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

EFIONG ALIZE MCKELVY and
GUADALUPE CITLALLI SALDANA
PONCE, individually, and on behalf of other
members of the general public similarly
situated and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act;

Plaintiff,

vs.

PBC SOLUTIONONE, INC., a California
corporation; CCS FACILITY SERVICES –
FRESNO, INC., a California corporation;
CCS FACILITY SERVICES – ORANGE
COUNTY, INC., a California corporation;
CCS FACILITY SERVICES – LOS
ANGELES, INC., a California corporation;
CCS FACILITY SERVICES – SAN
DIEGO, INC., a California corporation;
CCS LOS ANGELES JANITORIAL, INC.,
a California corporation; CCS ORANGE
COUNTY JANITORIAL, INC., a California
corporation; CCS SAN DIEGO
JANITORIAL, INC., a California
corporation, CCS ENGINEERING LOS
ANGELES, INC., a Delaware corporation;
CCS ENGINEERING ORANGE COUNTY,
INC., a Delaware corporation; CCS
ENGINEERING SAN DIEGO, INC., a
Delaware corporation; CCS ENGINEERING
FRESNO, INC., a Delaware corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 23CECG03633

Honorable Jonathan M. Skiles
Department 503

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND RENEWED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Declaration of Proposed Class Counsel
(Maria Halwadjian); Declaration of
Proposed Class Representatives (Efiong
Alize McKelvy and Guadalupe Citlalli
Saldana Ponce); Declaration of Proposed
Administrator (Lisa Mullins); and
[Proposed] Order filed concurrently
herewith]

Date: October 20, 2026
Time: 3:30 p.m.
Department: 503

Complaint Filed: September 5, 2023
FAC Filed: October 30, 2025
Trial Date: None Set

**TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF
RECORD:**

PLEASE TAKE NOTICE that on October 20, 2026 at 3:30 p.m. or as soon thereafter as the matter may be heard before the Honorable Jonathan M. Skiles in Department 503 of the Superior Court of California for the County of Fresno, located at B.F. Sisk Courthouse, 1130 O Street, Fresno, California 93721, Plaintiffs Efiong Alize McKelvy and Guadalupe Citlalli Saldana Ponce (together, “Plaintiffs” or “Class Representatives”) will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action and PAGA settlement described herein and as set forth in the Settlement Agreement and Amendment No. 1 to Settlement Agreement (together, “Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” and “**EXHIBIT 2**,” respectively, to the Declaration of Maria Halwadjian in Support of Plaintiffs’ Renewed Motion for Preliminary Approval of Class Action and PAGA Settlement;
- Certifying the proposed Class for settlement purposes;
- Appointing Plaintiffs Efiong Alize McKelvy and Guadalupe Citlalli Saldana Ponce as Class Representatives;
- Appointing Joanna Ghosh, Brian J. St. John, and Maria Halwadjian of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”), attached as “**EXHIBIT A**” to the [Revised Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement, and directing the mailing thereof in accordance with the Settlement Agreement;
- Approving ILYM Group, Inc. as the Administrator; and
- Scheduling a hearing to consider final approval of the Settlement.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which require approval by the Court of the settlement of a putative class action, and Rule 3.1113(e),

1 which allows the Court to preliminarily certify a class for settlement purposes, and permits the
2 Court to extend the page limit for memoranda.

3 This motion is based upon the following memorandum of points and authorities, the
4 Settlement Agreement, the Declaration of Proposed Class Counsel (Maria Halwadjian), the
5 Declarations of Proposed Class Representatives (Efiong Alize McKelvy and Guadalupe Citlalli
6 Saldana Ponce), and the Declaration of Proposed Administrator (Lisa Mullins) in support
7 thereof, as well as the pleadings and other records on file with the Court in this matter, and such
8 evidence and oral argument as may be presented at the hearing on this motion.

