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

BRAULIO JAVIER, individually and on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

HELENA AGRI-ENTERPRISES, LLC a
Delaware Limited Liability Company;
HELENA CHEMICAL COMPANY, a
Delaware Corporation; and DOES 1-50,
inclusive,

Defendants.

Case No. 22CECG02269

[Consolidated with Case No. 22CECG03145]

CLASS AND REPRESENTATIVE ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: November 5, 2024

Time: 3:27 p.m.

Dept.: 502

Judge: Hon. Kristi Culver Kapetan

Complaint Filed: July 27, 2022

FAC Filed: November 14, 2022

Trial Date: None Set

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1 **I. INTRODUCTION**

2 Plaintiff Braulio Javier (“Plaintiff”), on behalf of himself and the conditionally certified
3 Class and the PAGA Employees, bring this motion seeking final approval of a common fund, non-
4 reversionary wage and hour Class and Representative Action Settlement of \$600,000.00 and
5 Defendant Helena Agri-Enterprises, LLC (“Defendant” or “Helena Agri”) (collectively with
6 Plaintiff, the “Parties”).

7 The Joint Stipulation and Settlement Agreement (“Settlement”) was preliminarily approved
8 on July 25, 2024. (Declaration of James R. Hawkins in Support of Final Approval (“Hawkins Final
9 Decl.”), Ex. 4.) The Parties and the Settlement Administrator, ILYM Group, Inc. (“ILYM”) carried
10 out the notice and other procedures ordered by this Court. The settlement notice was mailed on
11 August 16, 2024. The Class Members had until September 30, 2024, to submit a request for
12 exclusion, object to the Settlement or dispute their settlement share. The results of the notice
13 procedures indicate that all 821 Class Members approve of the Settlement. ILYM did not receive a
14 single objection or request for exclusion from the Settlement. (*See*, Declaration of Nathalie
15 Henandez of ILYM Group, Inc. In Support of Final Approval (“Henandez Decl.”), generally).
16 Accordingly, Plaintiff now seeks final approval of the Settlement.

17 The proposed Settlement is fair, reasonable, and adequate, particularly in light of
18 Defendant’s legal and factual defenses both on certification and the merits. Class Counsel and
19 Defendant’s Counsel are experienced in wage and hour class action litigation, and both Parties
20 agree that the meaningful monetary recovery provided for the Class Members in the Settlement
21 Agreement supports a finding that the settlement is fair, reasonable, and adequate, particularly in
22 light of the substantial risks inherent to maintaining class action status through trial, the complexity
23 of the case, and the time spent by the Parties in investigation, discovery, mediation, preliminary
24 approval, notice procedures, and final approval.

25 Thus, the Settlement meets the criteria for final approval and Plaintiff respectfully requests
26 this Court grant final approval of the Settlement and enter the proposed Order and Judgment filed
27 concurrently herewith.

II. SUMMARY OF SETTLEMENT TERMS

The following is a summary of the key financial terms of the settlement and number of participating class members:

Gross Settlement Amount	\$600,000.00
Class Counsel Fees	\$210,000.00
Class Counsel Costs and Expenses	\$20,000.00
Class Representative Service Award	\$10,000.00
Settlement Administrator Costs	\$13,000.00
LWDA PAGA Payment	\$12,000.00
Aggrieved Employees PAGA Payment	\$4,000.00
Estimated Net Settlement Amount	\$331,000.00

Total Class Members	821
Opt Outs	0
Objections	0
Participating Class Members	821

III. THE SETTLEMENT ADMINISTRATOR MAILED THE NOTICE AND THE CLASS WAS GIVEN THE BEST POSSIBLE NOTICE OF THE SETTLEMENT

In approving a class action settlement, due process requires “notice plus an opportunity to be heard and participate in the litigation, whether in person or through counsel. The notice must be the best practicable, ‘reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 812. Notably, while an absent class member must be provided notice, it is elementary that any failure to *receive* notice, in and of itself, is insufficient to show a due process violation. *Dagher v. Ford Motor Co.*, No. D072436, 2018 WL 4057400, at *6 (Cal. Ct. App. Aug. 27, 2018) [citing *Juris v. Inamed Corp.* (11th Cir. 2012) 685

1 F.3d 1294, 1321 (“Courts have consistently recognized that ... due process does not require
2 that class members actually receive notice”)].

