the Settlement. Persons who submit a valid and timely Request for Exclusion shall not be permitted to object to the Settlement or to appear at the Final Approval Hearing to voice any objections.

All Participating Class Members who do not submit a valid and timely Request for Exclusion shall receive an Individual Settlement Payment without the need to submit a claim form and shall be bound by all terms of the Settlement, including, without limitation, the release of the Released Class Claims. PAGA Employees shall receive their respective share of the employee portion of the PAGA Payment regardless of whether they submit a valid and timely Request for Exclusion and shall be bound by the release of the Released PAGA Claims as set forth in the Settlement Agreement.

The Class Notice shall further provide that only Participating Class Members may object to the proposed Settlement. Any objection must be submitted in writing to the Settlement Administrator and postmarked no later than forty-five (45) days after the Settlement Administrator mails the Class Notice and must comply with the instructions set forth in the Class Notice. A Participating Class Member who does not timely submit a written objection in accordance with the Settlement Agreement and Class Notice shall be deemed to have waived any objection and shall be foreclosed from asserting any objection to the Settlement, whether by appeal or otherwise. Non-

Participating Class Members shall have no right to object to or otherwise be heard regarding the Settlement.

Finally, each Class Member shall have forty-five (45) days from the date the Class Notice is mailed to dispute the number of workweeks allocated to that Class Member during the Class Period. Any notice of dispute shall be submitted to the Settlement Administrator. In the event of a dispute, Defendant's employment, time, and payroll records shall be presumed accurate, and the Class Member asserting the dispute shall bear the burden of demonstrating the accuracy of the disputed information and shall be afforded an opportunity to submit supporting documentation. Any dispute regarding the number of workweeks shall be resolved by the Settlement Administrator, who may request additional information from Defendant's Counsel and or Class Counsel as necessary to resolve the dispute.

E. <u>Scope of the Release</u>

The Settlement provides for a release of claims that is limited to those arising out of the same factual predicate as the allegations asserted in the operative complaint and the PAGA notices submitted to the California Labor and Workforce Development Agency during the Class Period. Specifically, the Released Class Claims include all claims for wages, premiums, penalties, restitution, and other relief arising from the alleged failure to pay minimum and overtime wages, provide compliant meal and rest periods, issue accurate wage statements, reimburse necessary business expenses, timely pay all wages upon separation, and related claims under the California Labor Code and California's Unfair Competition Law, to the extent such claims arise from the facts alleged in the Action. [Settlement Agreement ¶ 3.]

As of the date the Judgment becomes final and Defendant has fully funded the Settlement, Plaintiffs and each Participating Class Member shall fully and finally release and discharge the Released Parties from the Released Class Claims for the period from May 11, 2018 through September 24, 2025. The release does not extend to claims unrelated to the factual allegations in the Action or to claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, or claims arising outside the Class Period. [Settlement Agreement ¶¶ 3, 8, 31.]"[3]

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT

California Rule of Court 3.769 requires court approval of a class action settlement and directs the Court to determine whether the proposed settlement is fair, reasonable, and adequate. In evaluating a proposed settlement, courts generally apply the standards articulated under Rule 23 of the Federal Rules of Civil Procedure. See *Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337; *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.

In assessing fairness, the Court considers factors including the strength of the plaintiffs' claims, the risks, costs, and delay of further litigation, the risk of maintaining class action status, the amount offered in settlement, the extent of discovery completed, and the experience and views of counsel. See *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801. Where, as here, a settlement is reached through arm's length negotiations with the assistance of an experienced mediator, it is entitled to an initial presumption of fairness. See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

V. ARGUMENT

A. The Settlement Should Be Preliminarily Approved

1. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides a fair and reasonable recovery for the Class despite disputed claims. Plaintiffs conducted an in-depth statistical analysis of underpaid wages and penalties due to Defendant's alleged unlawful timekeeping and pay policies/practices, potential meal and rest period violations, failure to reimburse all necessary business expenses, failure to pay wages at the correct rate of pay, wage statement penalties, waiting time penalties, and PAGA civil penalties. A summary of the results of Plaintiffs' exposure analysis is discussed below.