9
10 Dated: September 28, 2026

LAWYERS for JUSTICE, PC

11
12 By: 
13 Brian J. St. John
14 Maria Halwadjian
15 Attorneys for Plaintiffs Efiong Alize McKelvy and
16 Guadalupe Citlalli Saldana Ponce
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Efiong Alize McKelvy (“Plaintiff McKelvy”) and Guadalupe Citlalli Saldana Ponce (“Plaintiff Ponce”) (together, “Plaintiffs” or “Class Representatives”) seek preliminary approval of the Settlement Agreement entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendants CCS Facility Services-Fresno, Inc., CCS Facility Services-Orange County, Inc., CCS Facility Services-Los Angeles, Inc., CCS Facility Services-San Diego, Inc., CCS Los Angeles Janitorial, Inc., CCS Orange County Janitorial, Inc., CCS San Diego Janitorial, Inc., PBC SolutionOne, Inc., CCS Engineering Los Angeles, Inc., CCS Engineering Orange County, Inc., CCS Engineering San Diego, Inc.; and CCS Engineering Fresno, Inc. (collectively, “Defendants”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendants (collectively, the “Parties”) have agreed to settle the lawsuits for a Gross Settlement Amount of \$2,500,000.00.¹

Plaintiffs also seek to provisionally certify the following Class for settlement purposes, which Defendants do not oppose:

All non-exempt/hourly employees who worked for Defendants in California at any time during the Class Period (“Class” or “Class Members”).²

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Maria Halwadjian (“Halwadjian Decl.”), § 1.22. At the time of the settlement, Defendants estimated that there were 291,000 Total Workweeks from the start of the Class Period through January 28, 2025. In the original settlement agreement, the Parties agreed to an escalator clause providing that if there was a ten percent (10%) increase in the number of reported Workweeks through preliminary approval, such increase would, at CCS’s option, trigger an escalation of the Gross Settlement Amount in the amount equivalent to one percent (1%) for every one percent (1%) increase in Workweeks over the ten percent (10%) threshold, or CCS could choose to have the Class Period end on the last Workweek prior to exceeding the 10% threshold of 320,100 Workweeks (the “Alternate End Date”). Based on information provided by Defendants on February 18, 2026, there are 319,717 Workweeks during the period from August 15, 2019 to June 9, 2025. As such, Defendants have elected to exercise their option to end the Class Period and PAGA Period as of June 9, 2025 (i.e., the workweek prior to reaching the Workweeks threshold of 320,100) and agree to keep the Gross Settlement Amount as \$2,500,000.00. See Amendment No. 1 to Settlement Agreement (“Amendment No. 1”), § E, attached as “**EXHIBIT 2**” to the Halwadjian Decl.

² *Id.*, § 1.12. “Class Period” is defined as follows: (1) former employees of Fresno CCS Entities, from August 15, 2019 June 9, 2025, and (2) for employees of non-Fresno CCS Entities in California, from July 19, 2020 to June 9, 2025. See Amendment No. 1, § C, attached as “**EXHIBIT 2**” to the Halwadjian Decl. The start of the Class Period for the two groups differ as the non-Fresno CCS Entities were added to the action after the initial filing, and the agreed upon exposure period for Settlement did not date back as far for the non-Fresno CCS Entities as for the Fresno CCS Entities.

Class Members who do not submit a timely and valid Request for Exclusion from the Class Settlement (“Participating Class Member”) will receive a *pro rata* share of the Net Settlement Amount (“Individual Class Payment”) based upon the number of weeks each Class Member worked for Defendants as a non-exempt/hourly employee in California during the Class Period (“Workweeks”).³

The Settlement, upon final approval by the Court and funding of the Gross Settlement Amount, will operate to resolve the Released Class Claims of Plaintiffs and Participating Class Members and the Released PAGA Claims of Aggrieved Employees and the State of California.⁴

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants are janitorial services contractors who provide janitorial services and building maintenance services to a variety of customers in California. Plaintiffs are former employees of Defendants.

On June 30, 2023, Plaintiff McKelvy provided written notice by certified mail to the LWDA and Defendants of specific provisions of the California Labor Code that were alleged to be violated (“McKelvy 2023 PAGA Notice”).⁵ Aside from confirmation of receipt of the McKelvy 2023 PAGA Notice, the LWDA did not respond to the McKelvy 2023 PAGA Notice.⁶

On September 5, 2023, Plaintiff McKelvy filed a PAGA Complaint for Enforcement Under the Private Attorneys Generals Act, California Labor Code § 2698, Et Seq. in the Superior Court for the County of Fresno, thereby commencing the above-captioned lawsuit.⁷

On November 29, 2023, Defendants filed a Motion to Compel Arbitration and Stay Proceedings (“Motion to Compel Arbitration”).⁸

On March 25, 2024, prior to ruling on Defendant’s Motion to Compel Arbitration, the Parties filed a Stipulation and [Proposed] Order to Stay Action Pending Completion of

³ Settlement Agreement, §§ 1.23, 1.36, & 1.45.