3 This Court appointed ILYM as the Settlement Administrator to provide notification services
4 and settlement administration pursuant to the terms of the Settlement. (Hernandez Decl. ¶ 3). On
5 August 9, 2024, ILYM received the class data from Defendant’s counsel including name, most
6 recent mailing address, social security number, and the dates of employment for each Class
7 Member. (*Id.* ¶ 5).

8 On August 16, 2024, ILYM mailed the Notice to 821 Class Members. (*Id.* ¶ 7). The Notices
9 advised Class Members of their right to request exclusion from the Settlement, object to the
10 Settlement, dispute their pay periods, or do nothing, and the implications of each such action. The
11 Notice advised Class Members of applicable deadlines and other events, including the Final
12 Approval Hearing, and how Class Members could obtain additional information, including a toll-
13 free telephone number. (*Id.*, Ex. A). The Notice also disclosed the claims that would be released
14 upon final approval and each Settlement Class Member’s total workweeks and pay periods worked
15 during the Class Period and estimated individual settlement payment based thereon. (*Id.*).

16 As of the date of this filing, a total of 26 Notices were returned to ILYM by the U.S. Postal
17 Service. (*Id.* ¶ 8). ILYM promptly re-mailed 15 of these notices either using a provided forwarding
18 address or after performing a computerized skip-trace using Accurint. (*Id.* ¶ 9). Ultimately only 11
19 notices remained undelivered following a skip-trace or other search using the name, address, and/or
20 social security number of the class member. (*Id.* ¶ 10). ILYM successfully reached and delivered
21 Notice to 815 of the 821 Class Members, which represents 98.7% of the Settlement Class. (*Id.*).

22 The deadline to object or request exclusion from the Settlement was September 30, 2024,
23 except for those remailed notices. (Hernandez Decl., ¶¶ 11–12; Settlement ¶ III.K.2.c). No
24 Settlement Class Members have requested exclusion or objected to the Settlement. (*Id.*). 100% of
25 Settlement Class Members will participate in the Settlement. (*Id.* at ¶ 13.)

26 Further, the terms of the Class Notice, which were approved by the Court, fully complied
27 with the requirements of California Rules of Court, Rule 3.769(f). It provided Class Members with
28 all relevant information needed to make an informed decision whether to participate in, to opt-out

1 of, or to object to the Settlement. It provided an explanation of the litigation and proposed
2 Settlement terms, and procedures on how to opt out, object to, and/or appear at the final fairness
3 hearing. The documentation provided an explanation of the case, the exclusion date and procedure
4 for exclusion, the proposed attorneys' fees, litigation costs, administration costs, PAGA penalty
5 allocation to the LWDA, the proposed service awards, and the individual Class Members' estimated
6 recoveries, which were all included in the class notice packets. It also stated that those who do not
7 opt out will be bound by the Settlement and Class release. Moreover, the Court diligently approved
8 the Notice Packet as to form and content in its Preliminary Approval Order. Therefore, the Court
9 may proceed to determine the fairness and adequacy of the Parties' class action settlement and order
10 its approval, secure in the knowledge that all Class Members have been given the opportunity to
11 participate fully in the notice process and have been fully apprised of their rights and options,
12 including their rights to object or request exclusion from the Settlement.

13 ILYM followed the notice procedures delineated in the Preliminary Approval Order and
14 Settlement. Thus, notice to the Class of the proposed Settlement was reasonably calculated, under
15 all the circumstances, to apprise the Class Members of the pendency of the action and afforded
16 them an opportunity to opt out of, object to, or dispute the settlement.