In addition, the Settlement reflects consideration of Defendant's current financial condition, which required Class Counsel to review and evaluate Defendant's financial information, including

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[3] "Released Party" means Defendant Empower Solar, Inc., together with its current and former owners, officers, employees, and directors.

the impact of recent legislative developments and tax changes that have adversely affected the solar industry, and which further supports the reasonableness of the Settlement amount in light of the risks of continued litigation and potential collectability concerns.

Failure to Pay Overtime/Sick Wages Due to Improper "Regular Rate of Pay":

As described above, Plaintiffs allege that Defendant failed to account for non-discretionary bonuses, commissions, and other incentive pay when calculating the "regular rate of pay" when paying overtime and sick time wages. Plaintiffs' analysis of Defendant's sampling of pay records revealed that any such underpayment of overtime wages was approximately $600,000. [Bokhour Decl. ¶ 11.]

However, in response, Defendant argued that it correctly calculated the "regular rate of pay," and the such discretionary payments were properly excluded from regular rate of pay calculations. Defendant also tried to argue that any underpayment was in good faith and *de minimums*. [Bokhour Decl. ¶ 12.]

Due to this and in light of Defendant's other defenses, Plaintiffs discounted this claim by 30%, resulting in **$420,000** in damages. [Bokhour Decl., ¶ 13.]

Meal Period Violations:

Plaintiffs further allege that Defendant failed to provide Plaintiffs and other Class Members with all first meal periods of at least thirty (30) minutes prior to the fifth hour of work, and second meal periods of at least thirty (30) minutes before the tenth (10^{th}) hour of their shift. [Bokhour Decl., ¶ 13.] Plaintiffs further allege that Defendant failed to adopt a policy/procedure of paying meal period premiums at the "regular rate of pay" for missed/non-compliant meal periods. Defendant's payroll records demonstrate that Class members were consistently unable to take second meal periods at all for shifts in excess of 10 hours. *Id*.

Plaintiffs' analysis of the data demonstrates 77,324 unique meal period violations comprising a 75% violation rate based on the payroll data analyzed. Plaintiffs calculate $867,420 in unpaid meal period premiums (77,324 non-compliant meal periods x $19.57 meal period premium). *Id*. As such, the total damages for meal period violations are estimated at $867,420. *Id*.

However, Defendant claims that it maintained legally compliant meal period policies throughout the Class Period, such that it allowed non-exempt employees to take compliant and timely meal periods. *Id*. Defendant further claimed that all or most of the hourly employees had signed second meal period waivers and/or otherwise voluntarily waived a second unpaid meal period that was made available by the company so they could go home sooner rather than taking a second 30-minute unpaid meal break. As such, Defendant contended that there were no violations for all of the shifts between 10.0 and 12.0 hours. Defendant also contends that this claim would not be certified due to the lack of any common evidence tying together the reason that Class Members experienced an alleged meal period violation. *Id*. Lastly, Defendant asserts that the presence of these affirmative defenses as to the voluntariness of a particular meal period decision would preclude class certification. *Id.*; *see Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 25.

In light of these defenses and arguments, Plaintiffs discounted Defendant's maximum exposure by 50% for the risk of non-certification, and an additional 50% to account for Defendant's defenses on the merits, to arrive at an estimated total of **$216,855**. *Id*.

Rest Period Violations:

Plaintiffs allege that Defendant failed to authorize and permit all legally compliant rest periods throughout the Class Period. [Bokhour Decl., ¶ 15.] More specifically, Plaintiffs alleged that Defendant's rest period policy required Class members to remain on the company premises during rest periods. *Id*. Plaintiffs' analysis of Defendant's data demonstrates there were approximately 105,000 rest period eligible shifts. *Id*. For this claim, Plaintiffs assumed a 33% violation rate and calculated Defendant's maximum exposure on this claim at $678,100 (34,650 non-compliant rest periods x $19.57 rest period premium). *Id*.