⁴ Settlement Agreement, at §§ 5.2 and 5.3. See *id.* at § 5.2 for the full scope of the “Released Class Claims” *id.* at § 5.3 for the full scope of the “Released PAGA Claims,” and *id.* at § 1.41 for the definition of the “Released Parties.”

⁵ Halwadjian Decl., ¶ 2.

⁶ *Id.*, ¶ 2.

⁷ *Id.*, ¶ 3.

⁸ *Id.*, ¶ 4.

Mediation (“Stipulation”). On April 2, 2024, the Court issued an order granting the Parties’ Stipulation.⁹

In advance of mediation, Defendants produced its statewide wage and hour policies in effect during the class period, along with job descriptions, detailed timekeeping and pay data for all Fresno employees during the class period, and data points such as total number of workweeks, pay periods, numbers of employees who terminated employment during the relevant period, and number of missed break premiums paid. In June 2024, the Parties mediated the case but were unable to finalize a settlement. Thereafter, Plaintiffs learned of additional locations where Defendants have branches in California that perform the same janitorial services as the Fresno branch pursuant to the same wage and hour policies and practices. One or more additional employees contacted Plaintiffs’ counsel for representation, ultimately culminating in Plaintiff expanding the case to add an additional named plaintiff (Ponce) and amending the complaint to add CCS’ affiliated entities as additional defendants.¹⁰

The Parties returned to mediation in January 2025 with respected wage and hour class action mediator David Rotman in an effort to negotiate a statewide class and PAGA settlement. In advance of mediation, Defendants produced, and Plaintiff’s counsel evaluated, detailed timekeeping and pay data for a random sample of 20% of the statewide class for 2019 to 2024, along with additional data points provided by Defendants including total number of workweeks, total number of pay periods, average hourly rate of pay for the class, total number of missed break premiums paid, total number of employees who separated employment, and information on use of meal break waiver agreements and arbitration agreements. Following mediation with the help of the mediator, the Parties were able to reach a class and PAGA settlement for \$2,500,000.

Plaintiffs’ core allegations in the case are that Defendants have violated California wage and hour law, including but not limited to laws set forth in the California Labor Code, by engaging in a uniform practice and procedure, with respect to Plaintiffs, Class Members, and

⁹ Halwadjian Decl., ¶ 6.

¹⁰ Halwadjian Decl., ¶ 7.

Aggrieved Employees of, *inter alia*, failing to pay all wages owed for work performed at all or at the correct rate of pay, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment as a derivative of the above violations, failing to provide compliant wage statements and failing to maintain requisite payroll records also as a derivative of the above violations, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.*, and conduct giving rise to civil penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections 2698, *et seq.*). Plaintiffs contend that they, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys’ fees and costs. Defendants have at all times denied the allegations and claims and that class treatment is appropriate and presented evidence that Plaintiffs and the class members have arbitration agreements and that Defendants have at all relevant times maintained facially compliant wage and hour policies. The Parties mediated and resolved the case prior to the Court ruling on the enforceability of the arbitration agreement.

Following mediation and the reaching of a settlement, on November 11, 2025, Plaintiff filed a Motion for Preliminary Approval of Class Action and PAGA Settlement (“Original Motion for Preliminary Approval”) and supporting documents seeking approval of the Settlement reached by the Parties.¹¹ On January 28, 2026, the Court issued a tentative ruling (“January 28, 2026 Tentative Ruling”), thereby raising multiple points of inquiry regarding the Original Motion for Preliminary Approval, and the Court’s tentative was to deny the Original Motion for Preliminary Approval without prejudice.

On January 29, 2026, the Parties attended a hearing on the Original Motion for Preliminary Approval, where the Court denied the Original Motion for Preliminary Approval without prejudice. The Court informed the Parties that Plaintiffs can refile their motion addressing the Court’s concerns raised in the January 28, 2026 Tentative Ruling.

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¹¹ Halwadjian Decl., ¶ 10.

On February 4, 2026, the Court issued a minute order adopting the January 28, 2026 Tentative Ruling as the order of the Court (“February 4, 2026 Order”). A true and correct copy of the February 4, 2026 Order is attached as “**EXHIBIT 7**” to the Declaration of Maria Halwadjian.