18 **IV. FINAL APPROVAL OF THE SETTLEMENT SHOULD BE GRANTED.**

19 **A. Legal Standard for Final Approval of Class Action Settlements.**

20 “[V]oluntary conciliation and settlement are the preferred means of dispute resolution. This
21 is especially true in complex class action litigation” *7-Eleven Owners for Fair Franchising*
22 *v. Southland Corp.* (2000) 85 Cal. App. 4th 1140, 1151 (quoting *Officers for Justice v. Civil Serv.*
23 *Comm. of the City and Cnty. & S.F.* (9th Cir. 1982) 688 F.2d 615, 625). A class action may not be
24 dismissed, compromised, or settled without the Court's approval. Cal. Rules of Court (“CRC”) 3.769 and 3.770. The decision to approve or reject a proposed settlement is committed to the trial
25 court's sound discretion. *Wershba v. Apple Comp., Inc.* (2001) 91 Cal. App. 4th 224, 234-35.
26 Accordingly, when evaluating a class action settlement for final approval, the Court should give
27 “[due] regard to what is otherwise a private consensual agreement between the parties.” *Id.* at 245.
28

1 The Court’s inquiry thus is limited to whether the proposed settlement is “fair, adequate, and
2 reasonable.” *Id.* at 244-45; *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801. A
3 settlement is “fair, adequate and reasonable” warranting final approval when “the interests of the
4 class are better served by the settlement than by further litigation.” Manual for Complex Litigation
5 (4th ed. 2008) § 21.61.

6 CRC 3.769 explains the procedure for final approval of a class action settlement, which
7 involves three distinct steps: (1) Preliminary approval of the proposed settlement at an informal
8 hearing; (2) Dissemination of mailed and/or published notice of the settlement to all affected Class
9 Members; and (3) A “formal fairness hearing,” or final settlement approval hearing, at which Class
10 Members may be heard regarding the settlement, and at which matters concerning the fairness,
11 adequacy, and reasonableness of the settlement may be presented.

12 In this case, the first step is complete. The first step was completed on July 25, 2024, when
13 the Court preliminarily approved the Settlement and determined that it was within the range of
14 possible final approval. (Hawkins Final Decl., Ex. 3). The second step, dissemination of Notice to
15 the Settlement Class, was completed on August 16, 2024. (Hernandez Decl., ¶ 7, Ex. A).

16 The third and final step in the settlement approval process is the Final Approval Hearing, at
17 which the Court determines whether the Settlement is fair, adequate, and reasonable. A settlement
18 agreement is presumptively fair when it is (1) the product of arm’s-length bargaining; (2) supported
19 by sufficient investigation and/or discovery to allow assessment of Plaintiffs’ claims; (3) supported
20 by experienced counsel; and (4) subject to only a small percentage of objections. *In re Cellphone*
21 *Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1389 quoting *Dunk*, 48 Cal. App. 4th at
22 1802); *Chavez v. Netflix, Inc.* (2018) 162 Cal. App. 4th 43, 52 (2008).

23 Following the final approval hearing, the Court will decide whether to enter a final order
24 approving the Settlement and enter judgment thereon. CRC 3.769(h). To do so, California courts
25 consider several factors, including the strength of the Plaintiffs’ case; the risk, expense, complexity,
26 and likely duration of further litigation; the risk of maintaining class action status through trial; the
27 value of the settlement; the extent of discovery completed and the stage of the proceedings; the
28 experience and views of counsel; and the reaction of the class members to the proposed settlement.

1 *Wershba*, 91 Cal. App. 4th at 244-45. “The list of factors is not exclusive and the court is free to
2 engage in a balancing and weighing of factors depending on the circumstances of each case.” *Id.* at
3 245. Courts must also give:

4 proper deference to the private consensual decision of the parties, [since] the court’s
5 intrusion upon what is otherwise a private consensual agreement negotiated
6 between the parties to a lawsuit must be limited to the extent necessary to reach a
7 reasoned judgment that the agreement is not the product of fraud or overreaching
by, or collusion between, the negotiating parties, and the settlement, taken as a
whole, is fair, reasonable and adequate to all concerned.

8
9 *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027. For the reasons set forth below, the
10 Court should complete the third step and grant final approval of the Settlement.