However, Defendant denies Plaintiffs rest period allegations and asserts that they maintained compliant rest period policies and practices throughout the Class Period and authorized and permitted all rest periods to Class Members. [Bokhour Decl., ¶ 16.] In addition, Defendant argued that, in practice, Class Members were allowed to be free and did, in fact, leave the premises during rest periods. Further, Defendant contends that this claim is not amenable to class treatment because individualized inquiries would be required to determine which employees failed to take rest periods, and the reasons why each employee failed to take a rest period on a particular shift. *Id*.

As such, Plaintiffs discounted Defendant's maximum exposure by 50% to account for the risk of non-certification, and an additional 50% to account for Defendant's defenses on the merits, to arrive at an estimated exposure of approximately **$169,525**. *Id*.

Wage Statement Violations:

Plaintiffs contend that, because of the foregoing Labor Code violations, Defendant issued inaccurate wage statements in violation of Labor Code section 226(a). [Bokhour Decl., ¶ 17.] More specifically, Plaintiffs alleged that the wage statements issued uniformly failed to reflect all net wages earned, gross wages earned, the appropriate overtime rate, and the appropriate rate of premium pay for non-compliant meal and rest periods. *Id*. Further, the wage statements issued by Defendant failed to indicate the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. *Id*.

Plaintiffs' data analysis reveals there were approximately 15,000 wage statements issued during the one-year liability period. *Id*. Therefore, Plaintiffs calculate Defendant's maximum exposure for this claim at $750,000. *Id.*

Based on Defendant's arguments that: (i) no violations occurred; (ii) any alleged violations were not "knowing and intentional" as required by Labor Code § 226(e); (iii) no actual injury was suffered; and (iv) that its wage statements always accurately reflected hours worked and amounts paid to employees, *see Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308 (agreeing with employer's "commonsense position that the pay stubs were accurate in that they correctly reflected the hours worked and the pay received), Plaintiffs discounted Defendant's calculated maximum exposure by 75% for a risk of non-certification, and an additional 50% for a risk of being unsuccessful on the merits, to arrive at an estimated total of **$93,750**. [Bokhour Decl., ¶ 21.]

Waiting Time Penalties:

Defendant's records reflected approximately 538 former Class Members who separated from their employment with Defendant during the Class Period. [Bokhour Decl., ¶ 19.] Based on an average hourly rate of $19.57, Plaintiffs estimated the average waiting time penalty per former employee to be $4,696 ($19.57 x 8 hours per day x 30 days). *Id*. Therefore, Plaintiffs estimated

Defendant's maximum exposure for potential waiting time penalties to be $2,526,878 (538 former employees * $,696 average waiting time penalty). *Id*.

Defendant also presented several defenses to this claim, most notably asserting that, because it possessed good-faith defenses to the underlying claims, any failure to pay wages was not "willful" as a matter of law. *Id*. Defendant further contends that no waiting time penalties are recoverable as a matter of law as to Plaintiffs' claims predicated on a failure to provide meal and/or rest periods, as a Court of Appeal recently held in *Naranjo v. Spectrum Security Servs., Inc.* (2019) 40 Cal.App.5th. 444, 473-75 (*review granted* Jan. 2, 2020). To account for Defendant's defenses, Plaintiffs discounted the maximum exposure by 80% for the risk of non-certification and an additional 60% for the risk of losing on the merits and/or not receiving the maximum penalties sought to arrive at an estimated exposure of **$202,150**. *Id*.