Plaintiffs have filed this renewed motion for preliminary seeking approval of the Settlement reached by the Parties and to address the points of inquiry noted by the Court in its February 4, 2026 Order.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendants will pay a Gross Settlement Amount of \$2,500,000.00 to resolve the Action.¹² This is a non-reversionary settlement and class members are not required to submit claim forms to receive their share of the settlement. Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys’ fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$875,000.00) (“Class Counsel Fees Payment”) and litigation costs and expenses in an amount not to exceed \$35,000.00 (“Class Counsel Litigation Expenses Payment”)¹³ to Class Counsel; (2) Administration Expenses Payment, which are currently estimated not to exceed \$35,000.00 to the Administrator (“Administration Expenses Payment”)¹⁴; (3) PAGA Penalties of \$375,000.00 (“PAGA Penalties”); and (4) payments in the amount of up to \$10,000.00 each to Plaintiffs (for a combined total of \$20,000.00) (“Class Representative Service Payments”).¹⁵ The Parties have agreed to retain ILYM Group, Inc. (“ILYM” or “Administrator”) to handle the notice and settlement administration process.¹⁶

The Parties have agreed that the Administrator will determine each Participating Class Member’s share of the available Net Settlement Amount (“Individual Class Payment”), in accordance with the Settlement Agreement on a *pro rata* per Workweeks basis, by (a) dividing

¹² Settlement Agreement, § 1.22.

¹³ Settlement Agreement, § 3.2.2.

¹⁴ *Id.*, § 3.2.3.

¹⁵ *Id.*, §§ 3.2.1 & 3.2.5.

¹⁶ Amendment No. 1, § A.

the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.¹⁷ The Parties have agreed that the Administrator will determine each Aggrieved Employee's *pro rata* share of the 25% share of the PAGA Penalties, in accordance with the Settlement Agreement on a *pro rata* per PAGA Pay Periods basis, by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.¹⁸

The Parties agree, for purposes of this Settlement, that Individual Class Payments will be allocated 25% to wages subject to withholdings and 75% to penalties and interest.¹⁹ The Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Class Payment.²⁰ Each Individual PAGA Payment will be allocated as 100% penalties and will not be subjected to withholdings.²¹ Defendants will provide the funds for any employer-side taxes related to the Individual Class Payments.²²

Individual Class Payment and Individual PAGA Payment checks will be negotiable for 180 calendar days from the date of their issuance, and thereafter, shall be canceled.²³ Thereafter, funds from uncashed Individual Class Payment and/or Individual PAGA Payment checks shall be transmitted to the California Controller's Unclaimed Property Fund in the name of each Class Member and/or Aggrieved Employee to whom the checks were issued.²⁴

Any Class Member may request to be excluded from the Class Settlement by mailing a Request for Exclusion postmarked on or before the date that is sixty (60) calendar days from the date of the initial mailing of the Class Notice by the Administrator ("Response Deadline").²⁵

¹⁷ Settlement Agreement, § 3.2.4.

¹⁸ *Id.*, § 3.2.5.1.

¹⁹ Settlement Agreement, § 3.2.4.1.

²⁰ *Ibid.*

²¹ *Id.*, § 3.2.5.2.

²² *Id.*, § 4.3.

²³ *Id.*, § 4.4.1.

²⁴ *Id.*, § 4.4.3.

²⁵ *Id.*, §§ 1.43 & 7.5.1.

Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.²⁶

Only Class Members who have not submitted a Request for Exclusion (i.e., Participating Class Member) may object to the Class Settlement by submitting a Notice of Objection, to the Administrator prior to the Response Deadline or by presenting their objection orally at the Final Approval hearing, regardless of whether they submitted a written objection.²⁷

In order to dispute the number of Workweeks and/or PAGA Pay Periods attributable to an individual Class Member and/or Aggrieved Employee, that Class Member and/or Aggrieved Employee must submit a written letter to the Administrator, and include copies of any supporting evidence they may have.²⁸

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). Courts review class action settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later detailed review after the period during which notice is distributed to class members for their comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th Ed. 2002). Preliminary approval of a settlement does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage. Cal. R. Ct. 3.769(g).

In considering a potential class settlement, a court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required for the trial court to grant provisional class certification and preliminary approval; the court may

²⁶ *Id.*, § 7.5.4.

²⁷ *Id.*, §§ 7.7.1 & 7.7.2.

²⁸ Settlement Agreement, § 7.6.

grant such relief upon an informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg*, § 11.25.

V. THE COURT SHOULD PRELIMINARY APPROVE THE SETTLEMENT

The trial court has broad discretion to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk*, 48 Cal.App.4th at 1800. To make this fairness determination, courts must consider several relevant factors, including “the strength of the Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Dunk*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. Furthermore, courts give “proper deference to the private consensual decision of the parties.” *Hanlon*, 150 F.3d at 1027 (citation omitted).