11 **B. The Settlement is the Product of Arm’s Length Bargaining and the Strength**
12 **of Plaintiffs’ Case, the Risks of Class Certification, and the Expense of**
13 **Further Litigation Favor the Court’s Final Approval.**

14 Every case involves some level of uncertainty with respect to the outcome of the merits.
15 Settlement resolves that inherent uncertainty and is therefore strongly favored by the courts,
16 particularly in class actions. See *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950.
17 Such uncertainty is present here, providing strong justification for the proposed settlement. Plaintiff
18 recognized several significant risks inherent in litigating this case including the realistic probability
19 of certifying the action as a class action, the probability of maintaining the class action status
20 through trial and any appeals, the likelihood of class action recovery at trial after analyzing the
21 merits of Defendant’s legal defenses, and the current state of the law regarding certification and
22 establishing common questions of fact. While Class Counsel believes Plaintiff’s claims are
23 meritorious, Defendant has denied liability, disputed damages and penalties, and raised factual and
24 legal arguments which could render the Class Members’ claims worthless at either class
25 certification or trial. (Hawkins Final Decl. ¶¶ 26–28). A detailed summary of Plaintiff’s claims,
26 Defendant’s corresponding defenses, and the resulting analysis of Defendant’s realistic exposure is
27 provided in the Declaration of James Hawkins in Support of Preliminary Approval (Hawkins
28

1 Preliminary Decl. ¶¶ 45-61). Defendant’s defenses included, *inter alia*, that their policies and
2 practices were legally compliant, that Plaintiff’s claims were not certifiable, that changes in the law
3 regarding claims for wage statement violations and class certification requirements would
4 undermine Plaintiff’s claims, and that PAGA penalties would likely be reduced by the Court.

5 While the proposed Settlement may be less than the amount that the Class could potentially
6 recover following trial, it is highly unlikely that Plaintiff and the Class would receive the full
7 amount to which they believe they are entitled for the reasons discussed above. As such, the Gross
8 Settlement Amount, even if only a fraction of a total potential recovery, is a fair and adequate real
9 recovery for Class Members. *In re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459.
10 (“It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery
11 does not per se render the settlement inadequate or unfair.”) (internal quotations omitted). The
12 Settlement achieved was reached through arm’s length bargaining and with the assistance of a well-
13 respected wage and hour mediator, Gig Kyriacou. (Hawkins Final Decl. ¶ 23.)

14 **C. The Value and Fairness of the Settlement Favors the Court’s Final Approval.**

15 In evaluating the fairness of consideration offered in settlement, it is not the role of the
16 courts to second guess the negotiated resolution of the litigants. Rather, it is understood that:

17 the court’s intrusion upon what is otherwise a private consensual agreement
18 negotiated between the parties to a lawsuit must be limited to the extent necessary
19 to reach a reasoned judgment that the agreement is not the product of fraud or
20 overreaching by, or collusion between, the negotiating parties, and that the
settlement, taken as a whole, is fair, reasonable, and adequate to all concerned.

21 *Hanlon*, 150 F. 3d 1027. The issue is not whether the settlement could have been better in some
22 fashion, but whether it is fair. *Id.*

23 In this case, Defendant has consistently denied liability, disputed Plaintiff’s claimed
24 damages, and raised formidable factual and legal arguments which could potentially defeat Class
25 Members’ claims at either class certification or trial. Given these available grounds for defending
26 against the asserted class claims and the risks of maintaining class certification through the trial of
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1 the action and throughout any appeals, the Settlement is fair, reasonable, and adequate. (Hawkins
2 Final Decl. ¶¶ 24–29).

3 Plaintiff, through Class Counsel, secured a common fund of \$600,000.00 for the Settlement
4 of the claims alleged in the class action. Indeed, the monetary relief provided by the Settlement is
5 a meaningful recovery to the Class warranting final approval. The sum is well within the ballpark
6 of reasonableness. The 821 Participating Class Members will be paid a pro-rata portion of the Net
7 Settlement Amount. As of the filing of this motion, the highest Individual Settlement Share to a
8 Settlement Class Member was estimated to be approximately \$1,162.96, the average Individual
9 Settlement Share is currently estimated to be approximately \$405.01. (Hernandez Decl. ¶ 14).
10 Further, the amount obtained per Participating Class Member on a gross basis, \$730.82 per
11 participating Class Members (\$600,000 / 821 participating Class Members) compares favorably to
12 similar class action settlements, including the following cases:

- 13 • *Salguero v. Deliv, Inc.*, Case No. 19STCV32534, Los Angeles County Superior
14 Court (2021) – \$635,000.00 class action and PAGA settlement for 3,021 class
15 members (average payment on a gross basis of \$210.20).
- 16 • *Sanderson v. A Bright Future*, Case No. 34-2019-00252816-CU-OE-GDS,
17 Sacramento County Superior Court (2020) - \$105,000.00 class action and PAGA
18 settlement for 471 class members (average payment on a gross basis of \$222.93).
- 19 • *Ortegon-Ramirez v. Cedar Fair, L.P.*, Case No. 1-13-CV-254098, Santa Clara
20 County Superior Court (2015) - \$4,750,000.00 class action and PAGA settlement
21 for 31,425 class members (average payment on a gross basis of \$151.15).

1 Notably, Defendants have also prevailed in some on-premises rest break cases.¹

2 In conjunction with the Motion for Preliminary Approval, Class Counsel provided a detailed
3 description of the claims, defenses and Defendant’s potential exposure on those claims, thereby
4 providing the Court with a sufficient understanding of the amount in controversy and potential
5 outcomes of the case, so that it can properly evaluate the sufficiency of the Settlement, as required
6 in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129-30 (2008) (trial court needs
7 sufficient information about the potential value of the case and issues to review the reasonableness
8 of the settlement). (See, Hawkins Prelim. Decl. generally.) At the time of preliminary approval, the
9 Court determined that the Settlement appeared to be fair, adequate and reasonable and favored
10 approval. After the completion of the notice process, no Class Members have opted out of the
11 Settlement, nor have any objected to the Settlement. (Hernandez Decl. ¶¶ 11–12). Thus, nothing
12 has changed since the time of preliminary approval to undermine the reasonableness of the
13 Settlement. The Settlement should be granted final approval.

14 **D. The Parties’ Investigation Favors the Court’s Final Approval**

15 “[T]he extent of discovery completed and the stage of proceedings” are factors considered
16 in assessing the fairness, adequacy, and reasonableness of a class action Settlement. *Dunk*, 48 Cal.
17 App. 4th at 1801. “This factor evaluates whether the parties have sufficient information to make an
18 informed decision about settlement.” *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 588 (N.D.
19 Cal. 2015) (citation omitted).

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21
22 ¹ See, *Ritenour v. Carrington Mortg. Servs., LLC*, No. SACV1602011CJCDMX, 2018 WL 5858658, at *7 (C.D. Cal.
23 Sept. 12, 2018) (“The California Supreme Court never stated that an employer cannot require an employee to remain
24 on the premises during a rest period”); *Hubbs v. Big Lots Stores, Inc.*, No. LACV1501601JAKASX, 2018 WL 5264141,
25 at *4-5 (C.D. Cal. Mar. 16, 2018) (“*Augustus* nevertheless recognized that an employer may require an employee to
26 remain “on premises” during such rest periods. . . For these reasons, requiring that an employee remain on premises
27 during a ten-minute rest period does not create a claim under PAGA.”); and *Bell v. Home Depot U.S.A., Inc.*, No.
28 212CV02499JAMCKD, 2017 WL 1353779, at *1-2 (E.D. Cal. Apr. 11, 2017) (“a policy requiring employees to remain
on the premises during their rest breaks does not violate the applicable California wage order and statute.”); cf, *Diaz v.*
Medline Industries, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-5651, Order Denying in
Part and Granting in Part Defendant’s Motion for Judgment on the Pleadings. Further, Courts are also split on whether
on-premises rest period cases can be certified (see footnote 8). Lastly, this area of law is potentially worsening as
evidenced by the dicta in *Estrada v. Royalty Carpet Mills, Inc.*, 76, Cal.App.5th 685, 706 (2022), which suggests that
on-premises rest periods are legal, an argument that would kill Plaintiffs’ primary claim, in this case, for on-premises
rest periods alleged to be non-compliant.