Unreimbursed Business Expenses:

Plaintiffs allege that Defendant failed to reimburse Plaintiffs and other Class Members for all necessary business expenses during the Class Period. [Bokhour Decl., ¶ 20.] Plaintiffs alleged that the business expenses incurred by Plaintiffs and other Class Members were for the required use of their personal cell phones for, amongst other things, text messaging staff/co-workers and customers. Plaintiffs calculated Defendant's maximum exposure under this theory of liability to be $220,500 ($250 unreimbursed business expenses x 882 putative class members). *Id*.

In response, Defendant contended that Plaintiffs and other putative class members never requested reimbursement from Defendant for these items, and Defendant did not know and had no reason to know that the alleged business-related expenses were incurred and not reimbursed. [Bokhour Decl., ¶ 21.]

Defendant contended that the California Labor Code only requires reimbursement of "necessary" expenses—as opposed to any expense that is incurred in the course of performing work—and argued that distinguishing a necessary expense from an unnecessary one would require individualized inquiry. *Id.*; *See*, Cal. Lab. Code § 2802; *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Defendant further contended that the reason why a putative class member undertook certain expenses, while not others, and failed to receive reimbursement for certain expenses while not others, would raise individual issues that could not be certified. *Id*. Indeed, whether an expense was necessary would depend, in part, on the reasonableness of the employee's choice, and whether an expense was incurred would have to be established by way of extensive individual factual inquiry and/or statistical evidence. Bokhour Decl., ¶ 25; *Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137.

In light of these defenses and arguments, Plaintiffs discounted Defendant's maximum exposure by 35% for the risk of non-certification, and an additional 40% to account for Defendant's defenses on the merits, to arrive at an estimated total of **$85,995**. [Bokhour Decl., ¶ 23.]

PAGA Penalties:

Based on the data provided by Defendant, there were approximately 15,000 pay periods worked during the relevant PAGA Period. [Bokhour Decl., ¶ 24.] Based on the alleged Labor Code violations described above, Plaintiffs contend that Defendant could be subject to PAGA civil penalties of one hundred dollars ($100) per pay period for initial violations during the PAGA Period. Accordingly, Plaintiffs estimate Defendant's maximum potential PAGA exposure to be approximately $1,500,000 (15,000 pay periods × $100). Id.; *Amaral v. Cintas Corp. No. 2* (2009) 163 Cal.App.4th 1157, 1207 (holding that the "initial" penalty rate applies until the employer is placed on notice of the alleged violations).

However, Defendant asserts a host of credible defenses to Plaintiffs' PAGA claims. First, Defendant argues that these penalties derive from the underlying wage and hour violations discussed above, which Defendant vigorously disputes. *Id*.; *see e.g.*, *Green v. Lawrence Service Co.* (C.D. Cal. 2013) Case No. LA CV12-06155 JAK (VBKx), 2013 WL 3907506, *5, n.5 (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Defendant further contends that the Court would drastically reduce any award of PAGA penalties as "confiscatory." *Id*.; *see also Thurman v. Bayshore Transit Mgmt., Inc*. (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc*. (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000).

Therefore, Plaintiffs discounted the maximum figure by 65% for risk of losing on the merits, and an additional 75% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of **$131,250**. *Id*.

Based on the foregoing, the total discounted damages are approximately $899,525, calculated as follows:

- Unpaid Wages: $420,000
- Meal breaks: $216,855
- Rest breaks: $169,525
- Wage Statement penalties: $93,750
- Waiting time penalties: $202,150
- Reimbursement: $85,995
- PAGA: $131,250
- **Total: $1,319,525**

In sum, while Plaintiffs asserts that this is a suitable case for certification, they realize that there is always a significant risk associated with class certification proceedings and considering Defendant's various defenses on the merits and to class certification, difficulties of proof, and other risks as described above, Plaintiffs predicted that the potential likely recovery for the Class at trial would be approximately $1,319,525 *Id*.