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

A. The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.

The Parties have actively litigated the Action since it commenced on September 5, 2023. Both sides investigated the veracity, strength, and scope of the claims throughout the case, and Class Counsel was actively preparing the matter for class certification and trial.²⁹

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²⁹ Halwadjian Decl., ¶¶ 36-40.

1 Class Counsel conducted significant investigation and formal and informal discovery
2 regarding the facts of the case, including and not limited to, the exchange, review, and analysis
3 of thousands of pages of documents and data from Plaintiffs, Defendants, and other sources.³⁰
4 The volume of data and documents that Class Counsel reviewed and analyzed included and was
5 not limited to: Plaintiffs' employment records, time and pay data for all hourly Fresno
6 employees followed by additional time and pay data for a random sample of 20% of all statewide
7 hourly employees, Defendants' California Employee Handbook and California Handbook
8 Addendum, internal memoranda, job descriptions, company policy acknowledgements, forms,
9 procedures and policies (including but not limited to Mutual Agreement to Arbitration
10 Agreement, CA Meal Break Waiver Agreements, Meal Periods and Rest Breaks Policy,
11 Overtime Policy, and Attendance and Punctuality Policy), among other information and
12 documents.³¹ Class Counsel learned that Defendants' policies with respect to timekeeping, meal
13 and rest breaks, expense reimbursements, wage statement, and pay practices are statewide and
14 do not vary from location and that the vast majority of hourly employees (over 95%) perform
15 the same role of janitorial/maintenance employees with the small remaining employees
16 performing administrative duties. Class Counsel applied its expertise in wage-and-hour class
17 action and representative litigation to review and analyze the data and concluded that the data
18 was sufficiently representative of the Class and statistically reliable to be extrapolated to the
19 Class as a whole. Class Counsel also had the opportunity to interview Plaintiffs and others to
20 gather facts and to identify potential witnesses.³² In addition, Class Counsel has extensive
21 experience in California wage-and-hour class actions.³³

22 The Parties engaged in extensive settlement negotiations and participated in two full-day
23 mediation sessions conducted by David Rotman, Esq., a well-respected mediator experienced
24 in mediating complex labor and employment matters.³⁴ Prior to and during the mediations and
25 settlement negotiations, the Parties exchanged extensive information and engaged in discussions

26 ³⁰ *Id.*, ¶ 37.

27 ³¹ *Ibid.*

28 ³² *Ibid.*

³³ Halwadjian Decl., ¶¶ 29-34.

³⁴ *Id.*, ¶ 36.

1 regarding their evaluations of the case and various aspects of the case, including but not limited
2 to, the risks and delays of further litigation, including the risks of proceeding with class
3 certification and/or representative adjudication, the law relating to overtime, minimum wages,
4 wages upon termination, wages during employment, wage statements, payroll records,
5 reimbursement of business expenses, off-the-clock theory, arbitration agreements, meal and rest
6 periods, PAGA representative claims, and wage-and-hour enforcement; the evidence produced
7 and analyzed; and the possibility of appeals.³⁵ During all settlement discussions, the Parties
8 conducted their negotiations at arm's length in an adversarial position.³⁶ Arriving at a settlement
9 that was acceptable to both Parties was not easy. Both sides felt strongly about their ability to
10 prevail at certification and at trial.³⁷ With the aid of the mediator's evaluation, the Parties have
11 agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiffs'
12 principal claims, the presence of arbitration agreements with class action waiver provisions, as
13 well as the costs and risks to both sides that would attend further litigation.³⁸

14 **B. The Settlement Is Fair, Reasonable, and Adequate.**

15 The Settlement represents a fair, adequate, and reasonable resolution of the matter.³⁹
16 The Settlement was calculated using the information and data uncovered during litigation, case
17 investigation, and the formal and informal exchange of information.⁴⁰ The Settlement takes into
18 account the potential risks and rewards inherent in any case and, in particular, in the matter at
19 issue.⁴¹ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement
20 represents a fair, reasonable, and adequate recovery for the Class as set forth in detail in the
21 supporting declaration of Plaintiffs' counsel, Maria Halwadjian.⁴²

22 Assuming that the Class Counsel Fees Payment, Class Counsel Litigation Expenses
23 Payment, Class Representative Service Payments, PAGA Penalties, and Administration
24

25 ³⁵ Ibid.