1 Plaintiff and Defendant entered the Settlement only after conducting an extensive
2 investigation, which enabled Class Counsel and Defense Counsel to thoroughly evaluate the
3 strengths and weaknesses of the claims. Class Counsel previously provided the Court with a
4 detailed description of the investigation conducted in this action in Plaintiffs’ Motion for
5 Preliminary Approval. The settlement negotiations between the Parties were extensive and occurred
6 at arm’s length. Following a thorough investigation and an evaluation informed by detailed informal
7 discovery, Parties attended a full-day mediation sessions with Gig Kyriacou, an experienced wage
8 and hour mediator. Although the Parties did not resolve the action at mediation, they continued to
9 negotiate with the assistance of Mr. Kyriacou in the weeks following. (Hawkins Preliminary Decl.
10 ¶¶ 14–15). On November 20, 2023, the Parties mutually accepted a mediator’s proposal and agreed
11 to the proposed settlement. (*Id.*) Thus, the Parties’ investigation and discovery are sufficient to
12 allow Class Counsel and the Court to act intelligently. (*Id.* ¶¶ 11–15).

13 **E. The Endorsement of the Parties’ Counsel Favors Final Approval**

14 The endorsement of experienced and well-informed counsel of a settlement as fair,
15 reasonable, and adequate is entitled to significant weight. *Dunk*, 48 Cal. App. 4th at 1801-02; *see*
16 *also Larsen v. Trader Joe’s Company* (N.D. Cal. July 11, 2014) No. 11cv05188-WHO, 2014 WL
17 3404531 (“A [trial] court is entitled to give consideration to the opinion of competent counsel that
18 the settlement is fair, reasonable, and adequate.”). Here, counsel for both Parties have significant
19 experience litigating wage and hour class actions and endorse the Settlement as being fair, adequate
20 and reasonable. Class Counsel believes that the Settlement is the best interest of the Class, and an
21 excellent result for the Class. (Hawkins Final Decl. ¶¶ 24, 43). This endorsement of counsel is
22 entitled to significant weight in favor of final approval. *Boyd v. Bechtel Corp.* (N.D. Cal. Aug. 22,
23 1979) 485 F. Supp. 610, 622 (“The recommendations of Plaintiffs’ counsel should be given a
24 presumption of reasonableness.”).

25 **F. The Reaction of the Class Favors Final Approval**

26 As explained above, 100% of the Class will participate in the settlement, demonstrating that
27 the Class entirely approves of the terms of the Settlement. (Hernandez Decl., ¶13). No Class
28 members objected to the amount allocated to the Class Representative Service award or the costs

1 and fees of Class Counsel. The Net Settlement Amount will be distributed *pro rata* to each of the
2 participating Class Members based on their shifts worked during the Class Period as a percentage
3 of all Class Members' shifts worked within the Class Period. This is a very favorable result for of
4 the participating Class Members. (Hawkins Final Decl., ¶ 25).

5 **V. THE PROPOSED PAGA ALLOCATIONS SHOULD BE FINALLY APPROVED**

6 When PAGA claims are settled, the trial court must "review and approve" the settlement.
7 Labor Code § 2699(l). In so doing, the court must consider whether the proposed "PAGA settlement
8 is fair and adequate in view of the purposes and policies of the statute." *O'Connor v. Uber Techs.,*
9 *Inc.*, 201 F. Supp. 3d 1110, 1135 (N.D. Cal. 2016). The parties have agreed to an allocation of
10 \$16,000.00 as PAGA penalties, and the Court has granted preliminary approval of this allocation.
11 (Hawkins Final Decl., Ex. 3.). Of this amount, 75% (i.e., \$12,000.00) shall be sent to the Labor and
12 Workforce Development Agency (LWDA), and the remaining 25% (i.e., \$4,000.00) shall be
13 distributed to the Aggrieved Employees. (*Id.*).