The proposed settlement of $600,000, therefore, represents approximately 45% of the reasonably forecasted recovery for the Class and, therefore, represents a fair, reasonable, and adequate resolution of this lawsuit. *Id*. Preliminary approval is appropriate since the Settlement will provide significant monetary relief to Class Members, which is consistent with what Plaintiffs' counsel believes could have been recovered had the case proceeded through trial. It would also provide the Class with a prompt and certain recovery rather than an uncertain recovery after years of potential additional litigation and appeals.

5. **Experience and Views of Counsel**

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiffs are represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions, and who have been appointed as class counsel in numerous cases alleging similar claims.

B. The Preliminary Approval Standard Is Met

At this stage, the Court can grant preliminary approval of the settlement and direct that notice be given if the proposed settlement: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed, and non-collusive negotiations; and (3) has no obvious deficiencies. *See* Manual for Complex Litigation § 30.41 (3rd Ed. 1995); 4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013).

1. The Settlement Is Within the Range of Possible Approval

The proposed settlement reflects approximately 66% of the estimated recovery the Class could reasonably expect in light of the significant litigation risks, and will provide tangible, monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case exceeds percentages routinely approved by courts. [Bokhour Decl., ¶ 27].

As detailed in the settlement calculation discussion above, a Participating Class Member will receive approximately **$351.47** (minus applicable withholdings for the wage portion of the payment). This estimated average Individual Settlement Payment is higher than the average payments achieved in other wage-and-hour class action settlements. Thus, Plaintiffs submit that the proposed Settlement is within the range of possible approval, such that notice should be provided to the Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Class has had the opportunity to opt out or object.

a. The allocation for the Class Representatives Service Payment is reasonable.

Subject to Court approval, Plaintiffs will receive service payments of $12,500 each, in addition to their Individual Settlement Payments. These service payments are intended to compensate Plaintiffs for the time and effort expended in assisting Class Counsel and for undertaking the responsibilities and risks of serving as Class Representatives. Incentive awards of this type are routinely approved in California class actions. See In re Cellphone Fee Termination

Cases (2010) 186 Cal.App.4th 1380, 1393 to 1394..

Here, Plaintiffs spent considerable time and effort producing relevant documents and past employment records, and providing the facts and evidence necessary to support the allegations. [See Declaration of Plaintiffs in Support of Motion for Preliminary Approval of Class Action Settlement; Bokhour Decl., ¶ 28.] Plaintiffs were available whenever counsel needed and tried to obtain documents and information that would benefit the Class. [*Id.]* Accordingly, it is appropriate and just for Plaintiffs to receive a reasonable Class Representatives Service Payment for services rendered on behalf of the Class.

b. The Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment are reasonable.

Class Counsel meets the requirements under California law. Class Counsel conducted extensive research, investigation, and analysis of the potential value of the claims. Additionally, Class Counsel are highly experienced in wage-and-hour litigation and class action cases. *See* [Bokhour Decl., ¶¶ 30-31; see Declaration of Joshua Falakassa in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Falakassa Decl.") ¶¶ 29-32]; As such, appointment of Bokhour Law Group, P.C. and Falakassa Law, P.C. as Class Counsel is appropriate.

The Settlement establishes a Gross Settlement Amount of $600,000 and provides for Class Counsel to apply for attorneys' $200,000 fees, which represents one-third of the settlement amount. Class Counsel will apply for attorneys' fees at the time of seeking final approval of the proposed Settlement.

Under California precedent, it is appropriate to award attorneys' fees as a percentage of the "common fund" created by a class action settlement. *See Laffitte v. Robert Half Int'l, Inc.,* 1 Cal.5th 480 (2016) (holding "the percentage of fund method survives in California class action cases"). The goal is to award "reasonable compensation for creating a common fund." *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989). In reviewing a fee award request, courts consider the following factors: (1) the results achieved; (2) whether there are benefits to the class beyond the immediate generation of a cash fund; (3) the risks of litigation; (4) the skill required of counsel and quality of the work performed; (5) the contingent nature of the fee and the foregoing by counsel of other work; and (6) the reactions of the class. *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-50; *In re Toyota Motor Corp.*, 2013 WL 3224585 (C.D. Cal. June 17, 2013). Of these factors, the most significant factor is the "degree of success obtained." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983).