26 ³⁶ Ibid.

27 ³⁷ Ibid.

28 ³⁸ Ibid.

³⁹ Halwadjian Decl., ¶¶ 36, 38, & 47.

⁴⁰ *Id.*, ¶¶ 36-40.

⁴¹ *Id.*, ¶ 45.

⁴² *Id.*, ¶¶ 36, 38, & 47.

Expenses Payment are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be \$1,160,000.00.⁴³ Additionally, 25% of the PAGA Penalties (i.e., Aggrieved Employee Amount), which is \$93,750.00 out of \$375,000.00, will be distributed to the Aggrieved Employees. The average individual payment to each class member is estimated to be \$229.67. Of course, each individual payment will vary depending on the number of workweeks and pay periods worked. The entire Net Settlement Amount will be fully paid out to the Participating Class Member, in accordance with the Settlement Agreement. No amounts will revert to Defendants.

The amount of each Participating Class Member's Individual Class Payment and each Aggrieved Employee's Individual PAGA Payment will be calculated based on their Workweeks and/or PAGA Pay Periods during the Class Period and PAGA Period, respectively.⁴⁴ "An allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. Here, the allocation is reasonably related to the number of Workweeks and/or PAGA Pay Periods actually worked for Defendants during the relevant period and should be approved.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, Aggrieved Employees, and the State of California.⁴⁵ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appear to be competent, and have experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

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⁴³ *Id.*, ¶ 20.

⁴⁴ Settlement Agreement, §§ 3.2.4 & 3.2.5.1.

⁴⁵ Halwadjian Decl., ¶¶ 36, 38, & 47.

1 **C. The Settlement Is of Significant Value.**

2 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
3 conducted extensive investigation and exchanged thousands of pages of documents, data, and
4 information prior to mediation.⁴⁶ The information that Class Counsel obtained from Plaintiffs,
5 Defendants, and other sources allowed Class Counsel to develop valuation models in order to
6 evaluate the potential value and merit of the claims, and perform a complete evaluation of
7 Defendants’ defenses thereto.⁴⁷ As outlined in the Declaration of Maria Halwadjian, Class
8 Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to
9 entering into the Settlement.⁴⁸

10 **VI. CERTIFICATION OF THE CLASS IS APPROPRIATE**

11 The requisites for establishing class certification are met, and the Parties have stipulated
12 to conditional certification of the Class for settlement purposes only.⁴⁹ California Code of Civil
13 Procedure Section 382 “authorizes class actions when the question is one of a common or
14 general interest, of many persons, or when the Parties are numerous, and it is impracticable to
15 bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th
16 319, 326. California courts certify class actions where the Plaintiff identifies “both [1] an
17 ascertainable class and [2] a well-defined community of interest among class members.” *Id.*

18 **A. The Class Is Ascertainable and Sufficiently Numerous.**

19 “Ascertainability is required in order to give notice to putative class members as to whom
20 the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001)
21 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed Plaintiffs
22 by describing a set of common characteristics sufficient to allow a member of that group to
23 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
24 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed Class must also be
25 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435; *see also Rose v.*

26
27 ⁴⁶ *Id.*, ¶ 37.

28 ⁴⁷ *Id.*, ¶ 45.

⁴⁸ *Ibid.*

⁴⁹ Settlement Agreement, § 2.6.

1 *City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40
2 individuals satisfies the numerosity requirement as joinder is not practical at that point). The
3 Class here is estimated to be approximately 5,459 individuals, which is sufficiently numerous.⁵⁰
4 Further, all Class Members can and will be identified by Defendants to the Administrator
5 through a review of Defendants' employment records non-exempt/hourly employees who
6 worked for Defendants in California during the Class Period. As such, the Class is ascertainable
7 and sufficiently numerous.

8 **B. The Class Share a Well-Defined Community of Interest.**

9 The community of interest requirement "embodies three factors: (1) predominant
10 common questions of law or fact; (2) Class Representative with claims or defenses typical of
11 the class; and (3) Class Representative who can adequately represent the class." *Sav-On, supra*,
12 34 Cal.4th at 326. "[T]he community of interest requirement for certification *does not mandate*
13 *that class members have uniform or identical claims.*" *Capitol People First v. Dep't of*
14 *Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts
15 focus on the Defendants' internal policies and "pattern and practice . . . in order to assess whether
16 that common behavior toward similarly situated Plaintiff renders class certification
17 appropriate." *Id.* (citing *Sav-On*, 34 Cal.4th at 333).