14 This allocation is fair and reasonable given the nature of the PAGA claims, which has a
15 limited 1-year statute of limitations. Furthermore, courts "repeatedly approve[] PAGA allocations
16 of both smaller amounts and that comprised a smaller portion of the total settlement consideration
17 in the agreements at issue." (*See Davis v. Cox Commc'ns California, LLC*, No. 16cv989 BAS
18 (BLM), 2017 WL 1496407, at *1 (S.D. Cal. Apr. 26, 2017) (preliminarily approving \$4,000 PAGA
19 allocation in \$2710,000 settlement); *Moore v. Fitness Int'l, LLC*, No. 12cv1551 LAB (NLS), 2014
20 WL 12571448, at *5 (S.D. Cal. Jan. 22, 2014) (approving \$2,500 PAGA allocation when attorneys'
21 fees award alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA
22 (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving \$3,000 PAGA allocation in
23 \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, No. 08cv821 IEG (BLM), 2010 WL
24 2196104, at *2 (S.D. Cal. June 1, 2010) (approving \$3,000 PAGA allocation in \$1,000,000
25 settlement); *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D.
26 Cal. Apr. 3, 2009) (approving \$11,250 PAGA allocation in \$1,026,000 settlement); *In re Nordstrom*
27

1 *Commission Cases*, 186 Cal. App. 4th 576, 579 (2010) (“[T]he trial court did not abuse its discretion
2 in approving a settlement which does not allocate any damages to the PAGA claims.”).)

3 Thus, the PAGA allocation of \$16,000.00 is well above a fair and reasonable range for the
4 PAGA penalties and should now be finally approved.

5 **VI. THE SETTLEMENT ADMINISTRATOR'S REQUESTED EXPENSES ARE**
6 **REASONABLE AND APPROPRIATE.**

7 In accordance with the Court’s Preliminary Approval Order, the parties retained a neutral
8 third-party administrator, ILYM Group, Inc. (“ILYM”), to administer the notice process. ILYM
9 Group was engaged by the Parties’ Counsel and subsequently approved and appointed by the Court
10 to provide notification services and claims administration, pursuant to the terms of the Settlement,
11 in the above referenced Action. Duties performed to-date and to be performed after Final Approval
12 of the Settlement is granted, include: (a) printing and mailing the Notice Of Class Action And
13 Private Attorney General Act (“PAGA”) Settlement, Request for Exclusion From Class Action
14 Settlement, Objection Form, (collectively referred to as “Notice Packet”); (b) receiving and
15 processing requests for exclusion; (c) resolving Settlement Class Members’ disputes over the
16 number of shifts Defendants have record of them working during the Class Period, which was pre-
17 printed on their individualized Class Notice; (d) calculating individual settlement award amounts;
18 (e) processing and mailing settlement award checks; (f) handling tax withholdings as required by
19 the Settlement and the law; (g) preparing, issuing and filing tax returns and other applicable tax
20 forms; (h) handling the distribution of any unclaimed funds pursuant to the terms of the Settlement;
21 and (i) performing other tasks as the Parties mutually agree to and/or the Court orders ILYM to
22 perform. (Hernandez Decl. ¶ 3). The Court preliminarily approved up to \$15,000.00 for settlement
23 administration costs. (Hawkins Final Decl., Ex. 3.) ILYM will charge a total of \$13,000 in costs
24 associated with the administration of the Settlement. This includes all costs incurred to date, as
25 well as estimated costs involved in completing the Settlement. (Hernandez Decl. ¶¶ 14–15).
26 Plaintiff believes this is an appropriate amount for the settlement administration services provided
27 and respectfully requests the Court award this amount to ILYM. (Hawkins Final Decl. ¶ 19).

1 **VII. CONCLUSION**

2 The preliminarily approved Settlement is the product of arm’s length negotiations after
3 significant investigation and discovery, mediation, and negotiation. It provides meaningful benefits
4 to the Class Members that are discernibly fair when weighed against the significant potential risks,
5 delays, and costs of further litigation. The Class Members have overwhelmingly accepted the
6 Settlement as fair, reasonable, and adequate. Accordingly, Plaintiff, as Class
7 Representative, respectfully request that the Court grant final approval to the Settlement.

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9 Dated: October 11, 2024

JAMES HAWKINS, APLC

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11 By: 

James R. Hawkins
Christina M. Lucio
Mitchell J. Murray

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14 Attorneys for Plaintiff
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