Here, the Class Counsel Fees Payment provided for by the Settlement is reasonable, particularly in light of the time and effort expended by Class Counsel. Class Counsel litigated this case for over a year, with the possibility of an unsuccessful outcome and no fee recovery of any kind. [Bokhour Decl., ¶¶ 27-28]. The ongoing work has been demanding and ultimately successful in achieving a substantial Settlement. Given the strengths and weaknesses of the claims and the risk and expense of further litigation, Plaintiffs believe that his counsel achieved an excellent result on behalf of the Class. Considering the amount of the fees to be requested, the work performed, and the risks incurred, the Class Counsel Attorneys' Fees and Costs provided for by the Settlement are reasonable and should be awarded. *See Vizcaino*, 290 F.3d at 1051.

Once the Court grants preliminary approval of the Settlement Agreement and the Class Notice is disseminated, Plaintiffs' counsel will submit a request for attorneys' fees and costs with its final approval motion.

2. <u>The Settlement Resulted from Serious, Informed Negotiations</u>

The Settlement resulted from an exchange of substantial information, arm's-length negotiations by counsel, two full-day mediations before experienced wage-and-hour mediators, and additional months spent negotiating the long-form settlement agreement. Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar*, *supra*, 168 Cal.App.4th at 130. Here, the parties actively litigated this case since it commenced. Class Counsel conducted a thorough investigation into the facts of the case, including, *inter alia*, interviews with Plaintiffs and multiple Class Members, and diligently investigated the allegations in this lawsuit. Class Counsel reviewed a large volume of documents and data produced by Defendant and obtained through other sources, including and not limited to, Plaintiffs and other Class Members, employment records (including, *inter alia*, time and payroll data, timecards, earning statements, and personnel records), as well as excerpts of Defendant's applicable employee handbook (such as excerpts pertaining to meal and rest break policies), class-wide data, various documents regarding Defendant's wage-and-hour policies, various internal memoranda various agreements, various training and on-boarding material, and various forms, among other information and documents. The parties exchanged information and documents formally and informally. *Id.*, ¶ 40. The parties also met and conferred on numerous occasions over issues relating to the pleadings, jurisdiction, vigorous motion practice, and discovery. *Id.*

The parties reached the Settlement after reviewing all available evidence, arm's-length bargaining, and participating in mediations by well-respected mediators experienced in handling complex wage-and-hour class action litigation. *Id*. During the mediation, the parties exchanged information and discussed various aspects of the case, including and not limited to, Plaintiffs' claims, the risks and delays of further litigation and of proceeding with certification and/or representative adjudication, the law relating to rounding theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, the evidence produced and analyzed, and the possibility of appeals, among other things. *Id.*

During settlement discussions, the parties conducted their negotiations at arm's length from an adversarial position. [Bokhour Decl., ¶ 46.] Arriving at a settlement that was acceptable to both parties was not easy. The data and documents produced and obtained in this case enabled Class Counsel to prepare damages/valuation models in preparation for the mediations, to determine the value and strength of the claims. With the aid of the mediator's evaluations, the parties agreed that the Action was well-suited for settlement given the legal issues relating to the claims, as well as the costs and risks to both sides that would attend further litigation. *Id.* The Settlement takes into account the strengths and weaknesses of each side's position, as well as the uncertainty about how the case might have concluded at certification, trial, and/or on appeal. *Id.*

The Settlement is based on this large volume of facts, evidence, and investigation, and the parties' negotiations during each mediation. While the parties disagree over the merits and certifiability of Plaintiffs' claims, Plaintiffs and Class Counsel agree that the Settlement is fair, reasonable, adequate, and in the best interest of the Class, in light of all known facts and circumstances. *Id.*, ¶ 42.