18 Here, common issues of law and fact predominate as to each of the claims alleged and
19 asserted in the Action. Based on the documents and information obtained through informal
20 discovery and exchange of information in the case, Plaintiffs contend that Class Members
21 performed similar job duties and were subject to uniform operations and employment policies,
22 practices, and procedures during the Class Period, including the same timekeeping, meal and
23 rest break, expense reimbursement, payroll and recordkeeping policies and practices.⁵¹ As a
24 result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation
25 due to them from Defendants during the time period at issue. Plaintiffs maintain that the
26 outcome of this litigation would be determined by Defendants' alleged uniform operations and
27

28 ⁵⁰ Halwadjian Decl., ¶ 26.

⁵¹ Halwadjian Decl., ¶ 27.

1 employment policies and procedures that applied across its hourly-paid or non-exempt
2 employees who worked in California during the Class Period.

3 As members of the Class who were subject to these same policies, practices, and
4 procedures, and as outlined in the supporting declarations of Plaintiffs McKelvy and Saldana
5 Ponce, Plaintiffs' claims are typical of the Class. Moreover, Plaintiffs have no interests adverse
6 to the Class. Plaintiffs have taken steps to initiate and maintain this action and to ensure that it
7 comes to a fair and reasonable resolution.⁵² Importantly, Plaintiffs have retained a law firm well-
8 versed in wage and hour class actions, which has at all times represented the best interests of
9 Plaintiffs and the Class.⁵³

10 Accordingly, the proposed Class shares a community of interest, and the Court should
11 certify the Class for settlement purposes only.

12 **VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR CLASS**
13 **COUNSEL FEES PAYMENT AND CLASS COUNSEL LITIGATION EXPENSES**
14 **PAYMENT**

15 Class Counsel has litigated the matter for over two (2) years and was actively preparing
16 the matter for class certification and trial.⁵⁴ The ongoing work has been extensive, demanding,
17 and ultimately successful in achieving a substantial settlement resolution. Class Counsel
18 reviewed thousands of pages of documents and data⁵⁵ and also interviewed and obtained
19 information from Plaintiffs and other percipient witnesses, researched applicable law, undertook
20 damages/valuation calculations, and met and conferred with Defendants' counsel regarding the
21 pleadings and the production of documents and data prior to mediation.⁵⁶ Counsel for the Parties
22 also undertook extensive settlement discussions, which included participating in two
23 mediations.⁵⁷

24 _____
25 ⁵² Declaration of Efiong Alize McKelvy in Support of Plaintiffs' Motion for Preliminary Approval of Class
26 Action and PAGA Settlement ("McKelvy Decl."), ¶¶ 3-13; Declaration of Guadalupe Citlalli Saldana Ponce in
27 Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ("Ponce Decl."),
28 ¶¶ 3-13.

⁵³ Halwadjian Decl., ¶¶ 29-34.

⁵⁴ *Id.*, ¶ 36.

⁵⁵ *Id.*, ¶ 37.

⁵⁶ Halwadjian Decl., ¶ 37.

⁵⁷ *Id.*, ¶ 9.

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁵⁸

The Settlement establishes a Gross Settlement Amount of \$2,500,000.00, and provides for Class Counsel to apply to the Court consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$875,000.00 if the Gross Settlement Amount remains \$2,500,000.00) and reimbursement of actual costs and expenses in an amount up to \$35,000.00.⁵⁹ The attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, Aggrieved Employees, and the State of California, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members that an award of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment will be sought, and the amount allocated toward the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment by the Settlement.⁶⁰

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should

⁵⁸ *Id.*, ¶¶ 29-34.

⁵⁹ Settlement Agreement, § 3.2.2.

⁶⁰ Amendment No. 1, Exh. A.

“ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Id.* at 50.

The California Supreme Court has confirmed the propriety of calculating and awarding attorneys’ fees as a percentage of a settlement that has, by litigation, been preserved or recovered for the benefit of others. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The Court has taken the position that while “[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee,” “they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee[.]” and “[t]he percentage of fund method survives in California.” *Id.* (internal quotation marks omitted).

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45% of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶¹

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiffs’ Motion for Final Approval of the Settlement and application for the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment at the Final Approval Hearing. Considering the work performed and the risks incurred,

⁶¹ Halwadjian Decl., ¶ 21.

the attorneys' fees provided for by the Settlement are well within the range of reasonableness for preliminary approval.