3. <u>The Settlement Is Devoid of Obvious Deficiencies</u>

Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies. The Settlement will provide monetary relief to Class Members. The amounts proposed for the Class Counsel Attorney's Fees and Costs, the Class Representatives' Service Payment, Settlement Administration Costs, and the PAGA Penalties are all reasonable and appropriate based on the facts of this case. Because the Settlement lacks obvious deficiencies, this factor supports preliminary approval.

VI. CERTIFICATION OF THE PROPOSED CLASS IS APPROPRIATE UNDER CAL. CIV. PROC. SECTION 382

Class certification under California law is appropriate where: (1) the Class is so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiffs' claims are typical of the claims of absent Class members; and (4) Plaintiffs and their counsel will fairly and adequately represent Class members' interest. *See* Cal. Civ. Proc. § 382. The proposed Class meets all of these requirements.

A. Ascertainable and Numerous

The proposed Settlement Class satisfies the requirements of Code of Civil Procedure section 382. The Class is readily ascertainable from Defendant's payroll records and sufficiently numerous to render joinder impracticable. Common questions of law and fact predominate because the claims arise from uniform wage and hour policies and practices. Plaintiffs' claims are typical of those of the Class, and Plaintiffs and Class Counsel will adequately and fairly represent the interests of the Class for settlement purposes.

B. Commonality

A settlement class has sufficient commonality if there are predominant questions of law or fact. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* (2004) 34 Cal.4th 319, 326. Here, the Class Members seek remedies under California's wage-and-hour laws for violations arising from common, uniform, and systematic practices that applied to all Class Members during the Class Period. *See e.g.*, *Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims); *Williams v. Superior Court* 221 Cal.App.4th 1353, 1371 (2013) (certifying class based on uncompensated work time). Accordingly, the commonality requirement is satisfied for settlement purposes.

C. Typicality

The typicality requirement is satisfied where Class Representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 191 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiffs purchased the same goods as the putative class in a consumer class action). Here, Plaintiffs' claims are typical of those of the Class Members, though some factual differences may exist among them, as the claims arise from the same events or course of conduct and are based upon the same legal theories. Given the structure of the Settlement, the proposed Class satisfies the typicality requirement for settlement purposes as Plaintiffs' claims arise from the same factual basis and are based on the same legal theories as those applicable to all other Class Members.

D. Adequacy of Representation

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services* 155 Cal.App.4th 676, 697 (2007).

Plaintiffs' interests align with those of other Class Members, as they were all employed as non-exempt employees by Defendant within the State of California. Plaintiffs' claims are typical of those of Class Members, which are confined to a limited group of similarly situated employees who worked for Defendant during the Class Period. Class Counsel are highly experienced in employment class action and complex wage-and-hour litigation, having handled many cases before and having been appointed class counsel in many other cases. *See generally*, Bokhour and Falakassa Declarations. Plaintiffs contend that Class Counsel's experience in litigating similar matters was integral to obtaining the Settlement.

E. Adequacy of The Method of Notice

A class notice must give the "best notice practicable" under the circumstances by providing "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin* 417 U.S. 156, 173 (1974). A class notice is adequate if it "generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Churchill Vill. LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). The notice must also be neutral and objective in tone and should neither promote nor discourage the assertion of claims.

Here, the proposed Class Notice provides the best notice practicable and is adequate in light of the fact that Defendant is in possession of the addresses for Class Members. While Class Counsel considered alternative methods such as publication or notice via the web or social media, it ultimately determined that first class mail was the best choice given that the identities of the Class Members are known and readily identifiable from Defendant's records. [Bokhour Decl. ¶ 49.] The Class Notice provides information on, *inter alia*, the nature of the lawsuit, the definition of the Class, the terms of the Settlement, the scope of the Released Claims, the binding effect of the Settlement, and the allocations for the Class Counsel Attorneys' Fees and Costs, Class Representatives Service Award, and Settlement Administration Costs. Each Class Member's Class Notice will state his or her number of pay periods/workweeks, estimated Individual Settlement Payment, and estimated PAGA Employee payment. The Class Notice summarizes the proceedings and provides the date, time, and place of the Final Approval Hearing.

All Class Members and PAGA Members can and will be identified by Defendant through a review of their business and employment records. After receiving the Class Data from Defendant, the Settlement Administrator will mail a Class Notice to each Class Member. Accordingly, the proposed Class Notice is adequate and is the best notice practicable under California law.

The Class Notice also meets the neutrality requirement for class notices. The Class Notice provides a brief, neutral explanation of the case from the perspective of both parties and recognizes that the Court has not yet granted final approval of the Settlement. The Class Notice sets forth in an accurate and informative manner the procedures and deadlines governing the submission of Requests for Exclusion, objections, and workweek disputes. The proposed Class Notice satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality. Accordingly, the Court should approve the proposed Class Notice.

On information and belief, the Class Notice has been drafted in a manner that is likely to be readily understood by the members of the Class. Class Members vary in age, education and experience.

All Class Members read and comprehend English. As such, the Class Notice has been drafted in plain English and is readily understandable to current and former employees.

VII. APPOINTMENT OF ILYM AS THE ADMINISTRATOR

The parties have selected ILYM as the Settlement Administrator to handle the notice and administration of the Settlement. ILYM will mail a Class Notice to each Class Member; receive, review, and process Requests for Exclusion, objections, and workweek disputes; calculate estimated Individual Settlement Payments; withhold applicable taxes and withholdings; prepare and transmit necessary tax documentation and filings; and transmit all required payments. ILYM will also handle inquiries from Class Members regarding the Settlement and perform any other usual and customary duties for administering a class action settlement.

Settlement Administration Costs are currently estimated not to exceed Eleven Thousand Dollars ($11,000) and will be paid out of the Gross Settlement Amount, subject to approval by the Court. Plaintiffs respectfully request that the Court appoint ILYM as the Settlement Administrator and direct distribution of the Class Notice in the manner and in accordance with the proposed schedule, set forth in the Settlement Agreement and discussed in Section VIII, *infra*.

VIII. DEADLINES FOR NOTICE AND ADMINISTRATION

The Court is respectfully requested to approve the proposed deadlines for the notice and settlement administration process. Within fourteen (14) calendar days following preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with the Class Data.[4] Within ten (10) days of receiving the Class Data, ILYM will send a Class Notice to each Class Member. Prior to mailing the Class Notices, ILYM shall attempt to locate Class Members' updated addresses by a search of the National Change of Address Database. If a Class Notice is returned as undeliverable, ILYM will promptly re-mail it to a forwarding address, if provided, or to an updated address obtained from a skip-trace search.

[4] "Class Data" means a complete list that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator on one Confidential spreadsheet and shall include the Settlement Class Members' full names, last known addresses, Social Security Numbers, and number of Work Weeks Worked or Pay Periods Worked as non-exempt or hourly employees of Defendant during the Class Period and the PAGA Period, respectively for each Settlement Class Member.

Requests for Exclusion, Objections, and Workweek Disputes must be mailed to ILYM and postmarked by the applicable Response Deadline.

All settlement checks issued to Class Members and/or PAGA Class Members will remain valid and negotiable for one hundred eighty (180) calendar days from the date it is mailed. Thereafter, the funds associated with any such checks that remain uncashed or are returned as undeliverable, if any, will be paid to the California State Controller's Unclaimed Property Fund in the name of the Participating Class Member, and the Participating Class Member will remain bound by the Settlement. [Settlement Agreement ¶ 82.]

IX. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily approve the Settlement and schedule a Final Approval Hearing.

Dated: January 8, 2026

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By: ______________________________
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