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

California statutory authority and case law vests the Court with broad discretion in fashioning appropriate class notice. See Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. A class notice is adequate if it "present[s] a fair recital of the subject matter and proposed terms" of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

"Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice, which will be provided to Class Members in both English and Spanish, describes the Settlement, the deadlines and procedures to submit an objection to the Class Settlement, submit a Request for Exclusion from the Class Settlement, and/or dispute regarding Workweeks and/or PAGA Pay Periods, and the date and time set for the Final Approval Hearing.⁶² The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁶³ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁶⁴ The proposed Class Notice also appries the Class Members and Aggrieved Employees of, *inter alia*, how their Individual Class Payment and if applicable, their Individual PAGA Payment is calculated and the number of Workweeks and/or PAGA Pay Periods credited to them.⁶⁵ The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39.

Thus, the proposed Class Notice satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e);

⁶² Amendment No. 1, Exh. A.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

Newberg, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960. Accordingly, the Court should approve the proposed Class Notice.

IX. APPOINTMENT OF THE SETTLEMENT ADMINISTRATOR

The Parties have selected ILYM as the Administrator. Within fourteen (14) calendar days of receipt of the Class List, the Administrator will perform an NCOA check and will mail the Class Notice to each Class Member and Aggrieved Employee.⁶⁶ The Administrator will skip-trace returned Class Notice and re-mail the Class Notice to the new addresses within three business days.⁶⁷ In the case of a re-mailed Class Notice, the Response Deadline will be the later of sixty (60) calendar days after initial mailing or fourteen (14) calendar days from re-mailing.⁶⁸ The Administrator will receive and process Request for Exclusion, Notice of Objection, and any challenges to Workweeks and/or PAGA Pay Periods.⁶⁹ In addition, the Administrator will be responsible for printing, distributing, and tracking Class Notices and other documents for the Settlement; calculating and distributing payments due under the Settlement; issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances; providing necessary reports and declarations; and other duties and responsibilities to process the Settlement and as requested by the Parties.⁷⁰ The Administration Expenses Payment is currently estimated not to exceed \$35,000.00 and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁷¹ Accordingly, Plaintiffs respectfully request that the Court appoint ILYM as the Administrator and direct the mailing of the Class Notice to the Class Members and Aggrieved Employee in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

XI. CLASS REPRESENTATIVE SERVICE PAYMENTS

In recognition of their efforts and work spearheading the prosecution of this matter and serving as well as their broader individual waiver and release of claims with a California Civil

⁶⁶ Settlement Agreement, § 7.4.2.

⁶⁷ *Id.*, § 7.4.3.

⁶⁸ *Id.*, § 7.4.4.

⁶⁹ *Id.*, §§ 7.5.1, 7.6, & 7.7.1.

⁷⁰ *Id.*, § 7.8.3.

⁷¹ Amendment No. 1, § 3.2.3.

Code Section 1542 Waiver (set forth in Section 5.1.1 of the Settlement Agreement), Plaintiffs respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Class Representative Service Payments in an amount up to each \$10,000.00.⁷² It is within the Court's discretion to award payment to a Class Representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299. The factors that courts may consider in determining whether to make an Class Representative Service Payments include: (1) the risk to the Class Representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the Class Representative; (3) the amount of time and effort spent by the Class Representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the Class Representative as a result of the litigation. *Id.*

The Class Representative Service Payments are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁷³ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.⁷⁴ Accordingly, it is appropriate and just for Plaintiffs to each receive \$10,000.00 (combined total of \$20,000.00) for their services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to their Individual Class Payment.

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant Preliminary Approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers for Justice, PC as Class Counsel; appoint Plaintiffs Efiog Alize McKelvy and Guadalupe Citlalli Saldana Ponce as Class Representatives; appoint ILYM as Administrator; preliminarily approve the allocations for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, PAGA

⁷² Settlement Agreement, § 3.2.1.

⁷³ Halwadjian Decl., ¶ 22; McKelvy Decl., ¶¶ 3-13; Ponce Decl., ¶¶ 3-13.

⁷⁴ Halwadjian Decl., ¶ 22; McKelvy Decl., ¶¶ 3-13; & Ponce Decl., ¶¶ 3-13.

Penalties, and Administration Expenses Payment; approve the proposed Class Notice; direct the Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and to schedule a Final Approval Hearing to take place in approximately 6 months.

Dated: September 28, 2026

LAWYERS for JUSTICE, PC

By: 
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